



United States Department of
Health & Human Services

Office for Civil Rights

Case Resolution Manual

FOR CIVIL RIGHTS INVESTIGATIONS

Revised 2009



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Case Resolution Manual For Civil Rights Investigations (Revision 2009)

I. INTRODUCTION

Widespread Voluntary Compliance is our Aim

The ultimate aim of the Office for Civil Rights (OCR) of the U.S. Department of Health and Human Services (HHS) is to achieve widespread voluntary compliance with Federal civil rights laws in the health and human services arena, thereby protecting access for all populations to vital services provided by entities receiving Federal funding and by state and local government health and human service programs and activities. Widespread voluntary compliance is best achieved not only through extensive awareness of legal standards – communicated by OCR via education and technical assistance – but also through conducting high quality, timely investigations, negotiating strong agreements with covered entities, and issuing violation letters of finding where warranted.

Strategic Use of Resources is Necessary

Effective civil rights enforcement requires strategic use of resources. The 2009 Revised Case Resolution Manual is a dynamic, interactive resource designed to incorporate new tools, best practices, and guidance documents as they are developed. The Manual provides OCR staff and managers with the procedures and strategies designed to promptly and effectively evaluate and resolve complaints and compliance reviews that remedy discriminatory policies and practices identified by OCR, through collaboration among regional investigative staff, Office of General Counsel (OGC) attorneys, managers, and Headquarters staff. It also streamlines OCR's investigative practices to ensure case resolution stays on track during the entire process in several ways:

- Leveraging the many excellent tools for investigating and analyzing cases that have been developed by OCR staff over decades of civil rights enforcement is critical to OCR's mission accomplishment. Electronic links to these resources are featured throughout the 2009 Revised Case Resolution Manual, allowing investigators instant access to the most relevant tools and templates.
- Evaluating cases from the outset and throughout the life of the case for legal sufficiency is one of the most difficult and important aspects of investigation. The 2009 Manual includes links to analytic templates, providing investigators with instant access to the critical legal elements of typical OCR cases.
- Spelling out the steps in an investigation and the range of approaches for case resolution at any stage during an investigation can help staff more efficiently manage

their time. The 2009 Manual sets out these steps and resolution approaches and incorporates links to sample documents, including but not limited to template letters, data requests, witness interview summaries, and guidance for evaluating the sufficiency of evidence.

Strategic use of resources is critical not only to the success of individual investigators but also to OCR regional offices, which must consider all cases on the regional docket when allocating OCR's key resource: staff time. It is also critical to the American public that we serve who are seeking, and are entitled to, equal access to quality health care and human services that are supported by HHS. To achieve civil rights compliance, OCR must strive to establish efficient and effective processes to obtain speedy relief for individual harms and effectively identify and rectify systemic harms.

Case Evaluation and Planning are Required

Striking a balance between allocating staff resources to addressing individual complaints with very particular facts versus complaints that raise systemic issues with significant civil rights implications for many is extremely challenging. The 2009 Manual provides concepts and strategies for prioritizing cases for investigation during case evaluation. Thus, urgent matters where a person's rights may be adversely affected without speedy OCR action will receive immediate attention. Equally important, the case evaluation procedure established by the 2009 Manual encourages regions to prioritize matters to target cases of national or local significance that raise key compliance issues.

Guidance for Investigation is Detailed

The 2009 Manual provides clear, detailed guidance for investigations. It memorializes current practice requiring regional communication with OCR headquarters. And it affirms OCR's commitment to issuing violation findings where necessary and appropriate.

Use this 2009 Case Resolution Manual as a Living, Interactive Resource

Use of the 2009 Revised Civil Rights Case Resolution Manual should result in more effective civil rights enforcement – not only higher quality investigations, but efficiencies that allow OCR staff to focus efforts on cases with maximum “ripple effect,” resulting in more widespread voluntary compliance with Federal civil rights laws. This Manual will be updated regularly with new resources as they are developed and will assist staff to help OCR achieve maximum impact as a law enforcement agency.

II. FILING OF COMPLAINTS AND THE INTAKE PROCESS

A. Form of Complaints and Process for Filing Complaints

Individuals and organizations may submit complaints to OCR using the Discrimination Complaint Form, <http://www.hhs.gov/ocr/civilrights/complaints/complaintformpackage.pdf>, or other typed or written correspondence (e.g., letter) to OCR. Complaint forms are available by request through any OCR office or on the OCR website. Individuals interested in filing a complaint may call OCR's toll-free number (800) 368-1019 (recording that refers callers to the OCR website www.hhs.gov/ocr for complaint filing information and to Regional Office phone numbers) or the TDD line, (800) 537-7697.

Complaints may be submitted in various ways:

- ✓ Mail
- ✓ Hand-delivery
- ✓ Fax
- ✓ E-mail to OCRcomplaint@hhs.gov (complainants must be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties.)

Filed complaints must be in writing, and should be signed and dated. In light of OCR's enforcement authority of civil rights statutes, however, regional managers or their designees have the discretion to waive the requirement for a written, signed complaint. Complaint submission by email represents a signature.

OCR staff provides complainants with information and assistance regarding the nature of their rights and the OCR investigation process. Staff assists complainants who may be unable to submit a complaint in writing. For example, OCR staff may write out allegations provided over the telephone by a complainant or provide interpreter services.

B. Consent To Reveal Information

OCR seeks the complainant's consent to reveal his/her identity or identifying information, if necessary, to investigate the complaint. Consent is voluntary, and it is not always needed in order to investigate a complaint. A complainant's failure to provide consent is likely to impede the investigation of the complaint, however, and may result in closure of the case. Even without a signed consent form, OCR has the authority to collect and receive material and information about a complainant, including personnel and medical records, which are relevant to its investigation of a complaint. For these reasons, OCR should always attempt to acquire a signed Complainant Consent Form, which notifies complainants of this authority. OCR's [Discrimination Complaint Form Package](#) includes the [Complainant Consent Form](#). (Appendix C).

Complaints may be filed on behalf of another person. A Complainant Consent Form may be requested and obtained from the affected party on whose behalf the complaint is filed, but is not required. Similarly, verification of a complainant's authority to act on behalf of a minor who is not emancipated or a legally incompetent adult may be requested and obtained, but is not required. OCR managers should exercise their discretion to investigate such third party complaints in the absence of a signed consent by the affected party or verification of the complainant's relationship as a parent, legal guardian, or personal representative. A third party may be an individual, an association, advocacy group, or organization.

The Privacy Act of 1974, [5 U.S.C. 552a](#), and the Freedom of Information Act (FOIA), [5 U.S.C. 552](#), govern the use of personal information collected by OCR. OCR does not reveal the name or other personal information about an individual unless it is necessary for completion of an investigation or for enforcement activities against an entity that violates the law, or unless such information is required to be disclosed under FOIA, or disclosure is permitted under the Privacy Act. Information concerning FOIA and the Privacy Act is contained in the OCR's Discrimination Complaint Form Package.



<http://www.hhs.gov/ocr/civilrights/complaints/complaintformpackage.pdf>

APPENDIX C: CONSENT FORM PACKAGE

C. How Complaints Are Processed Once Received in OCR

Complaint Vs. Correspondence

A complaint is a written or electronic statement to HHS alleging that the rights of one or more persons have been violated and requesting, directly or by implication, that HHS take action to resolve the allegations and issues stated in the complaint.

Complaints and correspondence in languages other than English must be translated, and correspondence sent to the complainant must be sent in the same language used by the complainant.

Not every piece of correspondence that OCR receives concerning an alleged civil rights violation is a complaint. Upon receipt, OCR will determine whether or not the correspondence constitutes a complaint.

The following examples are not generally complaints:

- Anonymous correspondence, in which the complainant does not provide a name or contact information (i.e., address, telephone number, or e-mail address);
- Inquiries that seek advice or information but do not seek action or intervention from OCR;
- Courtesy copies of court pleadings;

- Courtesy copies of correspondence or of a complaint addressed to another agency
- Newspaper articles;
- Courtesy copies of internal grievances; or
- Oral allegations, unless the complainant is a person with a disability or other special circumstance exists that prevents the person from submitting a written complaint.

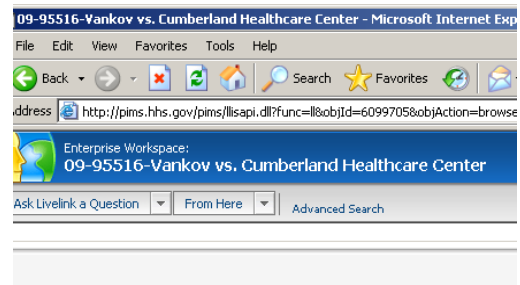
OCR may decide to use correspondence it receives which does not constitute a complaint but raises a concern that a covered entity may be violating the law to schedule a compliance review or make inquiries to local organizations to explore whether further action is warranted.

If OCR determines that correspondence it receives does not constitute a complaint, and does not warrant a compliance review or further inquiry, the correspondence will be handled in one of the following ways:

1. Information requests are handled as correspondence, logged into PIMS, and are assigned transaction numbers;
2. Generally, anonymous correspondence and courtesy copies and anonymous complaints do not require responses, are not logged into PIMS, and are not assigned transaction numbers.

Assign a Transaction Number and Establish a File for Each Complaint

A transaction number generally will be assigned to each complaint and a case file will be established. Managerial discretion is permitted to ensure that transaction numbers are appropriately assigned.



The following guidelines also should be applied:

1. Complaints from more than one person against the same covered entity, which contain different allegations or allegations specific to the complainant, are treated as separate complaints.
2. Complaints filed by more than one person that raise substantially identical allegations against the same covered entity can be treated as one complaint and assigned one transaction number. If subsequent complaints are received that contain substantially identical allegations, staff should incorporate additional complaints into an existing transaction that addresses these allegations.
3. New allegations filed by the same person against the same covered entity after OCR has accepted the complaint for resolution are reviewed on a case-by-case basis to determine whether the allegations should be added to the open complaint or treated as a new complaint.

Acknowledge the Complaint

Complaints should be acknowledged within ten calendar days of receipt. The acknowledgement letter informs the complainant that the complaint has been received and will be evaluated for appropriate action. Managerial discretion is permitted to combine consent forms for the complainant to review, sign, and return and/or combine requests for information from the complainant with the acknowledgement letter during the intake phase. In this regard, complaints should be acknowledged or closed within 30 calendar days of receipt.

If not already provided by the complainant, a Complainant Consent Form Package, including the related privacy notifications, will be included with OCR's acknowledgement letter. The complainant will be informed of the possibility that the complaint may be closed if the signed consent form is not received within 20 calendar days of the date of the acknowledgment letter. Case closures on this ground are discretionary and must be approved by regional management.

[APPENDIX A: Acknowledgement Letter - Simple \(Template\)](#)

[APPENDIX B: Acknowledgment Letter - Request for Consent Form – 20 Day Option \(Template\)](#)

[APPENDIX C: Consent Form Package](#)

III. INITIAL CASE REVIEW and PIMS TRIAGE

Triage refers to evaluation of the complaint in order to understand the complainant's allegations. Triage includes gathering appropriate information, including jurisdictional information, and deciding whether OCR will proceed to complaint resolution or will take other appropriate action, such as incorporating a complaint into an existing transaction or conducting a compliance review. The triage phase in PIMS begins with a series of steps and questions that help determine OCR's authority and jurisdiction. OGC and Headquarters are important resources that regions should consult to assist as needed in making critical determinations at this stage.

A. Gather and Evaluate Basic Information

In conducting a jurisdictional analysis, OCR will actively work with complainants and examine other sources of information to ensure that it has sufficient information to appropriately evaluate the complaint. The information needed includes the following:

- A description of the alleged discriminatory action or practice;
- A way to contact the complainant, i.e., information sufficient to enable staff to contact the complainant by letter, telephone, or electronically;
- Identification of the person or group injured by the alleged discrimination;
- Identification of the person, institution, or agency/organization alleged to have engaged in discrimination; and
- Sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and the basis of the discrimination (i.e., race, color, national origin, disability, age, gender, or religion).

Is it a Civil Rights or a Health Information Privacy (HIP) Complaint?

If it appears that the complaint contains only HIP allegations, staff follows regional procedures for closing the PIMS transaction and opening a HIP complaint.

If it appears the case contains HIP allegations as well as civil rights allegations, staff follows regional procedures for opening an additional PIMS transaction for the HIP complaint. Document this action in the transaction folder or in case notes and continue with the analysis.

Contact the Complainant to Obtain Missing Information

Staff should make reasonable efforts to contact the complainant to obtain the information needed for OCR to properly assess jurisdiction over the complaint. At this point, staff need only gather sufficient information to make an initial determination of whether the complainant has established a claim under the laws that OCR enforces and

that OCR has jurisdiction over the complaint. Remember, if an attorney or other personal representative filed the complaint, the investigator should contact the attorney first to obtain the information or to ask for authorization to speak to the complainant. Where additional information would be helpful, but is not necessary to evaluate the complaint to determine whether it should be accepted for investigation, OCR should not seek the additional information as part of Initial Case Review and PIMS Triage.

Staff may contact the complainant by telephone, letter (see [Contact the Complainant to Obtain Missing Information](#), below), or e-mail. When contacting complainants by e-mail, staff must adhere to [OCR's Policy for Safeguarding Protected Health Information and Other Confidential Information, dated August 21, 2007](#) (Appendix E). Additional guidance for contact with Complainants is provided in [Communication with the Parties in an Investigation](#), Part XI of this Manual.

Investigators could ask the complainant some or all of the following questions, depending on what information is needed:

- What happened?
- When did it happen?
- Who did it?
- Was someone or a group of persons denied a service or benefit? If so, who? What service or benefit was denied?
- Do you believe that unlawful discrimination is the reason for this action?
- If so, why?
- Did the entity's representative make any verbal statements that made you believe the motive for their actions was discrimination? Explain.
- Did the entity's representative make any written statements that made you believe the motive for their actions was discrimination? Explain.
- Do you believe that you were treated differently than other individuals? If so, in what way? Explain.
- Do you have any correspondence, e.g., letters, post cards, emails, regarding the agency's determination?

If information establishes that OCR has no jurisdiction over the person or entity alleged to have engaged in discrimination, it is not necessary to inquire further about the factual bases for the complainant's belief that discrimination has occurred. For these cases, staff closes the complaint and sends the complainant a no-jurisdiction closure letter.

Make a Record of Contact with Complainant

A record of contact in PIMS summarizing each conversation with a complainant must be created and placed in the case file.

Send an Insufficient Information Letter, As Necessary

If a complaint is incomplete, OCR will inform the complainant in writing of additional information needed and that, if the necessary information is not provided within 20 calendar days of the date of the insufficient information letter, the complaint will be closed. Complaints not supported with sufficient information within the 20-day timeframe will be closed. OCR will inform the complainant in writing of the closure due to insufficient information.

If the complaint contains sufficient information with respect to at least one allegation, but lacks sufficient information with respect to other allegations, staff attempts to obtain the missing information, as described above. OCR will continue in its assessment, and, if warranted, investigation of the supported allegation(s).

[APPENDIX D:](#) Guidance on Closure of Complaints Based on Insufficient Information from the Complainant

[APPENDIX E:](#) Guidance on the Use of Email

[APPENDIX F:](#) Acknowledgement Letter with Incomplete Complaint – 20 Day Option (Template)

[APPENDIX C:](#) Consent Form Package

[APPENDIX G:](#) Closure Letter - No Jurisdiction - Optional Referral (Template)

[APPENDIX J:](#) Closure Letter - No Response or Inadequate Response to Request for Information - 20 Day Letter (Template)

B. Determine Whether the Complaint is Timely

In most cases, complaints must be filed within 180 calendar days of the last date of the alleged discrimination (There is no timeliness requirement for a complaint that alleges noncompliance under Title VI and XVI of the Public Health Service Act (Hill-Burton Act).

The filing date is generally the earlier of:

- The postmark of the complaint;
- The date the complaint is received by OCR; or
- For complaints referred by another agency, including the U.S. Department of Justice (DOJ), the date the complaint is received by the other agency.

Timely complaints may include those where the complainant alleges a continuing discriminatory policy or practice. Staff should consult with supervisors and OGC as needed for guidance in making the determination of the existence of a continuing discriminatory policy or practice.

Determine Whether the Time for Filing the Complaint Should Be Extended

If a complaint is not filed within the 180-day timeframe, then consult a supervisor to determine whether a letter requesting additional information from the complainant should be sent. The letter provides an opportunity for the complainant to explain why the complaint was not filed in a timely manner. Such information may reveal reasons that would warrant the waiver of the 180-day filing requirement.

Regional Managers or their designees have the authority to waive the timeliness requirement for specific reasons. The following factors should be considered when determining whether to extend the 180-day time limitation:

- Whether the complainant became aware of the alleged discrimination within the respective filing period;
- The extent to which the complainant has sought or obtained relief through other administrative or legal proceedings;
- Whether the complaint was filed on a timely basis with another agency or through an internal grievance process and the complainant was subsequently notified that no action would be taken on the complaint;
- Whether actions of the covered entity contributed to the late filing; or
- Other reasons that OCR determines sufficient to warrant an extension.

APPENDIX K: Acknowledgement Letter - Untimely Complaint – 20 Day Option (Template)

If a waiver of the 180-day filing requirement is approved, staff should document this decision in the transaction folder or in case notes, summarizing the justification provided by the complainant.

If a waiver is not granted, the case should be closed and the complainant informed of the decision.

APPENDIX J: Closure Letter - No Response or Inadequate Response to Request for Information – 20 Day Letter (Template)

C. Determine Subject Matter Jurisdiction

OCR must determine whether it has jurisdiction over the subject matter of the complaint, i.e., whether the complaint alleges discrimination or retaliation on a basis prohibited by one of the statutes or regulations that OCR is responsible for enforcing, or whether referral to another agency is appropriate.

OCR has jurisdiction under three Federal statutes that apply generally to programs and activities receiving Federal financial assistance:

- Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq., [45 C.F.R. Part 80](#) (<http://www.usdoj.gov/crt/cor/byagency/HHST6reg.php>) (discrimination based on race, color or national origin) (Title VI);
- Rehabilitation Act of 1973, as amended, 29 U.S.C. 794:
 - Section 504 jurisdiction over recipients of Federal financial assistance from HHS, [45 C.F.R. Part 84](#) (Appendix DDD) (discrimination against otherwise qualified individuals based on disability)
 - Section 504 jurisdiction over HHS-conducted programs, [45 C.F.R. Part 85](#) (Appendix EEE) (See additional guidance in [Complaints Against HHS-Conducted Programs and Activities](#)); and
 - Section 508 jurisdiction over HHS-conducted programs that develop, procure, maintain, or use electronic and information technology (see [Electronic & Information Technology \(Section 508\) Homepage](#)) (requiring federal agencies to make their electronic and information technology accessible to people with disabilities) (Complaints filed under Section 508 are processed following the same procedures for investigating Section 504 complaints regarding HHS-conducted programs, [45 C.F.R. Part 85](#)) (See additional guidance in [Complaints Against HHS-Conducted Programs and Activities](#)).
- Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq. (Age Act), [45 C.F.R. Part 91](#) (Appendix FFF) (discrimination based on age). (See additional guidance in [Age Discrimination Complaints](#)).



OCR also has jurisdiction under these narrower authorities:

- Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131 et seq., as amended by the ADA Amendments Act of 2008 (P.L. 110-325), (Title II of the ADA), [28 C.F.R. Part 35](#) (www.ada.gov/reg2.html) (DOJ has delegated authority to HHS

over disability discrimination complaints against certain State and local government programs). (See discussion of DOJ delegation of Title II enforcement authority to HHS at [Disability Employment Discrimination Complaints below](#)).

- Titles VI and XVI of the Public Health Service Act, 42 U.S.C. 291 et seq., and 42 U.S.C. 300q et seq., [42 C.F.R. Part 124, Subpart G](#) (Appendix GGG) (Community Service obligations of Hill-Burton facilities). Under the community service obligations of the Hill Burton Act, facilities that have received Federal financial assistance under Title VI and XVI of the Public Health Service Act are required to make their services available to all persons residing or employed in the facility's service area without discrimination based on race, color, national origin, creed or any other ground unrelated to the individual's need for the service or the availability of the service in the facility.



APPENDIX L: Hill-Burton Community Service Assurance Complaint Letter (Template)

- Section 542 of the Public Health Service Act, as amended, 42 U.S.C. 290dd-1 (prohibiting discrimination in admission or treatment against substance abusers suffering from medical conditions by Federally-assisted hospitals and outpatient facilities), [45 C.F.R. 84.53](#) (Appendix HHH);
- Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 (Title IX), [45 C.F.R. Part 86](#) (Appendix JJJ) (sex discrimination in federally assisted education programs);
- Sections 794 and 855 of the Public Health Service Act, 42 U.S.C. 295m and 298b-2, [45 C.F.R. Part 83](#) (www.usdoj.gov/crt/cor/byagency/HHSPart83.php) (sex discrimination in federally assisted health training programs);
- Section 508 of the Social Security Act (Maternal and Child Health Services Block Grant), [42 U.S.C. 708](#) (www.usdoj.gov/crt/cor/byagency/hhs708.php) (sex and religion added as prohibited grounds);
- Section 533 of the Public Health Service Act (Projects for Assistance in Transition from Homelessness), [42 U.S.C. 290cc-33](#) (www.usdoj.gov/crt/cor/byagency/hhs290cc33.php) (sex and religion added as prohibited grounds);



- Section 1908 of the Public Health Service Act (Preventative Health and Health Services Block Grant), [42 U.S.C. 300w-7](#) (sex and religion added as prohibited grounds);
- Section 1947 of the Public Health Service Act (Community Mental Health Services Block Grant and Substance Abuse Prevention and Treatment Block Grant), [42 U.S.C. 300x-57](#) (www.usdoj.gov/crt/cor/byagency/hhs330w7.php) (sex and religion added as prohibited grounds);
- Family Violence Prevention and Services Act, [42 U.S.C. 10406](#) (www.usdoj.gov/crt/cor/byagency/hhs330w7.php) (sex and religion added as prohibited grounds);
- Low-Income Home Energy Assistance Act of 1981, [42 U.S.C. 8625](#) (www.usdoj.gov/crt/cor/byagency/hhs8625.php) (race, color, national origin and sex discrimination prohibited);
- Community Services Block Grant Act, [42 U.S.C. 9918](#) (www.usdoj.gov/crt/cor/byagency/hhs9918.php) (race, color, national origin, disability, age and sex discrimination prohibited);
- Equal Employment Opportunity Provisions of the Communications Act of 1934, as amended, 47 U.S.C. 398(b) (www.usdoj.gov/crt/cor/byagency/hhs398b.php) (prohibiting employment discrimination by federally funded public telecommunication entities on grounds of race, color, religion, national origin or sex);
- Section 1808(c) of the Small Business Job Protection Act of 1996, [42 U.S.C. 1996b](#) (www.usdoj.gov/crt/cor/byagency/hhs1996bMEPA.php) (prohibiting the routine consideration of race, color, and national origin in child adoption and foster placement decisions) (Section 1808(c) repealed the Howard M. Metzenbaum Multiethnic Placement Act of 1994, 42 U.S.C. 5115a).

OCR has jurisdiction over complaints alleging retaliation, intimidation, threats, and coercion or discriminatory conduct by a covered entity including, but not limited to, where:

- The complainant has testified, assisted or participated in an OCR investigation or hearing;
- The complainant has participated in a recipient's or other covered entity's internal grievance procedure or filed a complaint with a Federal, State or local civil rights agency in an attempt to redress practices, actions, or policies that could violate OCR's statutory authorities; or



- The complainant has opposed practices, actions, or policies that could violate OCR's statutory authorities.
- The above list of potential retaliatory actions is not exhaustive. Staff should consult with supervisors and OGC as needed for guidance in making the determination of whether there are grounds to investigate claims of retaliation.

Several regulations that OCR enforces contain specific provisions prohibiting retaliation: Title VI regulation, 45 CFR 80.7(e); Section 504 regulation, 45 CFR 84.61; Title IX regulation, 45 CFR 86.71; Age Discrimination Act regulation, 45 CFR 91.45; Title II regulation, 28 C.F.R. 35.134. Other regulations do not contain retaliation provisions, such as Hill-Burton. In such instances, allegations may be examined to determine whether there are grounds to investigate claims of retaliation.

D. Determine Jurisdiction over Entity or Program

OCR must determine whether it has jurisdiction over the program, activity, or entity alleged to have engaged in discrimination.

- Under Title VI, Section 504, the Age Act, and Title IX, OCR has jurisdiction over institutions that receive HHS financial assistance directly or as a sub-recipient;
- Under Title II of the ADA, OCR has jurisdiction over certain State and local government agencies, regardless of Federal funding;
- Under the Secretary's Delegation of Authority (45 Fed. Reg. 82721, Dec. 16, 1980), OCR has jurisdiction over facilities that have a community service obligation under Titles VI and XVI of the Public Health Service Act (commonly called the "Hill Burton Act").
- If the entity named in the complaint is covered by a delegation of authority from another federal agency, OCR must document the funding source and the time period in question in the case file; and
- Under Section 504 of the Rehabilitation Act of 1973, OCR has jurisdiction over HHS operated programs.

OCR staff may need to contact State coordinators within the appropriate state, city or county governments to track HHS funds and other assistance.

Regional managers or their designees have discretion in determining how to handle a complaint against an institution that is no longer a covered entity but was a covered entity at the time the alleged discrimination occurred. OGC consultation should be considered in such cases.

E. Handling of Complaints over which OCR Does Not Have Jurisdiction

If OCR does not have jurisdiction over the complaint, determine whether a complaint may warrant referral to another agency. There are two ways to refer the complaint. Staff can either inform the complainant of the referral agency's contact information so that they can file a complaint on their own, or staff can refer the complaint on behalf of the complainant by sending a copy of the complaint to the agency. Before forwarding a complaint directly to another agency, consult a supervisor. Typically, OCR provides the complainant with the agency's contact information to submit a complaint on his or her own. Where OCR may have dual jurisdiction over the complaint with another agency, or an interest in the outcome of the referral, a direct referral to another agency on behalf of the complainant would be appropriate.

F. Special Handling Procedures Including Referral to or Coordination with another Agency

Special handling procedures cover age and employment discrimination complaints, complaints alleging discrimination against prisoners, Hill-Burton complaints, complaints involving building/facility accessibility and certain block grants over which OCR has limited, shared, or overlapping jurisdiction with other agencies under applicable regulations, as described below:

Age Discrimination Complaints

Under the Age Act, OCR has jurisdiction to investigate complaints alleging discrimination based on age by a covered entity, which are not related to employment. By regulation, OCR must promptly refer such complaints to the Federal Mediation and Conciliation Service (FMCS), to provide the parties with a 60-day period from OCR's receipt of a sufficient complaint to resolve the matter through alternative dispute resolution. Consent from the complainant to disclose his or her identity to FMCS is not required. If an age complaint is not resolved by FMCS within 60 days from the date it was received by OCR and FMCS does not seek a 30-day extension of the mediation period pursuant to 45 C.F.R. 91.43, OCR will investigate the complaint.

[Also see [Gather And Evaluate Basic Information](#) (III.A. of this Manual)]

Upon referral of an Age discrimination complaint to FMCS, OCR shall notify the complainant of the referral to FMCS and opportunity to resolve the complaint through mediation. If the parties are unable to reach an agreement within 60 days, FMCS will refer the case back to OCR for investigation. The notification letter also should inform the complainant that if OCR fails to make a finding within 180 days since the complaint was filed, the complainant may bring a lawsuit in Federal court against the entity that allegedly engaged in unlawful



discrimination based on the complainant's age. The findings letter, if issued before the 180-day deadline, shall also include the same information.

If no finding is made within the 180-day period, OCR shall notify the complainant that no finding has been made and the complainant has the right to bring a civil suit for injunctive relief. If the complainant chooses to pursue the civil suit, OCR may, at the discretion of the regional manager, close the Age discrimination complaint if there are no allegations of other types of discrimination. In the 180 day notice, the complainant should be advised that:

- The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;
- A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;
- Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, and the recipient;
- The notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are being demanded in the event the complainant prevails; and
- The complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

If the complaint also involves allegations other than age (i.e. a "mixed case"), OCR will generally investigate those issues following completion of the FMCS proceedings. OCR retains the discretion to proceed with an investigation of non-age related allegations in a mixed case during the pendency of FMCS proceedings, as appropriate, to ensure civil rights compliance.

OCR will refer to FMCS any age complaint alleging retaliation by the covered entity that is received prior to the completion of the mediation process. OCR will retain and investigate any retaliation complaints received following FMCS mediation.

OCR does not have jurisdiction over employment discrimination complaints based on age. These cases must be referred to the EEOC. Staff must notify the complainant and covered entity of OCR's statutory jurisdiction and the procedures for processing age-based employment discrimination complaints.

[APPENDIX N:](#) Notification of Referral to FMCS Letter (Template)
[APPENDIX O:](#) FMCS Referral Form



Employment Discrimination Complaints on the Bases of Race, Color, National Origin, or Sex

Under Title VI and Title IX, OCR has limited jurisdiction to investigate certain employment complaints alleging discrimination based on race, color, national origin, or sex by a covered entity. The Equal Employment Opportunity Commission (EEOC) may have primary or dual jurisdiction over these employment discrimination complaints. After the receipt of an employment discrimination complaint, OCR will promptly determine whether the complaint should be investigated by OCR or referred to EEOC:

- By regulation (28 C.F.R. Part 42, Subpart H (DOJ) and 29 C.F.R. Part 1691 (EEOC)), employment discrimination complaints over which OCR lacks jurisdiction and EEOC may have jurisdiction must be referred to EEOC in a timely manner.
- Staff should refer to the EEOC any employment discrimination complaint over which both EEOC and OCR have jurisdiction solely alleging discrimination against an individual, absent special circumstances warranting OCR investigation.
- OCR should retain employment discrimination complaints for investigation on these protected bases only if (i) the complaint includes allegations regarding other non-employment related practices of a covered entity that could violate Title VI or Title IX; or (ii) a pattern or practice of employment discrimination is alleged. For employment discrimination complaints that could violate Title VI, OCR's jurisdiction is typically limited to programs or activities whether a primary objective of the Federal financial assistance is to provide employment.
- Where a complaint is referred to the EEOC, the entire complaint is closed and the complainant is notified of the referral. The letters notifying the complainant of referral to EEOC must state that OCR is closing the complaint. No determination of completeness or timeliness need be made. Consult a supervisor concerning whether to notify the covered entity of referral to EEOC. If the EEOC returns an OCR-referred complaint back to OCR for action, alert a supervisor for further instruction.
- Where OCR retains any portion of the complaint, the original case will be closed upon referral to EEOC and a new case number assigned to the portion retained by OCR.



Disability Employment Discrimination Complaints

OCR has jurisdiction to investigate complaints of employment discrimination based on disability by a recipient of Federal financial assistance under Section 504 and by a State or local government agency under Title II of the ADA. The EEOC also may have jurisdiction over these disability employment discrimination complaints against employers with 15 or more employees, including State and local government agencies, under Title I of the ADA.

Joint regulations (28 C.F.R. Part 37 (DOJ) and 29 C.F.R. Part 1640 (EEOC)) establish procedures for coordinating the investigation of complaints alleging employment discrimination based on disability.

- Under the joint regulations, where a complaint solely alleges discrimination against an individual and OCR has jurisdiction under Section 504 and the EEOC may have jurisdiction under Title I, OCR should notify the complainant in writing of its intent to refer the complaint to the EEOC for handling unless the complainant, following receipt of a “notification letter” from OCR, specifically requests that OCR investigate the complaint. In its notification letter to the complainant, OCR must inform the complainant that he or she may request in writing that OCR retain the complaint for investigation within 20 days of the date of the notification letter; explain the basic procedural differences between investigations by OCR and the EEOC; and inform the complainant of the potential for differing remedies under Title I and Section 504.

APPENDIX P: OCR/EEOC Selection Letter (Template)

- OCR will retain for investigation employment discrimination complaints over which OCR has jurisdiction under Section 504 and the EEOC may have jurisdiction under Title I of the ADA where the complaint: (i) includes allegations regarding other practices of a covered entity that could violate Section 504, or (ii) alleges a pattern or practice of employment discrimination.
- In contrast, where OCR has jurisdiction under Title II and the EEOC may have jurisdiction under Title I, staff must refer the complaint to the EEOC for investigation. Where a complaint is referred to the EEOC, the entire complaint is closed. The letters notifying the complainant and covered entity of referral to EEOC must state that OCR is closing the complaint. No determination of completeness or timeliness need be made. If the EEOC returns an OCR-referred complaint back to OCR for action, alert a supervisor for further instruction.

OCR’s Title II delegated authority is set forth in 28 C.F.R. 35.190(b) (3).

28 CFR Part 35; Subpart G -- Designated Agencies
Section 35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and

shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.

(b) The Federal agencies listed in paragraph (b)(1)-(8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in their functional areas.

(c) Responsibility for the implementation of subpart F of this part for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section may be assigned to other specific agencies by the Department of Justice.

(d) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

- Where OCR has neither Section 504 nor Title II jurisdiction and the EEOC may have jurisdiction under Title I, OCR must refer the complaint to the EEOC. If neither OCR nor the EEOC have jurisdiction, OCR staff must refer the complaint to the Department of Justice (DOJ), Civil Rights Division.
- Consult a supervisor and the coordinating regulations in complex situations, e.g., whether to forward a certain dual-filed or triple-filed complaint by one Title II designated agency to a different Section 504 agency.

[28 C.F.R. Part 37 \(DOJ\)](#) (see www.ADA.gov)

29 C.F.R. Part 1640 ([EEOC](#)) (see www.eeoc.gov/types/ada.html)

See additional information about the scope of Title I of the ADA.

APPENDIX Q: Disability Employment Discrimination Complaint Referral Letter (Template)

Disability Discrimination Complaints (other than employment) over which OCR Does Not Have Jurisdiction

Under the DOJ Title II regulations at 28 C.F.R. 35.190(b)(3), HHS is the "designated agency" handling complaints regarding State and local government entities' exercise of responsibility, regulation or administration as to all programs, services and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools; health care and social service providers and institutions, including "grass-roots" and community services organizations and programs; and preschool and day care programs.

28 C.F.R. 35.190(b) (3) (www.ada.gov/reg2.html)

Under the DOJ Title III regulations at 28 C.F.R. Part 36, DOJ retains jurisdiction over complaints against places of public accommodation (i.e., businesses and non-profit agencies that serve the public), including health care facilities. If OCR receives a disability discrimination complaint over which it does not have jurisdiction, but DOJ may have Title III jurisdiction, e.g., complaint against a private entity that would be covered solely under Title III as there is no indication that it received Federal financial assistance from HHS, it should be referred to DOJ and closed. OCR should notify the complainant of the referral.

[28 C.F.R. Part 36 \(www.ada.gov/reg3a.html\)](http://www.ada.gov/reg3a.html)

Consult a supervisor for guidance on cases where there may be Title III and Section 504 allegations raised in a complaint. HQ consultation should be sought concerning coordination with DOJ in such possible dual jurisdiction cases.

Also see [the DOJ Report regarding pending Title III cases](#) in PIMS Reference Library.

Complaints Involving Discrimination based on Disability or Unlawful Conditions of Confinement or Institutionalization

Discrimination Based on Disability: Complaints from persons who are incarcerated that allege discrimination based on disability are referred to the Disability Rights Section of the Department of Justice's Civil Rights Division. Complaints from persons who are committed to forensic psychiatric units, pursuant to a criminal commitment statute, alleging violation of their right to treatment in the most integrated setting or other disability discrimination claims, also are referred to the DOJ Disability Rights Section. The complaint should be closed and the complainant should receive a letter regarding the referral.

ADA Title II regulations provide that the Department of Justice has jurisdiction over administrative complaints that concern "programs, services and regulatory activities relating to law enforcement, public safety and the administration of justice, including courts and correctional institutions . . ." 28 C.F.R. § 35.190(b) (6). These same regulations give HHS jurisdiction over administrative complaints concerning "programs, services and regulatory activities relating to the provision of health care and social services . . ." 28 C.F.R. § 35.190(b) (3). When an individual is imprisoned or committed to a forensic psychiatric unit pursuant to a criminal commitment statute, the process inextricably involves the criminal justice system and therefore is a matter concerning law enforcement and public safety. As such, staff should refer these cases to DOJ for appropriate handling. When in doubt, regional staff should consult with headquarters staff for guidance.

APPENDIX R: Non-Jurisdictional – Unlawful Conditions of Confinement Referral Letter: Disability; Race, Color, National Origin; Religion; General Conditions – State Facility; General Conditions – Federal Facility (Template)

Discrimination Based on Race, Color, National Origin, and Religion: Complaints from persons who are incarcerated that allege discrimination based on their race, color, national origin, including complaints from limited-English proficient persons regarding language access, are generally referred to the Coordination and Review Section of the Department of Justice's Civil Rights Division. HHS funds some forensic psychiatric facilities, however, consult with Headquarters prior to referral of a complaint of this nature to DOJ. If it is determined that DOJ alone has jurisdiction over the complaint, the complaint should be closed and the complainant should receive a letter regarding the referral.

General Mistreatment and Bad Conditions: Complaints from persons who are incarcerated or institutionalized that allege abuse, unhealthy conditions, or poor medical care during confinement or institutionalization, are referred to the [Special Litigation Section](#) of the Department of Justice's Civil Rights Division (<http://www.usdoj.gov/crt/split/overview.php>). When the complaint alleges a pattern or practice of violations of residents' federal rights in a prison, a forensic psychiatric unit, or other institution, the complaint also should be referred to the [Special Litigation Section](#). The complaint should be closed and the complainant should receive a letter regarding the referral.

Staff should be aware that the DOJ Special Litigation Section enforces the [Civil Rights of Institutionalized Persons Act \(CRIPA\)](#), and does not investigate individual complaints or represent individuals in matters regarding institutional conditions. Rather, the Special Litigation Section investigates state or local government institutions and facilities under contract with a state or local government to determine whether there is a pattern or practice of violations of the Federal civil rights of institutionalized individuals.

Consult a supervisor for guidance on cases where there may be Title II and CRIPA allegations raised in a complaint. HQ consultation also should be sought concerning coordination with DOJ in such possible dual jurisdiction cases.

[APPENDIX R: Non-Jurisdictional – Unlawful Conditions of Confinement Referral Letter: Disability; Race, Color, National Origin; Religion; General Conditions – State Facility; General Conditions – Federal Facility](#)

Hill-Burton Complaints

Enforcement of Community Service Assurance: Under the Hill-Burton Act delegation of authority granted by the Secretary, OCR has jurisdiction to enforce the Hill-Burton Community Service Assurance provisions codified at 42 C.F.R. 124 Subpart G. The community service assurance provisions require, among other things, assisted facilities to provide services, including emergency services if it has an emergency capability, to any person who resides (or, in the case of Title XVI facilities, who is employed) in the service area without discrimination on the ground of race,



color, national origin, creed, or any other ground unrelated to an individual's need for the service or the availability of the needed service in the facility. Hill-Burton facilities that provide emergency services may not deny emergency services to any person who resides (or, in the case of Title XVI facilities, who is employed) in the service area on the ground that the person is unable to pay for those services.

Appendix CCC: Delegation of Enforcement Authority

Enforcement of Uncompensated Care Assurance: Under the Hill-Burton Act, Health Resources & Services Administration has the authority to enforce the Uncompensated Care Assurance provisions codified at 42 C.F.R. 124 Subpart F. The uncompensated care assurance requires assisted facilities to provide a reasonable volume of free or reduced-cost care to all persons residing in their service areas who are unable to pay. Complaints from persons who believe they have been unfairly denied Hill-Burton free or reduced-cost care should be referred to the HRSA Office of the Director of Facilities Compliance and Recovery. www.hrsa.gov/hillburton/default.htm

APPENDIX S: Non-Jurisdictional – Hill-Burton Uncompensated Services Letter (Template)

APPENDIX U: Notification Letter – Jurisdiction: FFA Authorities & Hill-Burton (Template)

Building/Facility Accessibility Complaints

OCR is required by regulation, 45 C.F.R. 85.61(f), to notify the Architectural and Transportation Barriers Compliance Board (Access Board) upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968 is not readily accessible to and usable by individuals with disabilities. The Architectural Barriers Act applies to buildings and facilities that are designed, built or altered by Federal funding or leased by Federal agencies, e.g., Social Security offices and post offices. The Access Board has overlapping jurisdiction with HHS for such access complaints. [See 42 U.S.C. 4151, et seq.](#)



OCR proceeds independently with an investigation of the building/facility accessibility complaint under 45 C.F.R. 85.41-85.43. A copy of the OCR letter of findings in such cases will be provided to the Access Board for information purposes. OCR and the Access Board investigations should be coordinated where possible.

For OCR's responsibilities under 45 C.F.R. Part 85, see additional guidance at [Complaints Against HHS-Conducted Programs and Activities](#)).

APPENDIX T: Non-Jurisdictional – Architectural Barriers Act: Federally-Funded Building Accessibility Requirements ((Template))

Complaints Involving Block Grant Recipients

The nondiscrimination provisions of certain HHS block grants require notice to the chief state official (i.e., Governor) when OCR finds a violation by a State agency or other entity receiving a payment of HHS block grants, and a reasonable period not to exceed 60 days to secure voluntary compliance. The Regional Manager should notify the HHS Regional Director in advance of any contact with a Governor's office, and keep the Regional Director or designee appropriately apprised of the negotiations.

Notice is accomplished when OCR transmits a copy of the letter of findings to the Governor for a block grant recipient that has been found in noncompliance. During the 60-day period, the role taken by OCR should be at the Governor's discretion. OCR may be invited to participate in joint negotiations with the Governor's Office or negotiate directly with the recipient. OCR may extend the 60-day negotiation period for good cause, in consultation with OCR headquarters. If the Governor responds to the notice and letter of findings by submitting information and/or comments with the intention of refuting OCR's determination, the Regional Manager must respond by letter as soon as possible. Consultation with OCR Headquarters and OGC is required in such instance.

If the Governor submits a proposed remedy (initial or revised) that is not acceptable to OCR, the Regional Manager should send the Governor a letter that explains OCR's position and offers technical assistance. If the Governor submits a proposed remedy that is acceptable to OCR, the regional office should prepare a Settlement Agreement for signature by the Governor. The agreement may contain an acknowledgement by the Governor that OCR discharged its obligation to notify and request him/her to secure compliance with the applicable statute or regulation and that such notification and request is not required should there be a violation of the terms of the Settlement Agreement.

If the 60-day period expires with no satisfactory resolution, OCR should notify the Governor's office in writing that OCR will contact the recipient directly to resolve the noncompliance determination. The regional office should inform the Governor's office of the results of OCR's negotiations with the recipient. If at any time the Governor's office advises the regional office that voluntary compliance cannot be secured, OCR must confirm this decision in writing and proceed with enforcement action. The regional office may limit the scope of the negotiations with the recipient if OCR has been involved in the Governor's negotiations.

Complaints against HHS-Conducted Programs and Activities

Investigators should review [45 C.F.R. Part 85](#) when processing a disability discrimination complaint against an HHS conducted program or activity under Section 504 of the Rehabilitation Act of 1973, and also Section 508 of the Rehabilitation Act when processing a complaint against HHS involving access to its electronic and information technology (EIT).

Section 504 of the Rehabilitation Act of 1973 requires, among other things, that Federal agencies provide reasonable accommodations for employees with disabilities, provide program access to members of the public with disabilities, ensure effective communication with people who have hearing or vision disabilities, and take other actions necessary to prevent discrimination on the basis of disability in their programs or activities.



Section 508 requirements are separate from, but complementary to, requirements in Section 504 of the Rehabilitation Act of 1973. Section 508 requires Federal agencies that develop, procure, maintain, or use EIT to ensure that Federal employees and members of the public with disabilities have access to, and use of, the information and data that is comparable to that provided to employees and members of the public without disabilities, unless an undue burden would be imposed on the agency.

See [45 C.F.R. Part 85](#)

Complaints alleging discrimination in employment on any basis, including disability, by HHS (including employees, former employees, and applicants) should be referred to the

[HHS Equal Employment Opportunity Division](http://www.hhs.gov/odme/eo/) (ODMEE). The HHS Internet site for more information is <http://www.hhs.gov/odme/eo/>.

OCR will process Section 508 complaints under the same administrative procedures established to process Section 504 complaints alleging discrimination on the basis of disability in a federally conducted program or activity. Those procedures are codified at [45 C.F.R. Part 85](#). Whenever investigating a Section 508 complaint, investigators should review the Architectural and Transportation Barriers Compliance Board (Access Board) regulation at 36 C.F.R. Part 1194.

Complaint processing under Part 85 requires that all complaints should be handled within 180 days of the receipt of a complete complaint. If the regional office determines that its investigation of a Part 85 complaint will exceed the 180-day time frame, the Regional Manager should notify the Deputy Director for Civil Rights. Headquarters will then assume the responsibility of requesting an extension from the Department of Justice.

The complainant should be advised that (1) in the case of noncompliance by an HHS component agency with Part 85 or Section 508, OCR will undertake appropriate action to ensure compliance and (2) in the event OCR and the component agency are unable to agree on a resolution of any particular matter, the matter will be submitted to the Secretary for resolution.

Final agency action on Part 85 and Section 508 complaints may be subject to judicial review under the Administrative Procedures Act (5 U.S.C. §701 et seq.).

EMTALA Complaints

Medicare participating hospitals must meet the Emergency Medical Treatment and Labor Act (EMTALA) (also referred to as “Patient Dumping”) statute codified at 42 U.S.C. § 1395dd (accompanying regulations at 42 C.F.R. §§ 489.24 and 489.20 (l), (m), and (r)) (see www.cms.hhs.gov/EMTALA/). EMTALA requires hospitals with emergency departments to provide a medical screening examination to any individual who comes to the emergency department and requests such an examination, and prohibits hospitals with emergency departments from refusing to examine or treat individuals with an emergency medical condition. The provisions of EMTALA apply to all individuals (not just Medicare beneficiaries) who attempt to gain access to a hospital for emergency care.



The enforcement of EMTALA is a complaint driven process. The investigation of a hospital's policies, procedures and processes and any subsequent sanctions are initiated by a complaint. If the results of a complaint investigation indicate that a hospital violated one or more of the anti-dumping provisions of EMTALA, a hospital may be subject to termination of its provider agreement and/or the imposition of civil

monetary penalties (CMPs). CMPs may be imposed against hospitals or individual physicians for EMTALA violations.

In addition to complaints filed by individuals, OCR may receive referrals from the Departmental Office of Inspector General (OIG) or the Centers for Medicare and Medicaid Services (CMS) regarding EMTALA. Staff should review these EMTALA referrals for potential Hill Burton, Title VI, or other civil rights issues.

State Operations Manual – Responsibilities of Medicare Participating Hospitals in Emergency Cases

(see www.cms.hhs.gov/manuals/downloads/som107ap_v_emerg.pdf)

Medical Quality of Care Complaints

Complaints about the quality of medical care need to be analyzed to determine if they allege a causal connection between the improper or poor quality of healthcare at issue and an individual's protected status. In other words, does the complainant allege that the substandard care that he/she received was different from the care provided to others because of his/her race, color, national origin, disability, or age? In conducting an initial case review and PIMS triage, it may be necessary to interview the complainant to determine whether such an allegation exists.

Quality of Medical Care - In essence means doing the right thing, at the right time, in the right way, for the right person – and having the best possible results.
<http://www.ahrq.gov/consumer/qnt/qntqlook.htm>

There are two main types of quality of medical care measures:

Clinical Quality addresses how well a healthcare provider prevents or treats illness or injury. Examples of such complaints include:

- Medication errors
- Unnecessary or inappropriate surgery
- Delay in treatment
- Change in condition not treated
- Discharged from the hospital too soon



Consumer Satisfaction addresses how satisfied the patient is with their overall health care experience. Examples of such complaints include:

- Concerns about conditions at the hospital such as inadequate housekeeping, rooms too cold or too hot, etc.
- Concerns about rudeness or inappropriate conduct by health care staff
- Concerns about billing

If a complaint concerns medical care, treatment, or conditions then alert a supervisor for further instruction. OCR jurisdiction typically does not extend to consumer satisfaction issues, and complaints that are restricted to these concerns will likely be closed as non-judicial. Consideration should be given to referring such consumer satisfaction matters to an appropriate entity, such as the Medicare Ombudsman, or other referral options listed below where no civil rights allegations are raised. Regional managers should consult with Headquarters for guidance in evaluating complaints raising clinical quality issues, and assistance in obtaining clinical expert review of such cases where needed.

No Civil Rights Allegations Raised

If the complaint raises a concern about the quality of medical care but does not allege that the substandard care was based on prohibited discrimination, then the complaint should be administratively closed for lack of jurisdiction.

For example: A 65 year old individual alleges that a hospital discharged him while he was still experiencing pain and that his physician was incompetent. No discriminatory basis is described or apparent.

Either the acknowledgment or closure letter should include information about other avenues that the complainant may have to obtain a quality of care review. These options include:

The Centers for Medicare and Medicaid Services (CMS) is the administrative agency overseeing Medicare providers and State Medicaid Programs. In order to appropriately refer quality of care issues for individuals served under these programs, contacting the regional CMS office may be helpful. Regional Offices are charged with the responsibility to “ensure protections are in place to facilitate the delivery of high-value health care that is safe, effective, efficient, patient centered, timely and equitable.” For more information and links to these regional offices, see <http://www.cms.hhs.gov/RegionalOffices/>.

Individuals receiving Medicare may be directed to 1-800-MEDICARE (the Medicare Ombudsman) for assistance in filing complaints. (See <http://www.medicare.gov/Ombudsman/resources.asp>).

Individuals receiving Medicaid may be directed to the State Medicaid agency; contact information can be found on the individual’s Medicaid Identification Card.

See <http://www.medicare.gov/FraudAbuse/HowToReport.asp> for information on how to file Medicaid and Medicare Fraud and Abuse complaints with the HHS Office of the Inspector General (OIG).

Staff also may recommend that the complainant contact other agencies that may be able to address quality of care concerns, such as the State Department of Health or the State licensure boards for physicians and other licensed health care professionals.

Also see: [Complaints Involving Unlawful Conditions of Confinement or Institutionalization](#)

APPENDIX V: Closure Letter (No Jurisdiction with Quality of Care Information (Template)

Civil Rights Allegations Raised

If the complaint raises a concern about the quality of medical care due to discrimination, staff must continue to assess and take appropriate action concerning the civil rights allegations in the complaint.

For example:

- An HIV positive woman alleges that she was denied knee surgery because of her HIV positive status.
- A Hispanic individual who came to the hospital emergency room complaining of a head ache alleges that he waited twice as long as all of the other patients there who were white, and as a result suffered a stroke while waiting to be seen by a physician.

Staff should continue with the initial case review to determine whether the complaint is timely or the time for filing an untimely complaint should be extended, and whether OCR has jurisdiction. If so, staff should accept the complaint for investigation. In addition, staff should notify a complainant who raises a clinical quality of care issue that there are additional avenues to obtain a clinical quality of care review.

APPENDIX W: Acceptance of Complaint for Investigation Letter with Quality of Care Information (Template)

Staff inquiries concerning clinical quality of care reviews

Staff should ascertain from the complainant during any investigation of a complaint that involves a medical/clinical quality of care issue, whether he/she requested a clinical quality of care review with an outside agency. Where requests for quality of care reviews have been made by complainants, OCR should ascertain from the complainant whether medical information germane to the investigation is available and request a copy of such medical information from the complainant when it becomes available.

G. Initial Case Review Decisions and Notifications

OCR's goal is to complete the initial case review within 30 calendar days of receiving a complaint, and to determine whether the complaint will be accepted for investigation, referred to another Federal agency, or administratively closed, and notify the complainant of OCR's decision concerning the complaint. The time required for OCR

to complete the initial case review, however, will vary depending on the nature of the complaint and the amount of information provided by the complainant. Consult with a supervisor as needed to determine whether there are relevant issues to be investigated and, if not, the appropriate closure type to enter into PIMS. Typically, a case will fall into one of the following categories:

Administrative Closure

There are two categories of administrative closures during Initial Case Review: Other closures and No Jurisdiction closures; both subcategories are under the PIMS closure tab.

The most common types of administrative closures are as follows:

Other closures

- Complainant Refuses to Cooperate
- Complaint Not Complete
- Complaint Not Timely
- No Civil Rights Violation Alleged by the Facts Presented

No jurisdiction closures

If OCR decides to administratively close a complaint and not proceed with an investigation, staff sends a letter to the complainant stating that the complaint is being closed and explaining the reason for the decision. Staff should use PIMS Template letters developed for this purpose, and modify them as appropriate to reflect the allegations and facts of the particular case.

Refer to another Agency

If OCR decides that referral of the complaint to another agency is appropriate, e.g., DOJ or the EEOC, OCR sends a copy of the complaint and a referral letter to the appropriate agency and notifies the complainant of the referral.

APPENDIX F: Closure Letter (No Jurisdiction - Optional Referral) (Template)

Accept the Case

See [Part IV](#) for the procedures for accepting a case for investigation.

IV. ACCEPTING A CASE FOR INVESTIGATION

OCR is required to undertake the prompt investigation of complaints of unlawful discrimination that are accepted for investigation. Case investigations should be timely, legally sufficient and dispositive of the allegations accepted for investigation.

OCR must enforce the Federal civil rights laws mindful of our goals of obtaining speedy relief for individual harms and rectifying systemic harms where discrimination has occurred. In order to accomplish these goals, OCR staff should evaluate and classify each case that it accepts for investigation.

A. Case Evaluation and Classification

OCR staff should evaluate each case accepted for investigation in order to understand the complainant's allegations and determine appropriate handling and allocation of staff resources. The purpose of case evaluation and classification is to help OCR ensure that investigations are managed based on the urgency and specific circumstances of the case, including significance, likelihood of a violation finding, and potential impact, and that appropriate resources are dedicated based on case complexity. Case classification is, therefore, an important management tool to ensure maximization of resources to achieve the most impact.

No specific set of procedures is required for case evaluation. It can be done by one experienced and knowledgeable staff person or by a team of staff persons, and may include the regional civil rights attorney. Consultation with the Civil Rights Division in Headquarters may be appropriate at this stage. For example, coordination with Headquarters is expected where a case raises an issue of national or local significance, potential impact may be great, or the legal issues are particularly complex. Headquarters consultation also may be appropriate in other circumstances, such as where a national civil rights perspective, particular area of expertise or intra- or inter-departmental relationships may be an important component in a case. Decisions concerning case classification should be documented in PIMS case notes or in the transaction folder.

In whatever manner case evaluation is accomplished, OCR staff should employ the following concepts in setting priorities and classifying cases for investigation:

- Urgency
- National/local significance
- Potential violation
- Potential impact
- Complexity

Urgency

In determining the appropriate classification during case prioritization, the region should consider whether the issues accepted for investigation are time-sensitive and whether the complainant's or alleged injured party's rights may be adversely affected without speedy OCR action. For example: an individual alleges that she is not being provided with a needed interpreter by a surgical practice in discussions about the appropriate course of treatment for a serious condition; an advocacy organization alleges that an individual who does not understand English is being asked to sign forms by a hospital that will not provide an interpreter or materials in his language. For these kinds of cases, OCR staff should undertake to immediately determine the facts and attempt resolution of the issue.

Referral to or coordination with the State Protection and Advocacy System (P&A) should be considered for issues related to persons with disabilities, and consultation with Headquarters is encouraged.

APPENDIX Z: Protection and Advocacy Systems Information

Cases that are urgent should receive immediate attention. Speedy resolution of the immediate urgent situation may precede further consideration of the full range of resolution approaches to achieve full compliance where appropriate.

National / Local Significance

OCR should consider whether a case is of particular national or local importance, such as a case that:

- Has potential for significant impact because of its special interest to a community-based or advocacy organization that represents the interests of large numbers of individuals;
- Has generated significant concern in the community or among the public;
- Involves a significant interpretation of a policy or legal standard, affecting individuals and covered entities inside and/or outside the case; or
- May implicate regulations or policies of state or local government or other Federal agencies.

For example, an advocacy organization files multiple complaints alleging that covered entities are discriminatorily applying an Administration for Children & Families policy. Such cases should receive ongoing attention to ensure timely and appropriate resolution. Headquarters should be notified and consulted on an ongoing basis.

Potential violation

Where a case appears likely to result in a violation finding, the Regional Office should ensure that the case is a priority for investigation so that OCR's action will have impact and make a practical difference to the individuals potentially affected by the resolution of

the complaint. For example, an individual alleges that a surgical facility has a policy of excluding treatment of individuals who are HIV positive and provides the facility's written policy in her complaint submission. This case should be prioritized to ensure that OCR obtains a remedy, as appropriate, that will avert further discrimination.

Potential impact

OCR should maximize the use of its resources to achieve the greatest impact. In assessing impact, OCR should consider whether the complainant alleges individual harm or harm involving a class of persons. For example, an advocacy organization alleges that for the past two years a state TANF agency has sanctioned minority clients at a higher rate than other clients. OCR should also consider whether an individual complaint raises an important policy or legal question that will have an adverse effect on others who are similarly situated. For these cases, an investigative plan should be developed and consultation with Headquarters staff should be undertaken.

Complexity

The complexity of a case is important in determining resource allocation during case classification. In assessing how simple or complicated a case may be, the region should consider issues such as:

- What are the number and nature of issues raised;
- Will the investigation likely require significant data collection, statistical analysis or expert consultation;
- What is the scope of the covered entity's programs and services;
- Is the case a good candidate for early resolution or is a full investigation, with an onsite visit, necessary to learn the facts and identify potential harmed individuals and appropriate relief?

Assessment of complexity will help determine the number and types of investigators, the necessity for OGC and Headquarters consultation at the outset of and throughout the investigation, and whether involvement by HHS Operating Divisions or Staff Divisions or State agencies would be beneficial. For example, a mother alleges that her Medicaid-eligible child with an intellectual disability is discriminatorily being denied health and social services based on a state policy that fails to consider certain disability-related needs in determining services. For this kind of case, OCR staff should take steps to contact Headquarters and, possibly, the Centers for Medicare and Medicaid Services (CMS) to clarify the application of the Medicaid regulations and potentially contribute to the formulation of any remedy.

Cases that are complex require thorough planning and analysis and allocation of sufficient staff with appropriate expertise. Additional staff may be involved periodically as consultants. These cases generally require ongoing coordination with Headquarters and the OGC to ensure resolution consistent with governing legal and policy standards and considerations.

Other complaints may not implicate any of these factors for prioritization. For example, an individual reports that a social services agency does not have a Section 504 Coordinator or signage posted notifying clients of their rights under the ADA. These kinds of investigations should be processed consistent with established timeframes and procedures.

B. Preparing the Civil Rights Recommendation for Action (CR-RFA)

The investigator prepares a CR-RFA when it is determined that there is a possible civil rights violation within OCR's jurisdiction alleged in a complaint, when the complaint is timely and complete. At this point, the investigator will identify the issues to be investigated from the information included in the complaint and obtained in any follow up communication with the complainant.

For consistency in all civil rights investigations, the CR-RFA always contains the same categories. These categories are:

- Date of CR-RFA:
- Investigator:
- Complainant:
- Covered Entity:
- Trans No.:
- Date(s) of Alleged Discrimination:
- Allegations to Accept for Investigation:
- Allegations to Decline for Investigation:
- Funding Source:
- Statute(s) and Citation(s):
- Legal Issue(s) for Investigation:
- Recommended Case Classification and Rationale:
- Special Handling Requirements: (including factors such as language access and procedures necessitated by [Section II](#) of this Manual).
- Date Complaint Filed with OCR:
- Date Complaint Assigned to Investigator:
- Date of Last Contact with Complainant:

When possible, the investigator summarizes the allegations into two to three sentences describing only the relevant facts of the case. Plain, understandable language should be used to draft this portion of the RFA.

[Appendix LLL](#): Sample CR-RFA

After the CR-RFA is added to PIMS and the investigator notes in the investigative strategy box that RFA has been added to the transaction folder, the transaction is sent on to the supervisor for review. The supervisor will review the CR-RFA and either approve it, request revisions in the Case Notes tab; or make revisions through the PIMS edit function and return the transaction to the investigator in PIMS.

The message adjacent to the case in the investigator's PIMS Personal Assignments will read either "Staff Determine Case Resolution" or "Revise Investigative Strategy." "Staff Determine Case Resolution" means that the CR-RFA has been approved and that the investigator can continue to the next step of the investigation. "Revise the Investigative Strategy" means just that. The investigator then reviews the PIMS Case Notes tab to determine the changes or additional information requested by the supervisor. After completing the changes requested or other action, the investigator documents these actions in Case Notes and resends the Transaction for approval of the CR-RFA by selecting the Resend button. The same process as described above will then occur for the revised RFA: either the RFA is approved or the investigator will be asked to make additional changes.

C. Preparing the Acceptance Letter, Consent Forms, and Notification Letter

If OCR decides to investigate a complaint, then the investigator notifies the complainant and the covered entity. The investigator also determines whether it is necessary to obtain a signed consent form from the complainant, if not included with the complaint, in order to carry out the investigation.

All letters to the complainant and the Covered Entity are sent to the Regional Manager or designee for review in PIMS (i.e., initiate Send for Review in PIMS), and for signature, following regional practices. An entry in case notes informs reviewers of the purpose of the investigation, or of any pertinent concerns of the investigator. The results of case evaluation planning should be described in an entry in case notes or as a memo to file. After the letter is approved and signed, the letter is scanned and added to the case transaction folder. The investigator ensures accurate entry and coding of the document in PIMS.

The Acceptance Letter

An acceptance letter informs the complainant in writing that OCR has accepted the complaint for investigation and of the specific allegations that will be investigated. It also informs the complainant in writing of any complaint allegations that have been rejected for investigation and the reason(s) why.

In addition to sending an acceptance letter to the complainant, the investigator may verbally inform the complainant by telephone that OCR has accepted the complaint for investigation. Such a discussion with the complainant, which is carefully documented in a Record of Contact in PIMS, may be particularly helpful where OCR has accepted some allegations raised in a complaint, but has rejected others, and may help the investigator evaluate the next step, or best approach, in ongoing case planning.

APPENDIX Y: ACCEPTANCE OF COMPLAINT FOR INVESTIGATION LETTER (TEMPLATE)

The Consent Form

A signed consent form from the complainant provides OCR with authorization to reveal the complainant's identity to the covered entity and to obtain from various sources personal information about the complainant, as necessary. If a signed consent form is not included with a complaint that is filed with OCR, an investigator may request that the complainant review, sign, and return the consent form to OCR.

A complainant is not required by law to sign the consent form or give confidential or personal information about him/herself to OCR. Investigators are encouraged not to routinely release the name of the complainant(s) during the investigation unless such disclosure is needed to investigate the complaint. If the complainant is not willing to sign the consent form and the complainant's name must be released to the covered entity in order to investigate the complaint, then the investigator notifies the complainant in writing that failure to give consent will prevent investigation of the complaint.

The Notification Letter to the Covered Entity

OCR sends a notification letter to the covered entity, which summarizes the complaint allegations that OCR has accepted for investigation and describes OCR's authority to conduct the investigation. The notification letter is usually the first written communication OCR has with the entity that is the subject of a complaint, and may be combined with a request for documentary evidence to launch the investigation. In summarizing the allegations accepted for investigation and describing the act(s) or omission(s) alleged to be in violation of the law, the investigator should describe the allegations in sufficient detail so that the covered entity is aware of what conduct is under investigation. The notification letter also should reference citations to the appropriate federal statutes and regulations.

See Part V.E. -- [Data Request Letters](#)

If the notification letter cannot be delivered, this is appropriately documented in the file. The investigator should consult with the Regional Manager or designee about whether the case may be closed administratively or whether additional effort should be made to find the covered entity's managers or officers.

V. INVESTIGATING A COMPLAINT

Actively investigating a complaint involves several steps until the investigator reaches resolution on a case. These steps include case planning; communicating with the parties to the complaint; following up on information that OCR requested from the parties; interviewing witnesses; independently collecting evidence from various sources, including Internet or other research; and requesting legal or policy guidance from an OGC attorney or Headquarters Civil Rights Division staff member as needed.

[APPENDIX HH](#): Guidelines for Investigating Civil Rights Complaints **[Redacted under FOIA Exemption 7(E), 5 USC 552(b)(7)(E)]**

A. Case Planning

Case planning begins as early as possible, and is conducted throughout the life of every case to ensure high-quality decisions, prompt investigations, and efficient use of OCR resources. Case planning decisions are adjusted as necessary to take into account new information obtained during case processing. Investigators are responsible for case planning, and must seek appropriate guidance and assistance as needed from Regional Managers and their supervisors. Regional Managers or designees will participate in critical planning decisions commensurate with the nature and complexity of the case. Regional OGC attorneys should be consulted for advice on legal standards and investigative strategies, particularly for novel, complex, or challenging cases. Consultation with Headquarters also may be appropriate at this stage.

The following essential elements of case planning are addressed in every OCR case to guide the investigation:

- Parties in Interest
- Allegation(s)
- Statutes and Regulations Involved
- Elements of Claim (i.e. legal issues)
- Evidence in Support of and Against Claim
- Investigative Strategy/Approach

[APPENDIX AA](#): Theory of a Discrimination Case – PASEEQ

[APPENDIX BB](#): Title VI Disparate Impact / Effect Discrimination Case – PASEEQ

[APPENDIX CC](#): Title VI Disparate Treatment Case – PASEEQ

[APPENDIX DD](#): Elements of a Title VI, LEP Claim **[Redacted under FOIA Exemption 7(E), 5 USC 552(b)(7)(E)]**

[APPENDIX EE](#): Analytical Framework & Burdens of Proof in HIV/AIDS Discrimination Cases

[APPENDIX FF](#): Elements of an ADA, Title II/504 Most Integrated Setting Claim

In addition, effective case planning should include a determination of a target date for resolution and any other expected internal time frames that reflect OCR's experience in resolving cases of similar urgency, complexity and scope, and a discussion of monitoring approaches, if appropriate.

The case file should contain documentation that supports the decisions made with respect to each of the applicable essential planning elements. For complex cases that are non-urgent that lend themselves to more preparation and planning, case-planning documentation should be more detailed. For simple, urgent cases, case-planning documentation should be less detailed. For every case accepted for investigation, although Regional Managers are ultimately responsible for regional plans and decisions, investigators are responsible for proactively ensuring that the issues are clearly defined, that the approaches to be used in the investigation are tailored to the issues and applicable legal standards, and that the investigation proceeds logically and effectively. Case planning documentation should be organized so that it can be readily located in the case notes or transaction folder.

B. Communicating with the Parties in an Investigation

Throughout the investigative process, an investigator's communications with the complainant, the covered entity, and any person with knowledge of the circumstances in a complaint are critical to the investigation. Investigators determine facts and analyze those facts to determine compliance or noncompliance of the covered entity with the law. The investigator acts in a manner that is professional and restrained in communication with all parties and refrains from making statements of opinion, which may be misconstrued. Staff should be mindful that no communication whether by the investigator or the covered entity is "off the record." All communications with the parties in an investigation are documented in a Record of Contact in the PIMS case file.

OCR staff should keep the parties informed of the progress in evaluating and investigating a case and communicate with the parties regularly regarding the status of the case. OCR staff should strive to return the parties' telephone calls promptly, generally by the end of the following business day. OCR staff should acknowledge receipt of the parties' substantive letters and e-mails within five business days and, where a response is needed, provide a response to those letters and emails in a timely manner, generally within ten business days. As the investigation draws to a close, investigators generally should not allow the closure letter to be the only personal contact made by the investigator with the complainant.

See [Interviewing Complainants and Witnesses](#).

What Can Be Disclosed During an Active Investigation

Subject to the Privacy Act and FOIA, investigators have much discretion in communications while carrying out investigations. General disclosures (e.g., facts, circumstances, and dates) may be appropriate at times, such as when the investigator

is clarifying documents or gathering specific evidence of an event. Investigators may disclose specific information that identifies the complainant when the complaint record contains a signed consent from the complainant authorizing OCR to disclose his or her identity and/or to obtain personal information about the complainant for resolving the complaint. OCR does not routinely disclose documents, including the complaint, from an active investigation. An investigator may share documents or information with the covered entity only when such information is necessary to further the investigation. Some disclosures may hinder, or compromise, an investigation, and the Privacy Act may prohibit disclosure of specific documents. OCR's policy and practice is not to reveal information about complaints, active or closed. Investigators exercise caution when disclosing or discussing case-related information.

For instance, although the Privacy Act does not create rights for individuals whose names are not used to retrieve records, the complaint file may hold personal identifying information about other persons, such as an injured party who is not the complainant. Staff should consult OGC for advice as needed on specific requests for documents, or information, from an active record. The region may refer to OCR headquarters requests for information from an active investigation. Headquarters may, after consultation with the region, coordinate referral of the request to the HHS' FOIA officer.

Maintaining Professionalism in Written and Oral Communication

The investigator represents OCR whenever he or she writes or speaks to a member of the public. Therefore, it is critical that investigators use approved PIMS Templates and language whenever applicable in the case of written communication, including email communication. When communicating orally, if there is doubt about what can be communicated to a member of the public on any matter (including during an interview), the investigator may end the call by stating the need to confer with his or her supervisor and may offer to return the call once the investigator has obtained guidance.

Communicate What Voluntary Compliance Means

In accordance with OCR's regulatory authority, OCR's approach in resolving complaints will be to seek the cooperation and assistance of the covered entity. Early in the process, the investigator communicates this approach to the complainant and to the covered entity. Also, the investigator informs covered entities of a complaint filed against them and that OCR will seek to resolve the case as expeditiously as possible. This approach includes providing technical assistance to help individuals and covered entities understand their obligations under Federal civil rights laws and regulations, allowing covered entities a reasonable amount of time to come into compliance, and encouraging voluntary efforts by the covered entity to correct any indications of noncompliance.

Although the focus is on voluntary compliance, OCR obtains sufficient documentation in each case to establish (1) that there was no violation or (2) that the covered entity has carried out, to OCR's satisfaction, some action that resulted in the elimination or correction of a compliance concern.

The following are some examples of communication focused on informal case resolution:

- Advising the covered entity of a complaint filed against it is often a formal, written notification. However, investigators may indicate to the covered entity that the allegations in the notification letter are simply allegations and that the investigator's goal is to resolve the complaint with the assistance and cooperation of the covered entity.
- Investigators may reassure a covered entity that the investigator is prepared to work with the covered entity and to provide education and technical assistance.
- Advising the covered entity that an investigation may be terminated if the covered entity has taken or commits itself to take in the future, actions that will resolve the issue(s) raised in the complaint. Under these circumstances, OCR may resolve the complaint without issuing a Letter of Findings of compliance or noncompliance with the applicable civil rights laws and regulations. OCR would be required to confirm, however, either presently or through future monitoring, that the agreed upon actions have been carried out, prior to closing the case.

Investigators may incorporate the following notification in the data request letter when appropriate:

Please note that OCR's procedures provide for investigations to be terminated if the covered entity has taken or commits itself to take in the future, actions that will resolve the issue(s) raised in the complaint. If we can confirm your past actions or approve your written request for future actions prior to the due date for the data, then submission of the requested data will not be necessary. Under these circumstances, OCR may resolve the complaint without issuing a Letter of Findings of compliance or noncompliance with the applicable regulations based on your voluntary actions. We would be required to confirm, either presently or through future monitoring, however, that the agreed upon actions have been carried out, prior to closing the case. Please contact our office prior to the due date for the data, if you would like to explore this option.

Seeking Guidance

If there is any doubt about a substantive or procedural issue, then the investigator should confer with his or her supervisor. Investigators follow regional practices when seeking guidance from regional OGC attorneys or from the investigator's supervisors. When requesting guidance, however, the investigator should gather as much relevant information and/or conduct independent research, including using this Manual, to present an informed question.

Communication is Documented

Integrity of the case record is critical for every case. The case record reflects the investigator's neutral stance in obtaining and recording evidence to support OCR's decision upon completion of the investigation. The investigator is responsible for developing OCR's official record of the case, including internal and external oral communication. As the investigation proceeds, the investigator adds all contacts and information to the PIMS transaction folder as soon as possible. Contemporaneous documentation improves the accuracy of the information and allows OCR staff, besides the investigator, to assess the facts and the status of a case at any given time.

Investigators should have records of all communications in the Record of Contact (ROC) and/or Case Notes in PIMS. Case notes are for internal communication. Case notes usually contain investigator comments and exchanges between the investigator and the team leader or supervisor on review of documents, or comments from the investigator to Headquarters concerning guidance that the investigator needs on a specific issue. In the ROC, an investigator may document external communication (i.e. with the complainant, covered entity, witnesses, and other persons contacted for information about the case). An "edit" capability in an ROC entry and/or a memorandum in the PIMS case file allows the investigator to update discussions.

C. Types of Evidence

Evidence in a civil rights investigation falls into four basic types: direct, circumstantial, comparative, and statistical. All four types of evidence, when used appropriately, constitute the building blocks of the investigation.

- Direct evidence is evidence which shows, without having to draw an inference, the element one is trying to prove. (For example, in a case involving an allegation of intentional discrimination, the covered entity's board meeting minutes reflecting the administrator's statement that he "did not hire [the complainant] because he is a paraplegic" shows directly his intent to discriminate based on the complainant's disabling condition).
- Circumstantial evidence is evidence that may give rise to an inference of the element one is trying to prove. (For example, evidence indicating that the complainant, an emergency room nurse with seniority and a good record, was fired two days after she complained that Hispanics are always made to wait longer for treatment than whites, tends to show that the covered entity retaliated against her).
- Comparative evidence is evidence that tends to show whether or not a person in a protected class was treated differently than similarly situated members of another class. (For example, evidence indicating that the complainant, a twenty-year old patient in a nursing facility, is not permitted to take meals in the dining room with the other 40 residents, all over age 65, tends to show that he is treated differently than similarly situated persons because of his age).
- Statistical evidence, a category of comparative evidence, is a survey of a particular environment that may tend to show that similarly situated persons are treated

differently because of their membership in a protected class or that a facially neutral policy has a disproportionate adverse impact on members of a protected class. (For example, a home health care agency “redlines” a certain geographical area in which it will not provide healthcare services, allegedly for safety reasons; statistics showing that this area is populated disproportionately by African Americans suggest that racial bias may be the reason for the agency’s action).

In general, the sources of evidence used in a civil rights investigation consist of individuals (who give testimony) and documents.

- Testimonial evidence may be obtained in written or oral form from: the complainant; the covered entity’s owners, administrators, employees and contractors; patients, residents and their relatives and friends; applicants for jobs; advocates; and others involved in community service.
- Documentary evidence may include, but is not limited to: covered entity policies, notices, letters, admissions data, meeting minutes, and memoranda; patient and resident records; job applications; handwritten notes; and comparative and statistical data, as appropriate.

The relevance, reliability and completeness of the testimonial and documentary evidence gathered by the investigator will determine the quality of the investigation and, hence, whether a finding based on that investigation adequately supports the legal theory of the case.

D. The Standard of Proof

The standard of proof is the amount of evidence required to show that an allegation is true or untrue. OCR makes its determinations based on the “preponderance of the evidence.” The “preponderance of the evidence” means, considering all the evidence fairly and impartially, enough evidence exists to create a reasonable belief that what is sought to be proven is more likely true than not true. Therefore, all the evidence that has been offered on the issue by the complainant and the covered entity and/or gathered during the course of the investigation is weighed and balanced. A preponderance of the evidence is satisfied if it is more probable than not that an event or allegation occurred. This preponderance is based on the more convincing evidence and its probable truth or accuracy, not on the amount of evidence. That is, the quality of the evidence is given greater weight than the quantity of evidence to support or refute an allegation.

E. Investigative Techniques

The actual investigation is the most significant phase of the complaint process. The investigator is responsible for creating and developing as factual a case record as possible so that all information available is accessible to conduct an analysis of the allegations accepted for investigation. Regional Managers ensure that investigations are legally sufficient and dispositive of the allegations accepted for investigation. OCR

investigators and their supervisors utilize guidance established for conducting civil rights investigations.

APPENDIX HH: Guidance for Investigating Civil Rights Complaints

**[Redacted under FOIA
Exemption 7(E), 5 USC
552(b)(7)(E)]**

During the course of an investigation, the investigator must answer two main questions concerning the allegations:

- What happened? (Including when, where and how) – If the complainant alleges something did or did not happen, the investigator may gather data to determine whether the alleged event occurred or not.
- Why did it happen? On what basis? For what reason? -- The investigator may gather information to determine whether the reasons described by the complainant, or by the covered entity, are accurate or not.

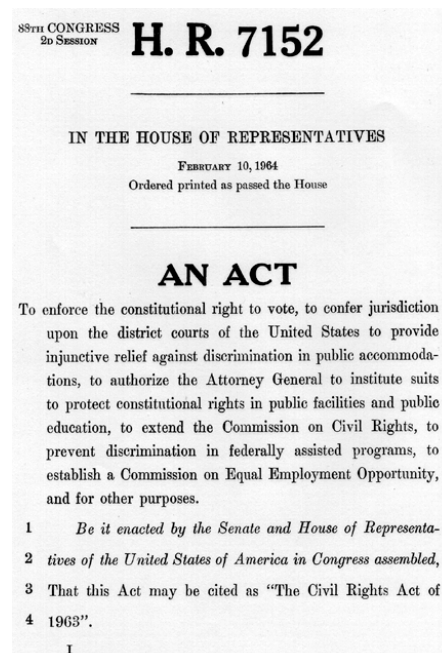
The scope of the investigator's fact gathering is limited to investigation of the allegations. If the covered entity represents as part of its corrective action plan, the policy toward providing language assistance services to limited English proficient clients or evaluating patients with infectious diseases for admission to its facilities was revised, for example, then the investigator should request a copy of both the original policy and the revised policy to verify the revisions actually took place. In this example, however, it would not be necessary to request a copy of the covered entity's entire set of policies and procedures for providing services to clients or admitting patients to its facilities.

During the investigation phase, the investigator as the neutral party collects and establishes the facts and evidence toward the goal of developing a complete case record. How to accomplish this task is discussed in detail below.

OCR's Authority to Obtain Information

OCR has the right to complete access during a covered entity's normal business hours to all information maintained by the covered entity needed to determine compliance status on those issues under investigation. See 45 C.F.R §§ 80.6 and 91.34 and 42 C.F.R. § 124.605-606. Generally, this includes access to oral information from a covered entity's employees as well as to written or non-written information, such as electronic storage media, microfilming, retrieval systems, and photocopies maintained by the covered entity. OCR, not the covered entity, decides what information is relevant to a determination of compliance.

OCR has no legal authority to require the complainant or any other non-covered entities (except under 28 C.F.R. Part 35 and 45 C.F.R. Part 85) to provide information. If the complainant's refusal to provide information interferes with



OCR's ability to investigate the case, it may constitute grounds for administrative closure of the complaint.

Obtaining Information

Generally, OCR requests documentary evidence, develops interview questions based upon those data and any other available information, and conducts interviews with the complainant, covered entity personnel, and others, as appropriate. The exact approach taken to data collection during the investigation will vary from case to case depending on the issues raised, the extent to which relevant data are in the control of the covered entity or others, and investigative strategies.

Depending on regional practice, an investigator's requests for initial or additional information from the covered entity may be in writing or conducted orally. In either circumstance, the information the investigator requests will likely fall into the following categories:

- Documentation of the covered entity's policies and procedures;
- Data that compares the treatment received by similarly situated individuals or groups based on their identification with or membership in a protected class, or
- Data that compares the quality and quantity of services provided one group with another;
- Dates of specific events; and/or
- Names and contact information of witnesses.

If the covered entity wishes to discuss case resolution, then a response to the request for information may not be necessary provided that OCR is satisfied that the covered entity has taken all corrective actions necessary to address any compliance concerns.

Regardless of what the covered entity is requested to produce, it is critical that the written or oral request be explicit and clear to prevent delay and confusion. Label all evidence, documents, electronic media, and written records of contact with information identifying the case being investigated and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document).

Oral Requests for Information

An oral request for information may be the quickest and most effective way to obtain evidence. If an oral request is made, the investigator may document this request in a Record of Contact (ROC) memo or in an ROC log and may specify exactly what was requested from the covered entity and the date when the covered entity agreed to provide the information. Oral requests for information may also be documented via

written confirmation with the covered entity. See Section V.C., Communication with the Parties in an Investigation, for additional guidance.

Data Request Letters

After the investigative strategy has been developed, the investigator should specifically identify the documentary evidence that should be supplied by the covered entity in an information request letter. Only information that is clearly relevant or which is reasonably calculated to lead to the discovery of evidence relevant to the complaint should be requested.

The data request letter should include:

- Identification of the complaint by transaction number or by other reasonable means to identify the particular investigation. Only release the complainant's name if the complainant has granted permission to release his/her name and if the complainant's identity is necessary to effectively conduct the investigation;
- OCR's legal authority to gain access to information, including relevant sections of the statute or regulation under which the investigation will be conducted;
- Delineation of the specific information required and the manner in which the information is to be provided;
- Notification of the date of the on-site investigation, if one is anticipated or, if one is not anticipated at that time, notification that it may be necessary at a later date to conduct an on-site investigation; and
- Deadline for covered entity's response to the request.

Timeframes for the Covered Entity's Response

The covered entity should be given a reasonable amount of time from the date of the information request to submit the requested information. In most cases, a 30-day period from the date of the oral request, or from the date of receipt of the data request letter, will be an adequate response time. Depending upon the complexity of the issues, however, additional time may be warranted.

Investigators should gauge both the complexity of the issues and the covered entity's ability to provide the information. If the covered entity needs assistance or clarification with respect to the requested information, then the investigator should document the assistance or clarification provided in the case notes or transaction folder.

Form of Data Provided by the Covered Entity

OCR's legal authority requires that a covered entity submit information in any form OCR stipulates as necessary for its investigations. OCR requests for a covered entity to

manipulate or compile information, however, should be reasonable and not unduly burdensome.

Unless OCR determines that the information should be provided in another way, such as in electronic format, the covered entity typically makes a copy of the information and mails it to OCR. If a covered entity invites OCR to come on site and collect the requested information, and provides OCR with sufficient access to files, records, logs, and appropriate indexes for OCR to extract the needed information, then the entity has provided OCR with the requisite access.

OCR Access to Otherwise Confidential Records

Under 45 C.F.R. §80.6, asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance, despite contrary state or local law. Nonetheless, OCR should respect and try to protect reasonable expectations of individual privacy. For example, OCR may permit a covered entity to code patient names and retain a key to the code. However, OCR should inform the entity that if such a procedure impedes the investigation, OCR requires access to the uncodified records. Relevant Federal confidentiality rules, such as 42 C.F.R. Part 2 implementing 42 U.S.C. §290dd-2, regulating consented and unconsented disclosure of substance abuse patient records, should be observed.

[APPENDIX JJ: Data Request Letter \(Template\)](#)

[APPENDIX KK: LEP Notification / Data Request Letter \(Template\)](#)

Also see [Responding to Covered Entity Objections to Requests for Protected Health Information in Civil Rights Investigations](#) (PIMS /Civil Rights Library /Investigative Resources).

**[Redacted under FOIA
Exemption 7(E), 5 USC**

552(b)(7)(E)]

Covered Entity's Response to Information Request

The covered entity's written response to OCR's information request may be inadequate, inconsistent or both. In such an event, the covered entity is given an opportunity to explain inconsistencies or to supplement its previous response. Depending on the circumstances, investigators assess the best method to obtain the covered entity's response, such as by telephone or in writing. If the investigator sends a letter, then the investigator normally requests that a supervisor review the letter before sending it. If the covered entity fails to comply with the data request within the prescribed time frame or refuses to provide OCR with requested information or with access to records, the investigator ascertains the exact basis for its failure or refusal, and attempts to explain OCR's authority or to provide other information to address the entity's concerns. If explanations or provision of other information does not elicit the covered entity's cooperation, then the investigator may request that the Regional Manager contact the covered entity directly. If such efforts are unsuccessful, then the regional OGC attorney should contact the covered entity.

Alternatively, or in conjunction with the steps outlined above, the investigator may prepare a letter informing the covered entity of OCR's authority to obtain the information and addressing the covered entity's concerns. Before sending the letter, the investigator follows regional protocol for review of this letter. Once approval has been obtained, the letter is sent by registered U.S. mail, with return receipt requested. If the covered entity is able to demonstrate that good faith efforts were made to submit the data within the prescribed time frame, but additional time is needed, the entity should be notified in writing of a new deadline for submitting the requested data. Staff should follow regional protocol for granting an extension of time to the covered entity. In some instances, the covered entity may fail to respond to OCR's notification letter(s) and to telephone calls that notify the covered entity of OCR's investigation. After the investigator confirms the address on record for the covered entity is correct, the investigator may consider sending a letter detailing the attempts made to contact the covered entity and reminding the covered entity of its requirement to cooperate with OCR's investigation. A deadline by which the covered entity should respond may be set, and obtaining approval before taking further action may be indicated. Send the letter by registered mail, with return receipt requested so that receipt of the letter can be documented.

If the covered entity fails to respond by the requested deadline, then the investigator should consult supervisors for a future strategy. An investigator may be requested to draft a memorandum summarizing the case, and submit the memorandum to the supervisor per regional protocol for review and place a draft in the PIMS transaction folder. If the covered entity is unable to demonstrate that good faith efforts were made to submit the data within the prescribed time frame, the Regional Manager has the discretion to notify the covered entity in writing that its failure to submit the data will be construed as a denial of access. The letter may also state that the covered entity's failure to submit the data by a specified date may result in initiation of steps to terminate Federal financial assistance to the covered entity or referral of the matter to the Department of Justice for possible enforcement. Consultation with Headquarters should occur before such written notification is provided to an entity.

APPENDIX LL: Denial of Access Letters

Interviewing Complainants and Witnesses

Interviews are an integral part of most investigations. The objective of interviews is to gain an understanding of the records and data relevant to the issues in the case; obtain information from and assess the credibility of witnesses; and evaluate the positions of the parties. At a minimum, the complainant, witnesses identified by the complainant as having knowledge relevant to the complaint, the covered entity, and any other witnesses having knowledge relevant to the complaint should be interviewed. The investigator has the discretion in selecting among the witnesses identified by either party to avoid duplication of effort and the unnecessary expenditure of resources. Interviews serve as a tool to gather information, as well as help to confirm, clarify, refute, or supplement information received from other sources. Interviews can be conducted in person or by telephone. Whether the interview is in person or by telephone, the investigator prepares

a summary of the interview. Where justified by the circumstances, the investigator may send the summary to the witness to review and sign to ensure its accuracy.

Preparing for the Interview

The first step is to collect as much information on the issue and/or allegations to be discussed. The investigator outlines the facts already known, particularly the facts that are uncertain, and then identifies missing information. This exercise will help the investigator determine the obvious questions to ask, and the questions needed to corroborate information obtained from other sources. See Section V.C., Communication with the Parties in an Investigation, for additional guidance as well as samples of questions.

An investigator may want to write out the questions to be asked in logical order and, depending on the case complexity, divide them into categories. These written questions can serve as a helpful reference during the interview. Because the purpose of the interview is to gather information, it is essential to create an environment that allows the interviewee to be comfortable. The investigator can help create this environment by being open with the interviewee and receptive to the information being offered, even if not all of it is useful. This posture may increase the likelihood that some information will not be withheld. If the investigator assumes an adversarial position at the beginning of the interview, this opportunity might be lost.

The investigator should try not to prejudge the interview content and expect specific information to be disclosed by the interviewee. Preconceptions can result in narrowing the focus of the interview prematurely and thus restrict the flow of information. Additionally, if an investigator's pre-interview expectations are set, then any unexpected information or change of direction might disturb the investigator and make it difficult for him or her to adapt to the situation and understand the facts as given by the interviewee.

Communicating With the Interviewee

Regardless of the interview format, in person or by telephone, the investigator should generally open the interview by communicating the following:

- A clear statement of OCR's authority to investigate the complaint(s)
- Where appropriate, a brief explanation of what is being investigated;
- A brief explanation of why he or she has been chosen to be interviewed;
- If applicable, the prohibition on intimidation and retaliation for exercising his or her rights or for participating in OCR's investigative process;
- The interviewee's right to have a personally designated representative present; and
- How the information the witness has provided may be used.

Although it is critical to focus upon what questions to ask and how, it is equally important for an investigator to listen effectively to the answers. Below are some general tips:

- Listen with purpose – Keep in mind specific information needed to verify or refute the allegation being investigated. The investigator may need to direct the questions to these specific points.
- Suspend judgment initially – People often stop listening when they have already formulated an opinion during the interview. The investigator should resist the temptation to judge or evaluate too quickly because this can lead to faulty inferences.
- Do not talk too much – Try not to interrupt the interviewee unnecessarily. The investigator may allow for silence because it allows time for the interviewee to sort his or her thoughts.

The following charts provide an understanding of types of questions and a variety of questioning techniques that may be used in an interview.

General Types of Questions

Question Type	Use	Example
Reflective	Clarify, verify so that you are not assuming, not jumping to conclusions. Repeats in question form what witness has said; shows investigator is listening.	“Are you saying that...”
Factual	Asks for specific facts such as dates, names, terminology. Tunnel effect occurs if you ask too many; can get boring.	“How many work in this office?”
Opinion	Asks for witness beliefs, attitudes, and thoughts.	“What do you mean when you say ‘poor attitude?’”
Descriptive	Asks for narrative account of an experience or situation.	“Describe the events leading to the confrontation.”
Feeling	Asks for the emotional state of the witness.	“Why do you feel you were discriminated against?”

Wording Questions: Questions should be purposeful, clear, natural, brief, thought-provoking, limited in scope, unbiased

Question Type	Use	Example
Direct	Guides interview in a specific direction; gets a short specific answer; can block witness responses.	“Did you see who started the fight?” “When did this policy go into effect?”

Indirect	When information is embarrassing, threatening; can be hypothetical.	“What if...” “Did you ever consider reporting his [inappropriate conduct] to management?” “What would have happened if you had reported him?”
Leading	Avoid; a type of direct question; phrased to suggest the right answer; may bias witness’ response; may affect accuracy of witness’ response.	“Don’t you think that’s a good settlement offer?” “You’re going to withdraw this claim, aren’t you?”
Double-barreled	Avoid; introduces more than one idea in the same question.	“What do you think of this complaint and what are you going to do about it?”
Negative/Sharp	Avoid; leads to defensive and endless qualifying.	“Why would anyone do a thing like that?”

Preface Questions: A statement which introduces a question; provides a frame which allows witness to interpret question correctly

Question Type	Use	Example
Factual	Gives witness facts/data to stimulate memory; can prevent response distortion.	“A copy of the complaint was mailed to you on 2/2/06. When did you personally receive a copy?”
Motivational	Arouses witness interest; witness can feel obliged to answer; reduces threat of question; include witness name or “you” in preface to increase rapport/cooperation.	“I know you feel what happened to you was discriminatory...”

Questioning Sequences: Refers to the ordering of questions in each topic

Question Type	Use	Example
Funnel	General to narrow; open to closed; witness needs to vent feelings; gives witness greater freedom.	“Tell me about...” “What happened when you...?” “Were there any witnesses?”
Pyramid	Specific to general; closed to open; can motivate witness; short questions easy to answer.	“Are you aware of the allegations filed by Mr. Z?” “Do you recall Mr. Z as a patient?” “Do you recall the incident he refers to in the complaint? Explain the events leading to this

		incident.”
Tunnel	A series of all one kind of question, e.g., all closed, all open; it is generally better to vary question types; may be used to press for facts.	

Amplification Questions: Expands range and depth of answer; reveals circumstances, reasons, attitudes

Question Type	Use	Example
Direct	Come right out and ask for more information.	“What happened after that?”
Silence	Usually not more than 10 seconds; (I don’t believe you, I approve, please continue, I agree, I don’t understand, I’m interested) and many more meanings.	
Minimum	Encouragement Just a few words to keep witness talking.	“I see.” “Yes, go on.”
Restatement	Repeat witness’ statement, but not parroting.	“You called in?”
Reflection	Reveals the feelings behind.	

Clarification Questions: Ensures that investigator understands what witness said; eliminates confusion, ambiguity; breeds confidence

Question Type	Use	Example
Direct	Ask directly for clarification.	“What do you mean by poor attitude?”
Paraphrase	Repeat Witness’ statement in other words; better than restatement.	“You only heard about the fight and did not actually witness it?”
An expanded paraphrase.		“Let’s see if I understand what you are saying...”
Confrontation	Challenges Witness’ words or actions; could make Witness hostile, avoid arguing or direct accusations.	“Could you be mistaken?” “Didn’t you just say that...?”
Why	Gets data on reasons behind a decision; challenges validity or authority of a response; gets the rationale; helps Witness reason through a problem; use with caution; Witness may become defensive, emotional.	“Why did you do that?” “Why did he react that way?” “Why didn’t you call in?”

Open	One of the best ways to start (unless you need to get to the heart of the matter immediately). Gets the witness involved; gives the witness control; gives the witness recognition.	“Tell me what happened.” “Could you describe the events...”
Closed	Follow-up after open question; to get specific, objective information; limits answers. Too many suggests badgering; may be threatening.	“Were you late for work?” “Did you call in?” “Who did you speak to?”

Drafting Interview Summaries

A written record of both telephone interviews and face-to-face interviews is made by the investigator in order to preserve the probative value of the information obtained. It is recommended that the investigator take notes during the interview; however, if note taking appears to impede the flow of information, then the interview can be conducted without taking notes. If the investigator conducts the interview without notes, then the investigator reduces the recollections of the interview to writing immediately after completing the interview. Whether notes are taken, or a tape recorder is used during the interview, depends on the investigative technique of the interviewer and the reactions of the interviewee. If tapes are transcribed, then the original tapes should also be kept. Tape recording interviews can be only with the consent of the interviewee.

Interview summaries contain the following information:

- Case number;
- Name, address, telephone number of the witness;
- Date, time, and location of the interview, including whether the interview was conducted by telephone;
- Name of the investigator conducting the interview;
- Name and identification of any other persons present, including an explanation for the presence of other persons; and
- A summary of the questions and responses.

When possible, the investigator summarizes the witness’s responses as the witness’s version of the facts in his or her “voice” and words. For example, instead of recording that “the witness then stated that she was not present during the interaction between the patient and the doctor” a better approach would be “I wasn’t in the room when the patient had the conversation with the doctor.” While the summary does not need to be a verbatim transcript of the interview, it should accurately reflect the questions posed and the responses of the witnesses. Finally, the need for a signed witness statement, affidavit, or declaration to be used for future enforcement purposes (such as evidence in an administrative hearing) will be assessed and considered, as appropriate.

Witness’s Right to Representation

The witness's right to representation does not include a general right to have others present during the interview. Rather, the witness is permitted to have a personally designated representative present. If the witness identifies the covered entity's counsel or a supervisor as a personally designated representative, the witness should be informed that such a person may have a conflict of interest between that person's responsibilities to the covered entity and the individual's responsibilities as a personally designated representative.

If a personally designated representative with responsibilities to the covered entity interferes with OCR's ability to conduct the interview, then that person will be requested to leave. The investigator may ask the witness whether he or she would like to have another representative. If the same person is named, then continue the interview assuming the representative will no longer interfere with the interview. If the representative continues to interfere with the interview, then request a break in order to consult a supervisor to determine the best action to take.

Covered Entity's Employees and Entity's Responsibility

As discussed previously, the covered entity must provide the investigator with access to all books, records, videos, electronic tapes, logs, internal memorandums, accounts, and other sources of information or facilities that OCR finds necessary to determine the covered entity's compliance. This required information includes what an employee can supply orally as well as any written information she or he may have that is not maintained elsewhere by the covered entity. Although OCR cannot compel a covered entity's employees to provide information, if the employee refuses to cooperate, the covered entity is still responsible for providing the information by any other possible method.

Interviewing Minors or Individuals Who Are Legally Incompetent

The investigator must obtain parental or guardian written consent when interviewing any person who is a minor or otherwise legally incompetent, for instance, an individual with mental impairments. If this procedure presents a problem, the investigator may consult the regional OGC attorney and the investigator's supervisor on local regional protocol. Parents or guardians may be invited by the investigator to be present during the interview. If consent is denied, the investigator does not interview the child or individual who is legally incompetent.

Verification of Facts

After receiving the covered entity's written response to the allegations, it is likely that disputed facts may need to be verified with the complainant and/or third parties. Such representations made by the covered entity and complainant should be verified either through an additional written request for information and/or by interviews with third parties. This part of the investigation may be the lengthiest and most important, because all the information gathered will be used to determine the case outcome.

During the course of the investigation, additional information may be required from the complainant. A request for such information can be made in person, by telephone, or in writing, or in combination, and can include specific questions or general requests. Although telephone calls may be sufficient, if the complainant fails to return OCR's calls, then the investigator may send the request to the complainant in writing. Note that the complainant should not be provided copies of any materials received from the covered entity.

When the covered entity denies the allegations, the investigator may allow the complainant an opportunity to provide additional information to corroborate her or his allegations. If the complainant raises an allegation of a systemic problem (e.g., no posted notifications regarding language access, no grievance policy, etc.), then the investigator may not need to contact the complainant, aside from requesting more general information in order to corroborate the complaint allegations. If the complainant raises an allegation of a specific problem (e.g., not providing an interpreter or other discriminatory treatment), then the investigator may need to contact the complainant to identify witnesses or to determine if the complainant has evidence not yet provided.

When the covered entity indicates that it has taken corrective actions, the investigator may examine the mitigation and corrective action(s) taken by the covered entity and inform the complainant of how the complaint has been resolved.

When the covered entity represents to the investigator that information was provided directly to the complainant from the covered entity, such as a letter of apology or a copy of revised patient information materials, the investigator may verify with the complainant that such information was actually received.

APPENDIX MM: Sample Letter Requesting Additional Information from the Complainant during the Course of the Investigation (Template)

On-sites

Regional managers have discretion about whether an investigator conducts an onsite visit during investigation of a complaint. Means of conducting investigations vary, and the reason to go onsite – considering staff resources and budget – focuses on the nature of the complaint, the scope of the investigation, and the range of other issues of importance to the investigator. For example, in an onsite visit, an investigator may collect information that could be difficult to obtain otherwise; personal contact may yield greater information and clarification than telephone or mail; and the investigator may obtain a more accurate impression of a physical environment. An investigator also may have concern about obtaining data in exigent circumstances – that documents may be hidden, altered, or destroyed.



Under most circumstances, the investigator decides to go onsite after the covered entity responds to OCRs request for information and the investigator has analyzed the material. Factors to consider in determining whether to conduct an on-site investigation include, but are not limited to: (a) whether the documentation provided by the covered entity verifies the covered entity's written position and is sufficient for a determination on the issue of discrimination; (b) whether an appropriate legally sound resolution can be obtained based on the information obtained; (c) whether additional information can be obtained through other means such as a supplemental data request or witness interviews by telephone; and (d) whether the covered entity is willing to submit a voluntary action plan or a letter committing itself to specific acts to resolve the case.

The investigator invests time in determining what information to obtain from the covered entity and the persons to interview. Investigators are encouraged to develop a written plan to facilitate the process. For example, an investigator may create a list of evidence needed for the investigation, a list of questions she or he will ask of witnesses, and a list of questions he or she will ask of covered entity staff members who may have firsthand knowledge of the entity's policies, procedures, and actual practice. In addition, the investigator carefully plans the sequence and spacing of interviews (i.e., providing sufficient time between interviews and considering the information each interviewee may give, which may bear on subsequent questions or other persons to be interviewed).

Arranging the Onsite Visit

The investigator contacts the covered entity to arrange a convenient date and time(s) to visit the facility and confirms the arrangements in a written letter. Normally, in the letter confirming, or notifying the covered entity of, the scheduled onsite visit, the investigator:

- Restates the allegations of the complaint, the basis, and the legal authority under which the complaint is being investigated;
- States section(s) of the civil rights law/regulation that requires or prohibits the alleged act(s) or omission(s);
- Requests additional information or data the covered entity is to submit for review prior to the onsite visit (including a timeframe for submission);
- Identifies additional data the investigator wants to review during the onsite visit;
- Requests that all the covered entity's staff to be interviewed be asked to be available as appropriate during the onsite visit;
- Identifies the covered entity's staff the investigator will interview, if this identification can be determined in advance, and may be requested by title, responsibility, or job duties; and

- Suggests that the covered entity designate a liaison person, if it has not already done so.

The Onsite Visit

The investigator determines the activities and the sequence of activities she or he will carry out. Onsite activities generally include an opening conference, an orientation meeting for information collection, a series of interviews, a visit to particular locations in the facility when relevant to the investigation, a collection of written information, and an exit conference. After returning from the onsite, the investigator is responsible for documenting activities and evidence obtained during the onsite in the case notes and transaction folder.

Opening Conference

The investigator holds an opening conference with the covered entity's chief executive officer, or designee, and others responsible for compliance with civil rights laws as a matter of courtesy, in order to give the covered entity an overview of the onsite investigation. This conference may include an introduction of the investigator(s); a brief description of the complaint allegations and issues; OCR's authority to investigate the complaint; confirmation of interview schedules; identification of appropriate facilities for interviewing; and a collection of written information. The investigator may notify the covered entity of the possibility of additional interviews, data collection efforts, and subsequent onsite visits.

Orientation Meeting for Information Collection

During the meeting, the investigator becomes acquainted with the covered entity's programs, services, and activities and also acquaints the covered entity with OCR's information needs and collection procedures. The investigator assesses and therefore requests the presence of covered entity employees who are responsible for keeping certain records, documents, or information that may be needed at the meeting.

Collection of Written Information

The investigator is responsible for properly identifying all information collected during the course of the onsite investigation, such as records and documents. Investigators keep accurate notes about the source of the document; they identify the person who provided the document, note the date the investigator obtained the document, and write a description of the document, if it is not self-explanatory.

Exit Conference

The investigator holds an exit conference with the covered entity's privacy officer, chief executive officer, or designee in order to describe how broadly the investigation will proceed after the onsite visit. Neither opinions about information collected during the

onsite visit nor conclusions about the issues of the investigation are communicated by the investigator to a representative of the covered entity at this conference.

Documentation of Evidence Obtained During the Onsite Visit

The investigator records, in writing, all interviews and then scans and appropriately places all evidence into the PIMS transaction folder for the case. Each document in the transaction folder obtained by the investigator during the onsite visit adequately identifies the source of the document, the name of the investigator, and the date received, along with any clarifying description about the content of the information contained therein. This clarification may be accomplished by including a cover memorandum to the document prior to scanning and filing the document(s) in the case folder. Additionally, investigators record aspects of the onsite visit in PIMS. The PIMS on-site module requires entry of date(s) of initial and, if applicable, subsequent visits, as well as costs incurred for travel. Investigators should consult as needed with the regional PIMRA to ensure accurate entry of needed information.

Analysis of Investigative Data

Regional Managers ensure that investigations are legally sufficient and dispositive of the allegations accepted for investigation. Staff should adhere to guidance established for conducting civil rights investigations.

**[Redacted under FOIA
Exemption 7(E), 5 USC
552(b)(7)(E)]**

APPENDIX HH: Guidance for Investigating Civil Rights Complaints

In some cases, it will be helpful to prepare an Investigative Report. An investigative report is a written document that should include the following: the allegations investigated in a case, the legal standards applicable to those allegations, a summary and analysis of the information discovered during the investigation, the findings of fact OCR draws from that information, the conclusions of law OCR reaches based upon those findings, and any recommendations for further action needed as a result of those conclusions.

See also discussion of when and how to prepare Investigative Reports in **APPENDIX HH: Guidance for Investigating Civil Rights Complaints**
APPENDIX NN: Sample Investigative Report

OCR regional staff must prepare an Action Memorandum forwarding a case-related document to OCR Headquarters for review and approval. The Action Memorandum should include as an attachment any Investigative Report that has been prepared. If similar detailed case-related information is contained in a proposed violation letter of findings (LOF), the proposed LOF may be an adequate substitute for an Investigative Report.

APPENDIX OO: Sample Action Memo

Also see [Discussion of Headquarters Review and Approval Requirements](#)

VI. INVESTIGATED CLOSURES

OCR has a variety of tools for resolving complaints and encouraging voluntary efforts by covered entities, where appropriate, at any stage of an investigation. Investigators and supervisors should consider, using management discretion and authority, all available approaches for resolving civil rights complaints at the earliest opportunity during the investigative process. OGC and Headquarters are important resources that regions should consult to assist in accomplishing prompt resolution of complaints.

These approaches include:

Early Complaint Resolution;

Technical Assistance (TA) provided;

Letter Confirming Voluntary Action Taken or to be Taken by a Covered Entity;

Letter of Concern;

Voluntary Resolution Agreement (VRA);

Violation Letter of Findings (LOF);

Settlement Agreement (SA);

Insufficient Evidence of a Violation Letter; and

No Violation Findings Letter.

Each of these approaches is described in more detail below. Any approach or combination of approaches may be initiated at any time after acceptance of the complaint for investigation and during the investigative process, and multiple approaches may be used to resolve any case without making investigative findings. Investigators should constantly consider which tool is most likely to promote prompt, appropriate complaint resolution, and consult with regional management and OGC, as needed, on resolution approaches.

For example, OCR staff may be analyzing a covered entity's initial response to a data request and formulating a strategy for a full investigation, when the entity indicates a willingness to resolve the matter by voluntarily and immediately implementing changes in policy and procedures with technical assistance from OCR. At that point, OCR staff should work with the entity and provide technical assistance, which may be written or oral guidance on pertinent legal standards and/or OCR policy, to promptly resolve the issues presented by the complaint. The Regional Manager has discretion to determine whether providing technical assistance to the covered entity is sufficient to resolve and close the complaint.

For cases in which the covered entity has taken or plans to take corrective action, for example, investigators and supervisors should confer as needed with Regional OGC for guidance in fashioning and memorializing by letter the covered entity's actions, to ensure legal sufficiency. In addition, the region should consult with Headquarters for advice and guidance, as needed.

As a general rule, where OCR's investigation has identified compliance concerns and changes that must be made by a covered entity, OCR seeks to negotiate a Voluntary Resolution Agreement (VRA) to be signed by the covered entity and OCR. Throughout the term of the VRA, typically a period of twelve or eighteen months and up to a maximum of three years, OCR specifies action steps and monitoring approaches to ensure compliance by the covered entity that can be verified by OCR.

In contrast, where OCR has issued a violation LOF, OCR typically seeks to negotiate a Settlement Agreement (SA) to be signed by the covered entity and OCR. It resembles a VRA in all respects as relates to compliance terms and monitoring approaches, except that failure of the covered entity to comply with the terms of a post-violation finding SA may lead to enforcement action by OCR, to include proceedings to seek termination of Federal financial assistance, or referral to DOJ, for failure to comply with the SA.

In both types of cases where OCR enters into formal written agreements with covered entities, OCR staff should develop strategies regarding appropriate remedies, time frames for the completion of remedial steps, and reporting requirements to resolve the case with the covered entity with a view toward effective monitoring. While draft documents may not be shared with the complainant, the complainant may be informed of the possibility of a VRA or a SA and OCR's reasoning for remedial actions to be required of the covered entity. Where appropriate, the complainant may be given the opportunity to offer input and suggest alternative solutions, with the understanding that OCR does not represent the complainant, but is responsible for ensuring compliance with the law. Records of contact between and among parties during the conduct of negotiation must be maintained in the case file.

All letters resolving cases are sent to the complainant (or the complainant's representative, if there is one) and the covered entity. If a complainant has a representative who has filed a complaint for the complainant, such as an attorney, as in all communications where complainants have representatives, OCR may not have direct contact with the complainant without the presence or consent of the representative.

The meaning of investigated closure codes in PIMS, and the various types of case resolutions are described in more detail below.

A. The Meaning of Investigated Closure Codes in PIMS

The meaning of commonly used investigated closure codes in PIMS follows.

No Violation - Investigation Found No Violation

The case is closed after OCR has issued a No Violation letter to the complainant and to the covered entity. The letter states that the investigated actions of the covered entity do not violate the Federal civil rights statutes or regulations. This closure code also applies to cases in which OCR has found that the evidence is insufficient to make a finding of a violation.

Change Achieved After Voluntary Compliance

The covered entity has carried out, to OCR's satisfaction, an action sufficient to remedy a potential violation or compliance concern. This action has occurred without OCR having made a determination regarding the compliance of the covered entity, such as in Early Complaint Resolution or when technical assistance is provided and the covered entity is required to provide evidence of corrective action. This type of closure is used when the covered entity takes voluntary action or informal resolution efforts by OCR result in the covered entity completing the necessary corrective action and providing evidence of such action prior to the issuance of a Letter of Findings.

Technical Assistance Provided

This is a rarely used special case closure for investigated cases in which OCR determines that a violation may have occurred, and OCR provides technical assistance to the covered entity, but evidence of corrective action by the covered entity is not warranted. For example, where it is clear that the covered entity had adequate plans in place to provide effective communication to deaf or hard of hearing persons, properly trained its workforce, implemented appropriate policies and procedures, and designated a Section 504 Coordinator, but has limited signage posted notifying clients of their rights under Section 504 that could be more prominently displayed in the facility. OCR may provide technical assistance to assist the entity to identify additional places where its notices could be posted, but determines that verification of such additional steps is not required to demonstrate compliance. The Regional Manager has discretion to determine whether providing technical assistance to the covered entity is sufficient to close the complaint. This closure code should not be used in cases in which the covered entity should take corrective action and must provide evidence that the action has been taken.

Monitoring Required

OCR and the covered entity signed a Voluntary Resolution Agreement that resulted in remedying a potential violation without issuance of a violation LOF, or a Settlement Agreement correcting a violation cited by OCR. Compliance with the terms of the agreement is monitored, and the monitoring due date for the case has been entered in the monitoring section. For example, investigators may place a case in monitoring in order to provide the covered entity with a 60-day period to develop and implement policies and procedures and train staff to ensure its civil rights compliance. When OCR

receives documentation that the covered entity has carried out all activities that prompted OCR to place the case in monitoring, an appropriate closure letter will be prepared and the case may be closed with a monitoring closure code.

Closure of a Case with Multiple Issues and Different Dispositions

Certain cases may involve more than one issue and, therefore, may result in more than one disposition. It is the investigator's responsibility to ensure that the dispositions are appropriately reflected in PIMS for each issue addressed in the investigation. This step will ensure accurate reporting in PIMS, which will record the most significant outcome of multiple outcomes as the overall closure disposition for the transaction. For example, a complaint raises issues of both discrimination and retaliation. If the disposition of the discrimination claim is Change Achieved (e.g., policy and procedures were developed) and disposition for the retaliation claim is Technical Assistance Provided, a closure disposition showing Change Achieved is more significant than a closure disposition showing Technical Assistance Provided, and Change Achieved would be the overall disposition for the case.

B. Case Resolutions

Early Complaint Resolution

Early Complaint Resolution (ECR) provides the parties involved the opportunity to quickly resolve the complaint allegations when the allegations are specific to a single injured party or group (i.e., all affected parties are known and can participate in the process). If the Regional Manager determines that ECR is appropriate and the complainant and the covered entity are willing to utilize this approach, OCR will work with the parties to facilitate resolution of the complaint. For example, an individual communicates using "home sign" – a sign language that is unique to the individual, members of his family, and a small number of persons in the community, and alleges that the covered entity failed to provide effective communication during an office visit. A possible early complaint resolution could involve the covered entity agreeing to utilize and appropriately compensate one of the people known to the complainant who meets the standard of a qualified interpreter for this individual.

Once initiated, ECR should be completed within 60 days, unless the Regional Manager grants a limited extension of time. OCR does not sign, approve, or endorse any agreement reached between the parties; however, OCR will assist both parties in understanding pertinent legal standards and possible resolutions.

At the successful conclusion of ECR, OCR should obtain a copy of a statement signed by the complainant that the allegation has been resolved or a copy of any negotiated agreement that has been signed by the complainant. Once evidence of the resolution of any complaint allegation has been obtained through ECR, OCR will issue a closure letter with respect to the resolved allegations and close the case in PIMS as Change Achieved after Voluntary Compliance. Other approaches may be utilized to resolve any outstanding allegations.

OCR does not monitor any agreement reached between the parties in ECR, but will inform the parties that if a breach occurs, the complainant may file another complaint. To be considered timely, the new complaint must be filed either within 180 days of the date of the original discrimination or within 60 days of the date the complainant obtains information that a breach occurred, whichever day is later.

APPENDIX PP: Early Case Resolution Guidance

Technical Assistance (TA) Provided

OCR should offer TA to covered entities at any stage of an investigation whenever there is an indication of a potential compliance concern. The purpose of TA is to help a covered entity understand its nondiscrimination obligations under the laws that OCR enforces. Whenever possible, staff should provide the covered entity with sample documents and policies; electronic links to regulations, OCR's fact sheets and website; suggested sources of helpful information from other HHS components; and explanations of regulatory requirements where needed. Staff should review the TA package provided to Medicare Part A applicants on their civil rights statutory and regulatory obligations as HHS recipients, which includes examples of policies as guidance for healthcare providers in developing civil rights policies and procedures.

Pre-Gant Package

http://www.hhs.gov/ocr/civilrights/resources/providers/medicare_providers/index.html

The complaint should be closed in PIMS as Technical Assistance Provided where OCR provides TA to the covered entity but corrective action by the covered entity is deemed not warranted. The Regional Manager has discretion to determine whether providing TA to the covered entity is sufficient to close the complaint.

Letter Confirming Voluntary Action Taken or to be Taken by a Covered Entity

An effective case resolution can take a variety of forms and can result from methods other than a formal, written agreement for corrective action between OCR and the covered entity during any stage of case investigation. For example, a covered entity may submit a voluntary plan of action or a letter committing itself to specific acts. The action plan or letter from the covered entity could outline the actions that the covered entity will take to resolve the case with specific detail, including the date(s) that any promised action will occur, so as to ensure an appropriate resolution of the complaint allegations. Alternatively, the covered entity could request a letter from OCR, detailing compliance measures that the entity should take, or the covered entity could submit data that demonstrates to OCR that it already has taken steps necessary to ensure its compliance with the applicable regulations.

If voluntary action has not yet been taken by the covered entity, the investigator should place the transaction in a monitoring phase in PIMS. Once OCR has received documentation that the covered entity has carried out all promised action, an

appropriate closure letter will be prepared and the case may be closed. A Regional Manager has the discretion to close a case as Change Achieved after Voluntary Compliance where the covered entity has carried out an action sufficient to ensure compliance with the regulations.

When a covered entity has completed the required voluntary actions, the closure letter will:

- Reference the applicable statutory and regulatory authorities for the investigation;
- Outline the actions, with specific detail, that the covered entity has taken to resolve the case; and
- Identify all issues in the investigation for which there was no resolution and states that none was necessary.

The closure letter will include: (1) the complainant's opportunity to request reconsideration of the region's findings by OCR Headquarters; and (2) advisements concerning the: (i) right to file a civil action; (ii) prohibition of retaliation by the covered entity; (iii) disclosure of records under the Freedom of Information Act and the Privacy Act; and (iv) name, telephone number, and email of OCR staff to contact for additional information.

APPENDIX QQ: Sample Letter Confirming Voluntary Action

APPENDIX AAA: Advisements

APPENDIX BBB: Reconsideration Notification Language for No Violation LOFs

Letter of Concern

At any time during the investigative process, if OCR has identified compliance concerns that should be shared with the covered entity, OCR staff should consider issuing a Letter of Concern. The purpose of a Letter of Concern is to put the covered entity on written notice when OCR has identified indications of possible noncompliance and to secure voluntary actions by the covered entity to address the concerns. A Letter of Concern may be appropriate where the circumstances generally suggest that satisfactory relief may be obtained more expeditiously by raising concerns during the course of an investigation rather than waiting until the completion of the investigation.

Once a Letter of Concern is issued, OCR staff should work with the covered entity and provide technical assistance to promptly resolve the issue(s) of concern, such that the entity commits itself by letter (or an exchange of letters with OCR) or formal written agreement to take specific future actions that appropriately addresses any compliance concern.

APPENDIX RR: Sample Letter of Concern

Also see other sample Letters of Concern in [PIMS / Civil Rights Library / Investigational Resources / Headquarters Approved Regional Documents](#).

Voluntary Resolution Agreement (VRA)

A complaint may be resolved when, before the conclusion of an investigation, the covered entity asks to resolve the complaint or has begun to take action to resolve the complaint. Regional Managers maintain their discretion to select, among the various case resolution strategies, the appropriate strategy, based on careful consideration of the facts and circumstances of each case. In some instances where the evidence may establish a compliance concern, the most effective case resolution approach will be a voluntary resolution agreement (VRA) signed by OCR and the covered entity. This formal written agreement may be the best approach, for example, in complex cases where voluntary action will be difficult to monitor due to its scope and necessary duration, or where the covered entity has not been cooperative and a formal agreement likely will be necessary to ensure that the covered entity takes the agreed upon voluntary action.

The OCR staff must bear in mind that when resolving a case through a VRA, the investigator is representing OCR, not the complainant. The primary objective is to enforce the law – that is, to ensure that the covered entity in question is in compliance. If the covered entity asks to resolve the complaint through a VRA, the investigator should notify the complainant of the covered entity's request and keep the complainant informed of significant developments in the complaint resolution process. VRAs should be negotiated before an LOF is issued.

OCR staff will carefully develop all VRAs to ensure accountability for high quality and consistency with OCR guidelines. All VRAs should be crafted with a view toward effective monitoring. Headquarters review and approval of proposed VRAs is required before the VRA is submitted to the covered entity.

See [Discussion of Headquarters Review and Approval Requirements](#)

A number of basic provisions should be included in each VRA, including:

- (i) Name of the covered entity, a brief description of the allegations addressed by the VRA, and the scope of the covered entity's programs/services/coverage area to highlight persons and programs impacted by the agreement;
- (ii) Authority and jurisdiction of OCR to investigate the complaint and secure voluntary compliance;
- (iii) Specifics of the voluntary action to be taken, within a stated period, to ensure the covered entity is in compliance and offer of technical assistance by OCR;
- (iv) Assurance that discrimination will not occur in any part of the program;

- (v) Provision for next steps for failure to comply with the VRA;
- (vi) Prohibition of retaliation by the recipient;
- (vii) Statement of the duration and effective date of the VRA;
- (vii) Statement that the VRA has no effect on other pending cases against the entity or on its continuing responsibility to comply with the civil rights laws enforced by OCR;
- (viii) Statement that the covered entity's compliance with the VRA may be reviewed any time by OCR;
- (ix) Statement that the VRA is available to members of the public, subject to confidentiality provisions; and
- (x) Signature by responsible officials for the parties, with titles of signatories, and date of signature.

The VRA should be finalized (i.e., signed by both parties) and copies should be sent with a cover letter to the covered entity and the complainant, with an explanation of the closure. The letter should state the date that the VRA becomes effective and, if appropriate, the date on which the first monitoring report is due. The complaint should be closed in PIMS with Monitoring Required on the date the letters are sent to the complainant and covered entity with the attached signed VRA. A monitoring case should be initiated in PIMS for the case during the monitoring period.

APPENDIX SS: Sample Voluntary Resolution Agreement (VRA)

Also see other sample Resolution Agreements in [PIMS / Civil Rights Library / Investigational Resources / Headquarters Approved Regional Documents](#).

APPENDIX TT: Sample VRA Cover Letter

APPENDIX AAA: Advisements

Violation Letter of Findings (LOF)

When the investigation reveals evidence that may establish a violation, the Regional Manager should consult with Headquarters on the best strategy for resolving the issues. OCR may determine that the region should contact the covered entity and attempt to secure the covered entity's willingness to negotiate a voluntary resolution agreement, or that the region should issue a violation letter of findings (LOF) with a proposed settlement agreement. OCR issuing a violation LOF may be the most appropriate and effective course to achieve compliance where doing so would promote OCR's enforcement priorities and/or where the violation was egregious or caused significant harm to an individual or a group of people. For example:

- The evidence demonstrates that a state administered nursing home has denied admission to an HIV positive patient solely due to the nature of the patient's disability. OCR's issuance of a violation LOF in this case, regardless of the level of cooperation of the covered entity, would promote OCR's enforcement objective of ensuring broad awareness of the Federal nondiscrimination protections for persons infected with HIV and deter future violations.
- The evidence demonstrates that a hospital's failure to provide interpreters in its emergency room led to unnecessary testing, wrong diagnosis, or inadequate or delayed treatment for a person or persons needing such interpreters. OCR's issuance of a violation LOF in this case would support OCR's enforcement priorities.

The following information should be included, as appropriate, in the violation LOF:

- Statement of OCR's jurisdictional authority, including status of the covered entity and the statutory basis for the investigation;
- Statement of each issue;
- Statement of the applicable regulatory provisions and other legal standards, as appropriate;
- Factual findings for each issue;
- Legal analysis of the issues, based on the factual findings;
- Determination of a violation or violations;
- Description of what remedies the covered entity must take to achieve voluntary compliance, with reference to the attached proposed Settlement Agreement (see below);
- Notice of the time limit on OCR's settlement process and the consequence of failure to achieve a voluntary settlement; and
- Advisements concerning the:
 - (a) right to file a civil action;
 - (b) prohibition of retaliation by the covered entity;
 - (c) disclosure of records under the Freedom of Information Act and the Privacy Act; and
 - (d) name, telephone number, and email of OCR staff to contact for additional information.

APPENDIX AAA: Advisements

See [Discussion Of Headquarters Review And Approval Requirements](#).

A violation LOF should be sent to the covered entity with a proposed Settlement Agreement. See the section below for a discussion of Settlement Agreements. Headquarters review and approval of proposed violation LOFs is required before the LOF is submitted to the covered entity. Investigators should be aware that a violation LOF provides OCR with the option to proceed with enforcement action against a covered entity, to include proceedings to seek termination of Federal financial assistance through an administrative hearing before the HHS Departmental Appeals Board, or referral to DOJ for judicial action, based on a covered entity's failure to comply with Federal civil rights law. These potential enforcement actions are only available if a violation finding by OCR has been issued.

See [Discussion Of Headquarters Review And Approval Requirements](#).

APPENDIX UU: Sample Violation Letter of Findings (LOF)

Also see other sample Violation Findings Letters in [PIMS / Civil Rights Library / Investigational Resources / Headquarters Approved Regional Documents](#).

Settlement Agreement (SA)

As a general rule, after a violation LOF has been issued OCR negotiates and executes an SA between the covered entity and OCR, to resolve the identified violation. The complaint will be considered resolved and the covered entity deemed in compliance if the entity enters into an SA that, fully performed, will remedy the identified violations, and complete all required actions. For this reason, a proposed post-violation SA should be attached to each violation LOF for the covered entity's consideration and adoption. It should be negotiated and developed with the same procedural considerations and contain the same basic provisions as a VRA, with one exception. The SA should contain a provision for enforcement, to include proceedings to seek termination of Federal financial assistance, or referral to DOJ, for failure to comply with the SA.

The complaint should be moved in PIMS to Monitoring status on the date the letters are sent to the complainant and covered entity with the attached signed SA.

Appendix VV: Sample Settlement Agreement

Also see other sample Settlement Agreements in [PIMS / Civil Rights Library / Investigational Resources/ HQ Approved Regional Documents](#).

Insufficient Evidence of a Violation Letter

OCR need not continue an investigation in the following circumstances:

- OCR has conducted an investigation and obtained sufficient information from which to determine that further investigation will not yield sufficient factual evidence to support a violation finding; or
- Evidence is unavailable to support the allegations after OCR has exhausted its efforts to obtain relevant evidence.

Under either of these circumstances, OCR may conclude that further investigation will not result in a finding of a violation and issue a letter resolving the matter on the grounds that there is insufficient evidence to support a finding of a violation. The letter should contain, at a minimum: (1) a statement of all issues raised by the complainant and accepted for investigation (allegations raised in the complaint that were not investigated due to lack of jurisdiction, referral, or other reason should be referenced in a footnote, along with a brief explanation of the reasons the allegations were not accepted), (2) a statement of OCR's jurisdiction over the complaint, (3) the applicable legal standards; (4) a description of the complainant's and covered entity's positions, (5) factual findings, (6) discussion and analysis to clearly explain how the legal standards apply to the factual findings, (7) a conclusion; (8) the complainant's opportunity to request reconsideration of the region's findings by OCR Headquarters; and (9) advisements concerning the: (i) right to file a civil action; (ii) prohibition of retaliation by the covered entity; (iii) disclosure of records under the Freedom of Information Act and the Privacy Act; and (iv) name, telephone number, and email of OCR staff to contact for additional information.

This is in contrast to a fully investigated case determination that the evidence is sufficient to support a finding of no violation.

APPENDIX MMM: Guidance Regarding Case Resolution Based on Insufficient Evidence of a Violation

APPENDIX BBB: Reconsideration Notification Language for No Violation LOFs

APPENDIX AAA: Advisements

No Violation Findings Letter

If at the conclusion of the investigation, the covered entity is found to be in compliance with the law, OCR will issue a No Violation Findings Letter. The letter should contain the same basic provisions as an Insufficient Evidence of a Violation Letter, with one exception -- it should conclude that the evidence established that the covered entity did not violate the law.

APPENDIX WW: Sample No Violation Letter

APPENDIX BBB: Reconsideration Notification Language for No Violation LOFs

APPENDIX AAA: Advisements

See Part VII, [REQUESTS FOR RECONSIDERATION](#)

Headquarters Review and Approval Requirements

Headquarters review and approval by the OCR Director, or designee, is required prior to regional offices issuing a VRA, a violation LOF, or a SA to a covered entity. Prior to submitting a recommendation to the Deputy Director for Civil Rights for Headquarters approval of the issuance of a VRA, violation LOF, or SA, the Regional Manager must: (i) ensure that the regional civil rights counsel has reviewed the case file and cleared the recommended documents for issuance as legally sufficient; (ii) ensure that the PIMS record is complete with relevant case file documents/records supporting the recommended action; and (iii) transmit an Action Memorandum to Headquarters through PIMS with the recommended documents for approval. In some circumstances, the regional staff also should prepare an Investigative Report to accompany the Action Memorandum.

Whether the OCR regional staff prepares an Investigative Report in addition to an Action Memorandum when forwarding a case to OCR Headquarters for review and approval, depends on the case. If similar detailed case information is contained in a proposed letter accompanying a VRA or violation LOF submitted with an Action Memorandum for Headquarters review and approval, the proposed letter or violation LOF may be an adequate substitute for an Investigative Report.

The regional Action Memorandum seeking approval for resolving the case must:

- Provide appropriate background about the case, including case-related information that may not be contained in an Investigative Report, violation LOF, or other case resolution letter, such as information about recent contacts with the covered entity and complainant that have influenced case resolution strategy and may impact negotiations;
- Provide a summary overview of the investigation conducted, analysis, and conclusions, and reason for recommended enforcement strategy, which includes the Regional Manager's impressions of the strengths and weaknesses of the evidence, and any obstacles encountered during the investigation that are germane to case resolution;
- Highlight any issues involved in the case that have, or potentially have nationwide impact, are precedent setting, or are novel from a legal or policy perspective;
- State whether Regional OGC review has been conducted and whether the recommended action is legally sufficient; and
- Provide the requested timeframe for Headquarters review with an explanation of any time sensitivities with rationale.

[APPENDIX OO](#): Sample Action Memo

APPENDIX NN: Sample Investigative Report

Once either a VRA and accompanying letter, or a violation LOF and SA are approved by Headquarters OCR for issuance, they will be signed as appropriate by the Regional Manager and transmitted immediately by certified mail, return receipt requested, to the covered entity. When either a VRA or SA is signed by OCR and the covered entity, i.e. fully executed, then a copy of the agreement should be transmitted with an explanatory cover letter by first class mail to the complainant.

C. Closing the Case during the Investigation (Administrative Closures)

OCR may determine that a complaint is appropriate for closure during any stage of the investigation, when one of the following occurs:

The complainant decides to withdraw his or her complaint

If the complaint included class allegations, based upon information obtained by the region prior to the withdrawal, the region may: (a) pursue resolution of the class allegations; or (b) use the information to target future compliance review activity. If OCR's investigation uncovered systemic compliance issues that remain unresolved, the region should use the information to conduct compliance review activity.

Staff should not close a case on the basis of "complaint withdrawn" where a complainant decides to withdraw his or her complaint because the covered entity has committed to carry out an action sufficient to remedy a potential violation or compliance concern. Staff should use the investigated closure code in PIMS that best describes the case resolution, in this instance, either "change achieved after voluntary compliance" or "technical assistance provided."

APPENDIX WW: Withdrawal of Complaint Letter (Template)

The complainant's or injured party's refusal to cooperate

When the complainant or injured party's refusal to cooperate substantially hinders the Region's ability to conduct the investigation, the complainant or injured party should be notified by letter that his/her failure to cooperate (including refusal to give permission to disclose identity where such information is essential) has made it impossible to conduct the investigation. The letter should inform the complainant or injured party that refusal to cooperate within 20 days of the date of the letter will result in OCR closing the case.

APPENDIX MM: LETTER TO COMPLAINANT REQUESTING ADDITIONAL INFORMATION DURING THE COURSE OF THE INVESTIGATION (TEMPLATE)

The death or unavailability of the complainant or injured party or an essential witness

When the death or unavailability of these persons substantially hinders the Regional Office's ability to conduct the investigation, case closure is appropriate. Regional staff should consult with OGC to assist in the individualized evaluation of the facts and circumstances of the complaint, to ascertain whether further action is warranted.

APPENDIX YY: Closure Letter - Complainant's Allegations Resolved or No Longer Appropriate for Investigation (Template)

Allegations raised by the complaint have been resolved.

If OCR receives information that the allegations have been resolved, OCR should confirm that no further action is necessary to ensure compliance and that any violations will not recur, prior to closing the complaint. For example, even if the initial allegation is resolved, e.g., admission to a facility, the covered entity may need to address the allegations with prospective policy changes or staff retraining.

Regional staff should consult with OGC to assist in the individualized evaluation of the facts and circumstances of the complaint, to ascertain whether further action is warranted.

The resolution of a complaint by a Federal or State court, or another agency

This includes decisions by Federal courts, the Secretary of HHS, the Civil Rights Reviewing Authority or Departmental Appeals Board judges, or DOJ guidance, OGC legal advice, or OCR policy determinations that make OCR action inappropriate, where, based on an individualized evaluation of the available facts and circumstances of the complaint and its resolution, OCR determines that the matter is moot and no further action by OCR is warranted. Regional staff should consult with OGC to assist in the individualized evaluation of the facts and circumstances of the complaint.



Complaint is frivolous

The complaint over which OCR has jurisdiction is determined to be so weak, attenuated, insubstantial, or unsupported by evidence that it is without merit, or so replete with incoherent statements that the complaint, as a whole, should be considered baseless or frivolous (i.e., lacking any arguable basis in law or fact). Also, the complaint is a continuation of a pattern of previously filed complaints, which involve the same or similar allegations against the same entity that OCR has found factually or legally insubstantial. Approval by the Regional Manager is required.

Consolidated into an existing complaint or review or new review

The same allegations have been addressed in a recently closed OCR complaint or compliance review, are being addressed in another open complaint or compliance

review, or will be addressed in a scheduled compliance review. Also when the complaint involves an OCR high priority issue or an extremely novel and complex issue, which, because of its scope, may require substantial OCR resources. In such instances, the Regional Manager may consider treating such a complaint as a compliance review. If the region elects this option, it should discuss the decision with the complainant, close the complaint, assign a review number, and initiate the compliance review as soon as possible. As part of this process, the region should also consider whether any of the complainant's allegations can be resolved immediately. Any outstanding individual allegations that can not be promptly resolved should be incorporated into the review. The results of the review will be shared with the complainant upon completion.

OCR has jurisdiction but another agency will process

Similar allegations are currently pending in a Federal or State court or in another agency, and, based on the nature, history and status of the proceeding and an individualized evaluation of the issues, available facts and circumstances of the complaint, deferral by OCR is warranted.

The above-described examples of situations in which OCR may use its discretion to close an investigated case are not exhaustive. In other words, Regional Managers have discretion to close cases where warranted during any stage of the investigation on other grounds as well. If other grounds are used for investigated case closures, however, the Regional Manager must consult with Headquarters and document this case consultation in the PIMS case file.

VII. REQUESTS FOR RECONSIDERATION

OCR is committed to ensuring that every complaint is appropriately resolved. OCR affords an opportunity for reconsideration to the complainant in limited circumstances. The Headquarters reconsideration process is discretionary, i.e., is not mandated by statute or regulation. The complainant's request for reconsideration must be limited to those issues raised in the complaint or during the course of OCR's investigation, and must timely identify errors in OCR's consideration of the facts or law that would change OCR's determination of the case. Merely stating disagreement with the disposition of an investigated case will not be sufficient to obtain Headquarters review.

Reconsideration is not available to complainants whose case was closed administratively without being accepted for investigation or where a voluntary resolution agreement or a settlement agreement was executed to resolve the case. The regional office should consult with Headquarters if there is uncertainty about whether to afford the complainant an opportunity for reconsideration by Headquarters.

A. Notification of Complainants

Notice of the complainant's opportunity to request reconsideration of OCR's findings must be included in the body of the letter of findings or closure letter to the complainant following an investigation, consistent with guidance above. The complainant may send a written request for reconsideration to OCR's Deputy Director for Civil Rights within 30 calendar days of the date of OCR's closure letter. Oral requests for reconsideration are not accepted. In the written request for reconsideration, a complainant should:

Identify the specific finding(s) with which he or she disagrees, and explain why the findings are unsupported by the evidence in the record or the applicable legal standards;

Identify evidence in the record that was overlooked or misstated in the investigation that would change the outcome of the investigation;

- Provide names and contact information of any important witness(es) identified during the investigation who were not interviewed by OCR and whose information would change the outcome of the investigation; and
- Identify any specific provisions of laws or regulations that were not considered or were misinterpreted by OCR.

Merely stating that he or she is unhappy or disagrees with the investigative findings will not be sufficient. The complainant's failure to provide the requested supporting information will result in denial of the request for reconsideration without a review by OCR Headquarters.

APPENDIX BBB: Reconsideration Notification Language for No Violation LOFs

B. Extension of Time for Filing a Request for Reconsideration

If a request for reconsideration is filed more than 30 days after the date of the letter of findings, OCR headquarters staff, exercising its discretion, will determine whether to contact the complainant to request an explanation of why the request for reconsideration was not filed in a timely manner. Such information may reveal reasons that would warrant the waiver of the 30-day filing requirement. The contact may be in the form of a letter or telephone call, and should be fully documented in PIMS.

The Deputy Director for Civil Rights may exercise discretion in granting a waiver of the 30-day filing requirement where:

- The complainant was unable to submit a timely request because of illness or other incapacitating or extenuating circumstances and the request was filed within 30 calendar days after the period of illness, incapacitation, or other extenuating circumstances ended; or
- The complainant requests an extension of time due to a pending FOIA request for case information, and resubmits a request for reconsideration within 30 days after receiving a substantive response to the complainant's FOIA request.
- Unique circumstances caused by agency action have adversely affected the complainant.

C. Decision on Request for Reconsideration

The Deputy Director for Civil Rights will issue a written decision in response to a request for reconsideration generally within 90 days of receipt. The decision of the Deputy Director for Civil Rights constitutes OCR's final decision in the case.

If the Deputy Director for Civil Rights remands the complaint to the region for additional investigation, the region must open a new complaint, and the new transaction would be associated in PIMS with the earlier closed complaint. The region will copy the materials in the reconsideration folder into the new transaction folder, or use an "alias" in PIMS to point to the original transaction.

Regional staff then prepares a letter to all recipients of the original closure letter informing them that the case is being reopened and providing them with the new case number. This letter can be used by the region as the acknowledgement letter for the new case.

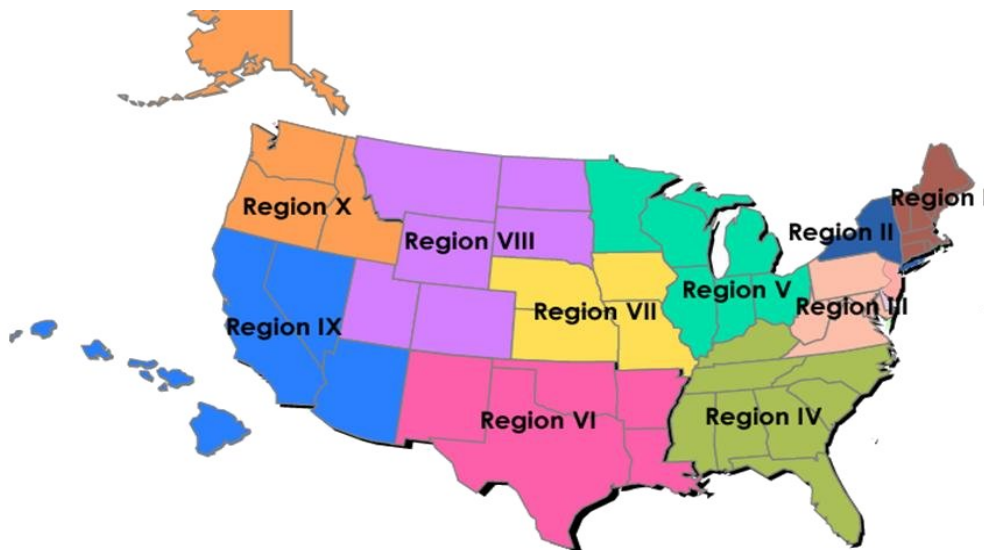
D. Receipt of Request for Reconsideration by Regional Office

Any reconsideration requests received by a region are referred to headquarters; the region scans the incoming request into the executive secretary's Intake Holding queue. After the reconsideration is scanned into the queue, the investigator is responsible for

alerting Headquarters of the presence of such a document in the queue; provide the case number, case name, and the name of the complainant.

If a region receives a request for reconsideration that includes additional information that it believes, based on its own analysis, justifies the reopening of a case or the opening of a new case, it may do so without forwarding the request to headquarters. In PIMS, the correspondence will be associated with the original complaint transaction and assigned to a civil rights Team Leader or Deputy Regional Manager.

[Reconsideration Letters in PIMS](#)



VIII. MONITORING

Monitoring is critical to ensure that all commitments made by the covered entity have been implemented consistent with the terms of a VRA, a SA, a voluntary plan of action, or other promised action. Communication with the covered entity and any other pertinent parties, including the complainant, with respect to any actions addressing individualized harm, is critical to ensure effective implementation of the commitments. OCR will promptly conduct its monitoring activities. In many instances, verification of implementation of commitments can be accomplished by a careful review of reports, documentation, and other information submitted by covered entities and others. In some instances, an on-site visit may be required to verify action taken by the covered entity or may be deemed the most efficient method of verification. Monitoring site visits will be conducted as necessary to verify or ensure compliance with the agreement and will be approved by the Regional Manager or his/her designee. Regional offices should consult with OCR Headquarters on monitoring activities, as needed, for assistance in ensuring and verifying compliance with the agreement by the covered entity

OCR will promptly acknowledge receipt of monitoring reports from the covered entity. OCR will evaluate the reported information and issue a decision to the covered entity as promptly as possible, generally within 60 calendar days unless otherwise specified in the agreement. OCR must promptly notify the covered entity of any deficiencies, and request an explanation of the entity's actions and appropriate action to address such deficiencies. Appropriate investigative, supervisory and OGC staff will participate in such determinations to ensure accountability for high quality and consistency with OCR guidelines. If the regional office and the covered entity are unable to resolve any deficiencies in the implementation of the agreement, the region must consult with OCR Headquarters.

OCR may seek additional commitments where necessary to address the entity's failure to implement commitments in the original agreement. If OCR and the covered entity still are unable to resolve any deficiencies in the implementation of the agreement, OCR may refer the matter for enforcement or other appropriate action.

The Regional Manager or his/her designee may agree to modify or terminate the schedule or the terms of the agreement at any time, as appropriate. Changed circumstances may warrant modification or termination of an agreement. Such circumstances include circumstances that fully resolve or render moot some or all of the compliance concerns that were addressed by the agreement and changes in controlling case law, statutes, regulations, or agency policy that make some or all of the provisions contained in the agreement no longer appropriate.

Any modifications to the agreement must be appended to the original agreement. Modification of the agreement provisions, reporting requirements, or timetable for completion or reporting will be documented in writing to the covered entity and in the monitoring case file.

The Regional Manager or his/her designee has discretion to grant extensions of time for submission of each report by the covered entity. Other modifications to an agreement will be reviewed and approved by the Regional Manager and OGC. The Deputy Director for Civil Rights must approve any modification of an agreement that would extend the total monitoring period beyond one year from the date of the original agreement. The covered entity will be notified, in writing, of significant modifications to an agreement.

Compliance issues identified for the first time during monitoring should be addressed by providing technical assistance or opening a new compliance activity, or considered for a future compliance review. Documentation that records the basis for such decisions should be placed in the case file.

OCR will conclude the monitoring of a case when it determines that the covered entity has fully implemented all terms contained in the agreement, including any subsequent modifications. At the discretion of the Regional Manager, a final OCR Monitoring Report that details the steps taken by the covered entity to complaint with the terms of the agreement will be added to the transaction folder. OCR will promptly notify the covered entity and the complainant that monitoring has been satisfactorily concluded and close the case. The closure letter informing the parties that monitoring is concluded will be reviewed and approved by the Regional Manager. OGC should be consulted as needed.

[APPENDIX ZZ: Sample Monitoring Closure Letter](#)

IX. ENFORCEMENT ACTION

A. Move to Enforcement for Failure to Achieve Compliance After OCR Has Made Violation Findings

If OCR is unable to achieve voluntary compliance following a violation finding, OCR will recommend enforcement action which may include: (a) administrative proceedings to suspend, terminate or refuse to grant or continue HHS financial assistance to the covered entity; or (b) referral of the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States. Whenever enforcement action is anticipated, Regional and Headquarters staff will consult as appropriate.

OCR may move to enforcement when it has made violation findings and a covered entity refuses to remedy the violation or negotiate a resolution. It also may move to enforcement where a region concludes that a covered entity has not fulfilled the requirements of a Settlement Agreement.

Prior to recommending enforcement action for non-compliance with an agreement, the Region should consider, with regional civil rights attorney and OCR Headquarters input, the following:

- Whether the entity's prior commitment, given its nature and terms, would be judicially enforceable;
- Whether OCR has fulfilled any pre-enforcement obligation it has under a post-violation Settlement Agreement, to give the entity written notice of, and an opportunity to respond to, apparent violations of the Agreement; and
- Whether updated findings are needed.

If enforcement action is recommended for failure to comply with an agreement or refusal to remedy or negotiate a resolution to a violation, the regional office staff must transmit an Enforcement Recommendation Action Memorandum to Headquarters. The regional Action Memorandum seeking approval to initiate enforcement action should include: Information about the nature of the violation as to each issue for which enforcement action is recommended;

- A discussion of the applicable statutes, regulations, policy interpretations and case law;
- An evaluation of the evidence available to prove the case;
- A discussion of any possible defenses;
- A draft Notice of Opportunity for Hearing, if the region recommends administrative proceedings, or a draft judicial complaint letter to DOJ explaining the reasons for OCR's referral, if it recommends referral to DOJ for judicial enforcement;
- A copy of the LOF and the Investigative Report, if one was prepared; and
- An explanation of relevant materials received after the LOF was issued and identification of those points on which OCR and the covered entity could not agree.

B. Move to Enforcement for Denial of Access to OCR to Assess Compliance

Where a covered entity has denied OCR access to information necessary to investigate the case and assess its compliance with Federal civil rights statutes, the region should consider, with regional civil rights attorney and Headquarters input, recommending enforcement action. As soon as OCR concludes that enforcement action is appropriate due to the covered entity's failure to voluntarily permit access to OCR, it will notify the entity of OCR's intention to recommend enforcement.

The regional office will prepare a draft letter notifying the covered entity of its authority to obtain access to the information and its intention to recommend enforcement action if access is not provided, in consultation with the regional civil rights attorney and Headquarters. OCR's notification letter will replace the violation LOF. The Region must follow the same procedures to obtain Headquarters approval as it would if issuing a violation LOF.

C. Options for Failure to Achieve Voluntary Resolution When OCR Has Not Made Violation Findings

Where an LOF was not previously issued and OCR determines that a covered entity is not in compliance with a VRA, voluntary plan of action, or letter containing commitments which it has signed, OCR should consider whether the evidence supports issuance of a violation LOF or whether additional investigation is required, and whether a violation LOF should be issued (e.g., to give the covered entity proper notice of, and the opportunity to correct, a violation, or, where jurisdiction is based on the receipt of a specific block grant, to provide the governor notice of a violation and an opportunity to obtain compliance).

SEE EXAMPLES OF ENFORCEMENT ACTIONS at [PIMS /Civil Rights Library /Investigational Resources /HQ Approved Program Area Resources](#)

SEE THE DEPARTMENTAL APPEALS BOARD WEB SITE at <http://www.hhs.gov/dab/>

X. COMPLIANCE REVIEWS

A. General

The pivotal objective of a compliance review is to address comprehensive systemic issues. The statutes and regulations OCR enforces authorize OCR to review, from time to time, the policies, procedures and practices of HHS recipients to determine whether they are in compliance with the Federal civil rights laws that OCR enforces. OCR recognizes that some types and incidents of discrimination may not be the subject of individual complaints but, nonetheless, constitute noncompliance that should be addressed. For example, discrimination against members of under-served communities may not be reflected in individually filed complaints because some members of such communities may not be aware of their rights and/or of the processes available to pursue those rights. Other discrimination victims may be too frightened to file complaints or may be precluded from filing a complaint even though the evidence shows that the underlying discriminatory policy or practice persists. Likewise, OCR may have anecdotal information or information gleaned from outreach activities that indicate the need for a compliance review.

The investigation procedures identified in this manual for complaint resolution should be utilized for compliance reviews, where appropriate. Each compliance review, or set of reviews, should be documented in advance with a justification memorandum that identifies the purpose of the review and any indicators that a review is needed, including any preliminary evidence. Compliance reviews are to be initiated at the discretion of the Regional Manager in consultation with the regional civil rights attorney and OCR Headquarters. The date the compliance review commences is the date the covered entity is notified of the compliance review.

The Regional Manager may treat a complaint as a compliance review when:

- The complaint, because of its scope, involves systemic issues;
- OCR identifies compliance concerns during the course of an investigation involving unrelated issues that were not raised in the original complaint;
- A compliance review would be the most effective means of addressing multiple individual complaints against the same covered entity; or
- The complainant decides to withdraw a complaint that includes class allegations.

The compliance review process enables OCR to use its resources with greater flexibility and efficiency. The pivotal objective of a compliance review is to address comprehensive systemic issues. All compliance reviews should include provisions for technical assistance.

B. Medicare Applicant Civil Rights Clearance (Pre-grant) Reviews

The Centers for Medicare and Medicaid Services (CMS) require health care providers, such as hospitals, nursing homes and home health agencies, to meet certain legal requirements in order to participate in the Medicare Part A program established by Title XVIII of the Social Security Act. Those legal requirements include ensuring that health care providers receiving Federal financial assistance from HHS do not deny benefits or services to qualified persons based on race, color, national origin, disability, or age. OCR conducts civil rights clearance (“pre-grant” or “pre-award”) reviews of such providers to determine compliance with the requirements of Section 504 as well as Title VI and the Age Act, and certifies that they meet the civil rights requirements to participate in Medicare. CMS, in turn, informs participants in the Medicare Program in writing that if OCR approval is not obtained, all reimbursements under the provider’s Medicare agreement will be recouped.

[CMS Regulation Concerning Civil Rights Clearance](http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=42&PART=489&SECTION=10&TYPE=TEXT) at <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=42&PART=489&SECTION=10&TYPE=TEXT>

Also see:

http://www.hhs.gov/ocr/civilrights/resources/providers/medicare_providers/index.html

OCR’s Medicare applicant civil rights clearance reviews also are an effective means of providing technical assistance to health care providers (who are either new to Medicare or are acquiring health care entities through a change of ownership) because potential civil rights concerns can be identified prior to receipt of Federal financial assistance. This approach is efficient and practical because it promotes voluntary compliance, while decreasing the need for more in-depth Federal complaint investigations and compliance reviews.

OCR’s review begins with receipt of a tie-in notice, or query sheet, from CMS, requesting civil rights review and clearance for a Medicare applicant. The Medicare applicant receives a package of information about OCR’s civil rights clearance review from CMS, a State agency, or OCR. It is available on the internet at OCR’s website, and includes examples of policies that the Medicare applicant provider can use as guidance in developing civil rights policies and procedures for its facility. These policy examples include a Nondiscrimination Policy; Policies and Procedures for Communicating with Persons Who Are Limited English Proficient; Policy for Providing Auxiliary Aids and Services for Persons with Disabilities; Section 504 Notice of Program Accessibility; and Section 504 Grievance Procedures for Facilities with 15 or More Employees.

Pre-Grant Package

http://www.hhs.gov/ocr/civilrights/resources/providers/medicare_providers/index.html

OCR then conducts a review of the Medicare applicant’s policies and procedures to ensure compliance with applicable law and provides technical assistance to the

applicant, as needed. OCR's review of Medicare applicants must be conducted and completed in a timely manner, generally within 60 days of receipt.

OCR's review involves an exchange of communication and information with the Medicare provider applicant. In addition, the applicant must submit a signed nondiscrimination Assurance of Compliance (HHS Form 690). If civil rights clearance of the Medicare applicant is appropriate, OCR's review ends with a signed closure ("civil rights clearance") letter to the provider, with a courtesy copy to the CMS regional office that originated the request for the civil rights clearance review. If OCR receives insufficient information from the Medicare applicant to make a determination that its policies and procedures are consistent with applicable Federal civil rights statutes, OCR notifies CMS and the Medicare applicant by letter that it is denying civil rights clearance. Following this notification, OCR staff work with CMS and the provider to address compliance issues. OCR Headquarters and OGC should be consulted for advice in the event that the provider continues to fail to respond in a manner acceptable to staff.

The investigator should search PIMS to determine if the covered entity has recently underdone Medicare Provider Certification and, if so, review the relevant documents. See further discussion of how to utilize pre-grant reviews of Medicare providers in civil rights investigations in [APPENDIX HH: Guidance for Investigating Civil Rights Complaints](#). [Redacted under FOIA Exemption 7(E), 5 USC 552(b)(7)(E)]

[APPENDIX PG: Pre-Grant Flow-Chart](#)

[APPENDIX PG-1: Pre-Grant Manual](#)

[APPENDIX PG-2: Pre-Grant Checklist](#)

[APPENDIX PG-4: Pre-Grant Data Request Letter \(Template\)](#)

[APPENDIX PG-5: Pre-Grant Denial Letter \(Template\)](#)

[APPENDIX PG-6: Pre-Grant Monitoring Closure Letter \(Template\)](#)

[APPENDIX PG-7: Pre-Grant Monitoring Letter \(Template\)](#)

[APPENDIX PG-8: Pre-Grant No Violation-Corrective Action Closure Letter \(Template\)](#)

C. Civil Rights Corporate Agreements with Health Care Providers

OCR has entered into civil rights corporate agreements with several major healthcare providers, to ensure their policies and procedures are in compliance with Federal civil rights laws. OCR staff conducting civil rights investigations and civil rights clearance reviews of Medicare applicants at the request of CMS should search PIMS to determine whether OCR has a signed civil rights corporate agreement with the entity that owns the healthcare facility and, if so, review the relevant documents.

[Signed Civil Rights Corporate Agreements in PIMS](#) -- See PIMS/Civil Rights Library/Investigational Resources/HQ Approved Program Area Resources/Pre-Grant

The existence of a civil rights agreement with a health care corporation is a factor that should be taken into consideration in OCR's investigations and compliance activities. See further discussion of how to utilize civil rights corporate agreements with healthcare providers during civil rights investigations in [APPENDIX HH: Guidance for Investigating Civil Rights Complaints](#). [Redacted under FOIA Exemption 7(E), 5 USC 552(b)(7)(E)]

Glossary

Acceptance Letter: A letter from OCR to the complainant informing the individual that the complaint has been accepted for investigation.

Allegation: A factual assertion that a right guaranteed under a law enforced by OCR has been unlawfully denied. A “jurisdictional allegation” is one where the alleged right denied is guaranteed by a law OCR enforces, and it is alleged the right was denied by an entity over which OCR has jurisdiction.

Basis: The reason for the alleged discriminatory conduct or harm. The following are examples of bases (i.e. protected status types), that are relevant to discrimination complaints: a) race; b) color; c) national origin; d) disability; e) age; f) sex; and g) religion.

Case Closure: The administrative procedure taken by OCR to terminate the processing of a complaint, which indicates that no further action will be taken on the complaint by OCR.

Case prioritization: The process of evaluating each case accepted for investigation in order to determine appropriate handling and allocation of resources, based on urgency, national/local significance, the potential of a violation, potential impact, and complexity.

Clearance Needed By (PIMS): A stage in PIMS case processing (i.e. workflow) where a person must review and act on a document before the document can progress in PIMS case processing.

Complaint: Written communication (paper or electronic) sent to OCR, which describes acts or omissions relative to an individual(s) that are believed to be in violation of applicable civil rights laws and regulations;

or

A written statement to OCR alleging that an entity is not complying with the requirements of applicable civil rights laws and regulations and requesting, directly or by implication, that OCR take action.

Complete Complaint: A complaint that includes sufficient information to evaluate the complaint and complete the intake process. A complete complaint must include the following:

- a. Name and signature of complainant (and name of aggrieved party if different from complainant).
- b. Contact information for the complainant.

- c. Identification of the entity that is alleged to have violated the complainant/aggrieved party's civil rights
- d. A clear allegation, which if proven true, would violate the law(s) enforced by OCR.

Note that the Age Discrimination Act regulation provides that HHS will “[accept] as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.” 45 CFR §91.42(c)(1).

Compliance Review: An investigation initiated by OCR to determine whether a covered entity is in compliance with the applicable civil rights laws and regulations.

Correctional Facility: A jail, prison, or other facility under the control of a law enforcement or correctional agency.

Corrective Action(s): Remedial action(s) that the covered entity is required or agrees to take in order to correct non-compliance issues or achieve voluntary compliance.

Correspondence: A written communication to OCR requesting information or assistance, but not alleging a violation of applicable civil rights law or regulation.

Covered Entity: A general term used to describe an entity over which OCR has jurisdiction under the statutes and regulations enforced by OCR, such as an entity to whom Federal financial assistance is extended, directly or indirectly from HHS, and all programs, services, and regulatory activities relating to the provision of health care and social services provided by State and local government agencies;

Disability: A physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Document: Any letter, document, fax, e-mail or phone call that is addressed to OCR that needs further action, including “Information Only” items and planned activities.

Enforcement Action: Action taken by OCR to effectuate compliance after it makes a violation finding and the covered entity refuses to remedy the violation or negotiate a resolution that corrects the noncompliance, or where the covered entity has not fulfilled the requirements of a voluntary resolution or settlement agreement. Enforcement action includes the suspension or termination of, or refusal to grant or to continue, Federal financial assistance; a referral to the Department of Justice with a recommendation that appropriate judicial proceedings be brought to enforce any rights of the United States under any law of the United States; or any applicable proceeding under State or local law.

Facility: Generally, all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property, or interest in such property. Note that this term is more specifically defined in the Hill-Burton implementing regulations, and is used in both the Title II implementing regulation relative to program accessibility and the Title VI implementing regulation relative to an entity's cooperation with OCR; therefore, care should be taken to ensure that this term is applied consistent with the applicable regulation.

Data Request: A written or informal request to the covered entity or other party or parties to access its facilities, books, records, accounts, and other sources of information, including protected health information, that are pertinent to ascertaining the facts of the complaint and the covered entity's compliance.

Forensic Unit: A medical or psychiatric treatment facility or unit that is under the control of a law enforcement or correctional agency; also a unit (which may be in another type of facility) where an individual has been committed pursuant to a criminal statute.

Federal Financial Assistance (FFA): Financial assistance provided by HHS, either directly or indirectly, to entities, including (1) grants and loans of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the permission to use (on other than a casual or transient basis) Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

Freedom of Information Act (FOIA): Found in Title 5 of the United States Code, Section 552, a statute enacted in 1966 that provides that any person has the right to request access to federal agency records and requires federal agencies to disclose records requested in writing by any person; however, agencies may withhold information pursuant to nine exemptions and three exclusions contained in the statute. FOIA applies only to federal agencies and does not create a right of access to records held by Congress, the courts, or by state or local government agencies. Decisions concerning FOIA requests for HHS records are made by the HHS FOIA Office, with recommendations from OCR for records that are created by OCR.

Individually Identifiable Health Information: Information that is a subset of health information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i.) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Intake: there are two kinds of intake processes: case intake and PIMS intake.

(1) Case Intake: Initial assessment of a document or correspondence received in OCR, to determine whether information provided is sufficient to log in as a complaint or as another type of file (e.g. correspondence requiring a response, or a reference or Information Only document that can be stored in PIMS as correspondence for future use by OCR).

(2) PIMS Intake: The process by which a document is entered into PIMS from a designated Intake Holding Queue in order to create a transaction for assignment to a staff member to complete some further action. The process enables transaction data attributes to be associated with documents and provides a means for OCR staff to track and manage documents electronically in the transaction folders. The process also allows for transaction data attributes to be associated with documents and provides a means for OCR to put copies of signed OCR letters into transaction folders.

The PIMS intake process is divided into 2 distinct parts; Pre-Triage and Post-Triage.

Pre-Triage Intake involves the following:

- a) Opening the mail
- b) Date stamping the mail
- c) Categorizing the document (Congressional, Correspondence, Reconsideration, HIP or CR complaint)
- d) Scanning the received documentation into PIMS

Post-Triage (occurs after a case intake occurs) and involves the following:

- a) Starting the complaint in PIMS (at this point the file is assigned a system generated file number)
- b) Assigning the transaction to a particular staff person who moves the documents into the appropriate folders (i.e. sensitive or non-sensitive)

Jurisdiction: OCR's statutory and regulatory authority to investigate an issue or allegation and over the entity against which the complaint has been filed.

Health and human service programs and activities (of State and local government agencies) (Title II of the ADA): Programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs, and preschool and daycare programs.

Investigation: Activities initiated by OCR predicated upon information of a possible violation of applicable Federal civil rights laws and regulations, as identified from a complaint, compliance review, or other information received by OCR. An investigation should include, where appropriate, a review of the pertinent practices, policies and procedures of the covered entity, the circumstances under which the possible noncompliance with applicable law or regulation occurred, and other factors relevant to a determination as to whether the covered entity has failed to comply with applicable law or regulation.

Investigation Strategy: A plan of action for the overall planning and conduct of an investigation.

Investigative Activities: Examples include initiating a data request, conducting interviews, conducting a paper audit, performing an on-site visit, or obtaining expert consultation.

Jurisdiction: OCR has subject matter authority over the issue raised and statutory authority over the entity against which the complaint has been raised.

Notification Letter: Written communication from OCR to the covered entity that informs the covered entity that a complaint has been received, outlines OCR's statutory authority to investigate the complaint, and describes the act(s) and/or omission(s) that are the basis of the complaint;

or

Written communication from OCR to the covered entity which informs the covered entity that OCR plans a compliance review of the entity, and identifies the focus of the review.

Office of the General Counsel (OGC): The Civil Rights Division of OGC (headquarters), or the Civil Rights Attorney serving in each regional OGC office.

Outreach Activity: Activities (either OCR-initiated, case-related, or responses to requests for general information or specific assistance in preventing or resolving potential civil rights problems) that advance the mission of the agency and focus on the

compliance needs of one or more covered entities. Activities include technical assistance, public education, and similar activities conducted jointly with other entities.

Outreach Phases: Segments of an outreach activity, which includes multiple events and/or locations and extends over a period of time. This activity would follow a plan of action building on events with a specific strategy articulated in the plan. The scope of the activity would be system or statewide; for example, providing technical assistance and/or training to staff/providers of managed care plans in a Medicaid managed care program; conducting training for case workers in a state-wide or multi-county social service or health department program

Point of Contact (POC) Type: The type of individual who is a point of contact for a covered entity.

Program or Activity, Program: All of the operations of:

- a) A department, agency, special purpose district, or other instrumentality of a State or of a local government, or the entity of such State or local government that distributes Federal financial assistance; including each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- b) a college, university, or other post secondary institution, or a public system of higher education; or local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
- c) an entire corporation, partnership, or other private organization, or an entire sole proprietorship:
 - a. if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
 - b. the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- d) Any other entity which is established by two or more of the entities described in paragraph (a), (b), or (c) above, any part of which is extended Federal financial assistance.

Program Information Management System (PIMS): OCR's software program used for managing case file information and tracking correspondence.

Quality of Care Concerns: See the following examples:

- Medication errors: Being given the wrong medication; being given medication at the wrong time; or being given a medication to which one is allergic
- Unnecessary or inappropriate surgery: Being operated on for a condition that could effectively be treated with medications or physical therapy

- **Unnecessary or inappropriate treatment:** Being given the wrong treatment or treatment that one did not need, or being given treatment that is not recommended for patients with one's specific medical condition
- **Change in condition not treated:** Not receiving treatment after abnormal test results or when one developed a complication, such as an infection after surgery or a bedsore while in a skilled nursing facility
- **Discharged from the hospital too soon:** Being sent home while still experiencing severe pain
- **Incomplete discharge instructions and/or arrangements:** Being sent home without instructions for the changes that were made in one's daily medications while in the hospital; or during an office visit, receiving inadequate instructions about the follow-up care needed

Reconsideration (formerly "Challenge"): Opportunity that OCR headquarters provides to complainants for review of a regional office determination resolving an investigated complaint in a manner unfavorable to the complainant. The reconsideration process is purely discretionary, i.e. is not required by statute or regulation, and is not available to complainants whose case was closed without an investigation; complainants when an OCR determination was made substantially in the complainant's favor; or complainants who fail to support their written request for reconsideration with information indicating that errors were made in OCR's investigated determination.

Retaliation: Intimidation, threats, coercion, or discriminatory conduct by a covered entity against any individual for the purpose of interfering with any right or privilege secured by the civil rights statutes and regulations enforced by OCR; or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under those statutes and regulations.

Review Needed By (PIMS): A stage in PIMS case processing (i.e. workflow) where a person must review and act on a document before the document can progress in PIMS case processing.

Sensitive Information (PIMS): Information where the loss, misuse, or unauthorized access to, or modification of, could adversely affect OCR's civil rights enforcement or the privacy of individuals to which they are entitled under the Privacy Act, such as medical records, employment records and information containing social Security numbers.

Settlement Agreement: Document setting forth terms and conditions of compliance and reporting, signed by a covered entity and OCR that follows a violation finding, which requires monitoring by OCR.

Subject Matter Expert: Designed members of the OCR Headquarters Civil Rights Division who provide subject matter support to the Centralized Intake Unit and regional offices.

Technical Assistance: Assistance given by OCR to assist an entity with program requirements to prevent or resolve potential civil rights compliance concerns. Technical assistance is usually tailored to an entity's needs and circumstances. Technical assistance can take various forms, including provision of relevant materials (e.g., check lists, sample policies), training, answering entity-specific questions, reviewing procedures and/or documents to identify and advise on needed changes to ensure compliance with Federal civil rights laws and regulations. Technical assistance can be done as part of a site visit, or in response to phone calls, personal contacts, etc.

Transaction: Any OCR event/activity that is recorded in PIMS, e.g. correspondence, compliance review, outreach, planned activity.

Transaction Number: A unique number assigned in PIMS to each OCR event/activity. Initiation of an event/activity triggers the creation of a transaction number by PIMS. The transaction number is assigned sequentially across OCR by PIMS at the time the event/activity is first recorded in the system. All documents associated with an event/activity, such as all documents related to a particular complaint, will have the same transaction number; however, such document is identifiable and retrievable by its own unique identification number which consists of the transaction number combined with a sequentially-assigned sub-transaction number. The first 2 digits of the transaction number correspond to the current fiscal year. Other attributes will be captured and retrievable via separate attribute PIMS fields in the system.

Uninvestigated Complaint: A complaint that is filed with but not investigated by OCR. These complaints include non-jurisdictional complaints, incomplete complaints, untimely complaints; and complaints that do not include an allegation of a violation of the laws or regulations enforced by OCR.

Urgent: A complaint that includes an allegation warranting immediate attention, such as a complaint where needed relief is time sensitive, or the alleged violation is on-going with potentially serious adverse consequences to the complainant or others at the present time or in the immediate future.

Voluntary Compliance: Efforts that are undertaken by a covered entity prior to enforcement action to address compliance concerns or correct violation findings.

Voluntary Resolution Agreement: Document setting forth terms and conditions of compliance and reporting, signed by a covered entity and OCR that precedes a violation finding, which requires monitoring by OCR.

APPENDICES

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APPENDIX A: ACKNOWLEDGEMENT LETTER (SIMPLE) (TEMPLATE)

[Return to: Acknowledge the Complaint](#)

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

We are in the process of reviewing your correspondence to decide whether OCR has authority and is able to take action with respect to the matters you have raised. We will complete our initial review as quickly as possible.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have questions regarding this matter, please write us or contact ##Staff Name## at ##Staff Telephone## (Voice), ##TDD Number## (TDD), or by e-mail at [*Insert e-mail address*]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

APPENDIX B: ACKNOWLEDGEMENT LETTER (REQUEST FOR CONSENT FORM – 20 DAY OPTION) (TEMPLATE)

[Return to: Acknowledge the Complaint](#)

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

We are in the process of reviewing your correspondence to decide whether OCR has authority and is able to take action with respect to the matters you have raised. We will complete our initial review as quickly as possible.

OCR is responsible for enforcing a variety of Federal civil rights laws that prohibit discrimination. Specifically, OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS. Additionally, OCR has jurisdiction over health and human service programs operated by HHS or by state and local public entities in cases involving disability-based discrimination. In addition to disability discrimination claims, OCR investigates claims of race, color, national origin, age and, in limited instances, sex and religion discrimination. OCR also has jurisdiction over health plans, health care clearinghouses, and certain health care providers with respect to enforcement of the Federal Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule, 45 C.F.R. Parts 160 and 164, Subparts A and E).

Enclosed please find a *Complainant Consent Form* for you to sign and return to this office so that OCR can continue our review of the matters you raised. We have included two other documents for you to review entitled *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* that provide additional information on how OCR may use, obtain and disclose your information while handling your complaint.

Please sign and return the *Complainant Consent Form* to our office within 20 calendar days of the date of this letter. If we do not receive the signed consent form from you, we will not be able to continue our review, and OCR will close this complaint.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have questions regarding this matter, please write us or contact **##Staff Name##** at **##Staff Telephone##** (Voice), **##TDD Number##** (TDD), or by e-mail at [*Insert e-mail address*]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

Enclosures (3)

APPENDIX C: CONSENT FORM PACKAGE

[Return to: Acknowledge the Complaint](#)

[Return to: Contact the Complainant to Obtain Missing Information](#)

Complete Package is on the following pages.



COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Protecting Personal Information in Complaint Investigations* and *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.

- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

After reading the above information, please check ONLY ONE of the following boxes:

- CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.
- CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: _____ Date: _____

Name (Please print): _____

Address : _____

Telephone Number: _____



NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

Privacy Act

The Privacy Act of 1974 (5 U.S.C. §552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), and Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§295m and 296g);
- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§291 et seq. and 300s et seq.) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill-Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS "designated agency" authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. §1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.

OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (ii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. §552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. §5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

Freedom of Information Act

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. §552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

Fraud and False Statements

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry."



PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

HOW DOES OCR PROTECT MY PERSONAL INFORMATION?

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information. Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law. Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

CAN I SEE MY OCR FILE?

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

CAN OCR GIVE MY FILE TO ANY ONE ELSE?

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission. If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.

CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

If you have any questions about this fact sheet, please contact OCR
<http://www.hhs.gov/ocr/office/about/rgn-hqaddresses.html> or Contact your OCR Regional Office:

Region I - Boston (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Office for Civil Rights
U.S. Department of Health and Human Services
Government Center
J.F. Kennedy Federal Building - Room 1875
Boston, MA 02203
Voice phone(617)565-1340
FAX (617)565-3809
TDD (617)565-1343

Region II - New York (New Jersey, New York, Puerto Rico, Virgin Islands)

Office for Civil Rights
U.S. Department of Health and Human Services
Jacob Javits Federal Building
26 Federal Plaza - Suite 3312
New York, NY 10278
Voice Phone (212)264-3313
FAX (212)264-3039
TDD (212)264-2355

Region III - Philadelphia (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Office for Civil Rights
U.S. Department of Health and Human Services
150 S. Independence Mall West
Suite 372, Public Ledger Building
Philadelphia, PA 19106-9111
Main Line (215)861-4441
Hotline (800) 368-1019
FAX (215)861-4431
TDD (215)861-4440

Region IV - Atlanta (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Office for Civil Rights
U.S. Department of Health and Human Services
Atlanta Federal Center, Suite 3B70
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909
Voice Phone (404)562-7886
FAX (404)562-7881
TDD (404)331-2867

Region V - Chicago (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Office for Civil Rights
U.S. Department of Health and Human Services
233 N. Michigan Ave., Suite 240
Chicago, IL 60601
Voice Phone (312)886-2359
FAX (312)886-1807
TDD (312)353-5693

Region VI - Dallas (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Office for Civil Rights
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202
Voice Phone (214)767-4056
FAX (214)767-0432
TDD (214)767-8940

Region VII - Kansas City (Iowa, Kansas, Missouri, Nebraska)

Office for Civil Rights
U.S. Department of Health and Human Services
601 East 12th Street - Room 248
Kansas City, MO 64106
Voice Phone (816)426-7277
FAX (816)426-3686
TDD (816)426-7065

Region VIII - Denver (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Office for Civil Rights
U.S. Department of Health and Human Services
1961 Stout Street -- Room 1426 FOB
Denver, CO 80294-3538
Voice Phone (303)844-2024
FAX (303)844-2025
TDD (303)844-3439

Region IX - San Francisco (American Samoa, Arizona, California, Guam, Hawaii, Nevada)

Office for Civil Rights
U.S. Department of Health and Human Services
90 7th Street, Suite 4-100
San Francisco, CA 94103
Voice Phone (415)437-8310
FAX (415)437-8329
TDD (415)437-8311

Region X - Seattle(Alaska, Idaho, Oregon, Washington)

Office for Civil Rights
U.S. Department of Health and Human Services
2201 Sixth Avenue - M/S: RX-11
Seattle, WA 98121-1831
Voice Phone (206)615-2290
FAX (206)615-2297
TDD (206)615-2296

APPENDIX D: GUIDANCE ON CLOSURE OF COMPLAINTS BASED ON INSUFFICIENT INFORMATION FROM THE COMPLAINANT

[Return to: Contact the Complainant to Obtain Missing Information](#)

[Return to: Insufficient Evidence of a Violation Letter](#)

This document provides guidance to help investigators ensure that they have sufficient information to evaluate complaints appropriately during Initial Case Review and determine whether complaint closure is appropriate under Section II(g)(xi) of the 2009 Revised Case Resolution Manual (CRM):

Complaint not complete.

Investigators should consult this guidance when an individual has filed a complaint and OCR is unable to process the case further without additional information from the complainant.

What Information Does OCR Need?

As noted in the 2009 Revised CRM, at II (a), the information that OCR generally will need to ensure that it has sufficient information to evaluate a complaint includes:

- An explanation of the alleged discrimination;
- A way to contact the complainant, i.e., information sufficient to enable staff to contact the complainant by letter or telephone or electronically;
- Identification of the person or group injured by the alleged discrimination;
- Identification of the person, institution or agency/organization alleged to have engaged in discrimination; and
- Sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and the basis of the discrimination (i.e., race, color, national origin, disability, age, gender, or religion).

Steps to Take When a Complaint Contains Insufficient Information

OCR staff will actively work with the complainant to ensure that it has sufficient information to evaluate the complaint appropriately. OCR staff will provide appropriate assistance to complainants, including persons with disabilities and individuals who speak a language other than English, who may need help in providing information OCR needs. In addition, if necessary information is missing, investigators will make a reasonable effort to contact the complainant, either by phone or email or in writing, to gather enough information to complete the complaint.¹

¹ Where additional information would be helpful, but is not strictly necessary to evaluate the complaint, OCR should not obtain the additional information as part of Initial Case Review, but during the complaint investigation, if opening an investigation of the complaint is otherwise appropriate.

Investigators should make a record of the attempted contact to gather additional information and any additional information that is gathered. At this point in the investigation investigators need only gather sufficient information to make an initial determination that the complainant has established a claim under the laws that OCR enforces and that OCR can proceed with the investigation.

When a complaint does not contain sufficient information, investigators could ask the complainant some or all of the following questions, depending on what information is needed:

- What happened?
- When did it happen?
- Who did it?
- Was someone or a group of persons denied a service or benefit? If so, who? What service or benefit was denied?
- What is the reason for this action?
- Is it because of the person's race, color, national origin, disability, etc?
- Why do you believe this is the reason?
- Did the entity's representative say something about race, color, national origin, disability etc?
- Did the representative indicate the reason for the action, either in writing or orally?
- If so, what did the agency representative indicate?
- Do you have any correspondence, e.g., letters, post cards, emails, regarding the agency's determination?
- Was the person or persons treated differently than other individuals? In what way?
- What remedy are you seeking?

Remember, if the complaint was filed by an attorney, the investigator should contact the attorney first to obtain the information or you may ask if you can speak to the alleged injured party directly. Set a deadline for when the complainant is to return the additional information to you, generally 20 days. A sample letter to send to the complainant to request this information is attached.

Closing a Complaint under the CRM Based on Insufficient Information from the Complainant

If the complainant fails to respond to the request for additional information within 20 days or responds but the information is inadequate, the investigator may contact the complainant and provide additional time or may close the case based on a determination that the complaint is not complete. 2009 Revised CRM, Section II (g) (xi).

As noted above, the complaint need only state a claim under one of the statutes that OCR enforces. The standard is whether the complaint alleges facts that, if true, would constitute a violation of one of these laws. The complaint need not **demonstrate** a prima facie case but

must allege a prima facie case². See template closure letter to send to the complainant advising that his or her case has been closed due to insufficient information.

If a complainant sends the necessary information after OCR has closed the complaint, OCR has the discretion to take no further action to investigate the complainant's allegations or, in appropriate circumstances, to open a new case with a new transaction number. Appropriate circumstances may include good cause for not providing the information in a timely manner.

² Generally, if established, a prima facie case is established by evidence gathered through an investigation.

APPENDIX E: GUIDANCE ON THE USE OF EMAIL CONTAINING INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (IIHI) AND OTHER SENSITIVE OR CONFIDENTIAL INFORMATION

[Return to: Contact the Complainant to Obtain Missing Information](#)

1. Electronic communication of individually identifiable health information (IIHI) and other sensitive or confidential information between OCR personnel and covered entities or complainants (e.g., email) is permitted using approved encryption software (e.g. WinZip or other HHS approved software). Unsecured Electronic Messaging may not be used for communicating individually identifiable health information (IIHI) and other sensitive or confidential information.
2. Any email containing individually identifiable health information (IIHI) and other sensitive or confidential information must contain the email Notice.
The information contained in this message may be privileged and confidential. If you are NOT the intended recipient, please notify the sender immediately with a copy to OCRPrivacy@hhs.gov and destroy this message.

Please be aware that email communication can be intercepted in transmission or misdirected. Your use of email to communicate individually identifiable health information (IIHI) and other sensitive or confidential information to us indicates that you acknowledge and accept the possible risks associated with such communication. Please consider communicating any sensitive information by telephone, fax or mail. If you do not wish to have your information sent by email, please contact the sender immediately.

Text: http://gtc-web04/ocr/technology/shared/security/email_notice.txt

3. Any electronic messaging (e.g., email) between OCR Staff and covered entities or complainants must establish Informed Consent for Electronic Messaging.

I will be happy to respond to your query but to do so via email you must provide your consent, recognizing that email is not a secure form of communication. There is some risk that any individually identifiable health information (IIHI) and other sensitive or confidential information that may be contained in such email may be disclosed to, or intercepted by, unauthorized third parties. I will use the minimum necessary amount of protected health information to respond to your query. If you wish to conduct this discussion via email, please indicate your acceptance of this risk with your email reply. Alternatively, please call my office to arrange a phone conversation or office visit.

Text: http://gtc-web04/ocr/technology/shared/security/email_notice.txt

4. Great care should be taken when sending an email with individually identifiable health information (IIHI) and other sensitive or confidential information to ensure that the recipient address corresponds to the intended recipient.
5. Any email containing individually identifiable health information (IIHI) and other sensitive or confidential information that is misdirected must be forwarded to the OCRTechnicalSupport@hhs.gov mailbox for headquarters' assessment of the matter and recommended action.

6. Email messages containing individually identifiable health information (IIHI) and other sensitive or confidential information must not be forwarded to non-OCR email addresses either individually or by an automated forwarding mechanism.
7. Personal email addresses must not be used to conduct official OCR business.
8. Web mail is not secure, yes the protocol (https) is secure but you do not have the tools to secure (encrypt) the data (attachments). Use Terminal Server or VPN when transmitting individually identifiable health information (IIHI) and other sensitive or confidential information.
9. Instant Messaging (IM) software should not be installed or used for electronic messaging until an approved secure Instant Messaging (IM) option is available.

If the two parties cannot exchange information via a secure electronic means (e.g. Email and WinZip) then the use regular mail is as an option. If sensitive information is being sent to OCR, encourage the sender to use an established courier service (e.g. USPS, FedEx, UPS) for tracking and guaranteed delivery purposes. OCR staff can use regular mail. If you feel that the content of the material should be sent via certified, registered or an established courier service seek approval from your supervisor

Another option is FAX. The traditional Fax method (telephone line) does not guarantee confidential transmission on a few respects so observe the following:

The most frequently expressed concern about fax confidentiality is the handling of incoming fax messages. A mailed document comes in a sealed envelope with the addressee's name on its face. A fax document is printed on a fax machine which is often located in an open office environment and shared between a numbers of colleagues. If you are receiving a fax with sensitive information, ensure you promptly pick up the fax.

An often overlooked but potentially more damaging fax message leakage is typing errors in dialing the destination number. Somebody receiving a random fax which is not addressed to him/her has no legal obligation to ignore the information contained in the message. Validate the phone number prior to sending the FAX, you will want to notify the recipient that a fax is being sent. In practice, the need to accelerate the exchange of information forces the use of fax for confidential documents ensure you minimize risk.

Additional Information:

Email Notice and Informed Consent for Electronic Messaging:

http://qtc-web04/ocr/technology/shared/security/email_notice.txt

WinZip Encryption Guide:

http://qtc-web04/ocr/technology/shared/security/winzip_encryption.pdf

Adobe Acrobat Encryption Guide:

http://qtc-web04/ocr/technology/shared/security/pdf_encryption.pdf

APPENDIX F: ACKNOWLEDGMENT LETTER WITH INCOMPLETE COMPLAINT – 20 DAY OPTION (TEMPLATE)

[Return to: Contact the Complainant to Obtain Missing Information](#)

[Return to: Administrative Closure](#)

##Title## ##First Name## ##Last Name##

##Address##

##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

OCR is responsible for enforcing a Federal law that protects the privacy of health information and several Federal civil rights laws that prohibit discrimination. Specifically, OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS in cases involving discrimination based on race, color, national origin, age, disability, and, under certain circumstances, sex and religion. Additionally, OCR has jurisdiction over health and human service programs operated by HHS or by state and local public entities in cases involving disability-based discrimination. OCR also has jurisdiction over health plans, health care clearinghouses, and certain health care providers with respect to enforcement of the Federal Standards for Privacy of Individually Identifiable Health Information.

We have reviewed your complaint. Your complaint does not give us enough information for us to determine whether we have the authority to investigate the concerns you raise. [IF APPLICABLE -We have not been able to contact you by telephone or email to ask you directly about the information we need.] [OR, IF APPLICABLE – You did not give us a telephone number or email address, so we cannot contact you directly for the information we need.]

Within twenty (20) days, please contact [STAFF NAME, TITLE], who is assigned to your complaint, at [TELEPHONE NUMBERS VOICE AND TDD] or by email at [ADDRESS]. If you cannot telephone or email, please be sure to give us the following specific information:

[OPTIONAL: INSERT SPECIFIC ITEMS OF INFORMATION YOU NEED TO COMPLETE THE COMPLAINT AND GIVE YOU ENOUGH INFORMATION TO DETERMINE WHETHER OCR HAS AUTHORITY TO INVESTIGATE THE CASE. BELOW ARE SOME SAMPLE QUESTIONS; ADD OR DELETE QUESTIONS, AS NEEDED; TAILOR THE QUESTIONS TO WHAT YOU NEED.]

1. Do you want to file a complaint of discrimination with OCR?
2. If so, what is the name of the person or entity (or persons or entities) against which you are filing a complaint of discrimination?
3. Who was discriminated against?

4. What happened that you believe was an act of discrimination (describe in detail with names of witnesses, identification of persons who acted in a discriminatory way, the service or benefit that was denied, etc.)?
5. When did the alleged discrimination happen (date or dates)?
6. What do you believe is the basis for the discrimination you are alleging, e.g., race, color, national origin, disability, age, or other basis?
7. Why do you believe that the action you described was based on [BASIS]? [IF THE COMPLAINANT HAS ALREADY IDENTIFIED MULTIPLE BASES, ASK THIS QUESTION SEPARATELY FOR EACH BASIS IDENTIFIED.]
8. Please provide a telephone number or email address where you can be contacted.

Please return the specific information requested above to our office within twenty (20) calendar days of the date of this letter. If we do not receive the requested information from you, OCR will not be able to investigate your complaint, and we will close your case.

We have enclosed a Complaint Form for you to complete or to use as a guide to help you give us the information we need. The Complaint Form Package includes a copy of *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* for your review. Please read this information and keep it so you can refer to it later. The package also includes a fact sheet entitled *Protecting Personal Information in Complaint Investigations*. This fact sheet tells you how we protect information that you provide to us and under what circumstances we are required by law to release information to the public. Please review the fact sheet.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have any questions, please write us or contact **##Staff Name##** at **##Staff Telephone##** (Voice), **##TDD Number##** (TDD), or by e-mail at *[Insert e-mail address]*. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

Enclosure: OCR Complaint Package

APPENDIX G: CLOSURE LETTER - NO JURISDICTION – OPTIONAL REFERRAL (TEMPLATE)

[Return to: Contact the Complainant to Obtain Missing Information](#)

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

Upon review of your complaint, we have determined that OCR does not have authority to investigate your complaint and, therefore, is closing this matter. OCR's determination, as stated in this letter, applies only to the allegations in this complaint that were reviewed by OCR.

Optional language: If you are referring the complaint to another agency, say: [OCR has sent a copy of your complaint to]. **If you are not referring the complaint to another agency, but think another agency might be able to help the complainant, say:** [You may wish to contact] [Agency, name and address], which is an agency that may be able to assist you with this matter.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

We regret that we cannot be of further assistance to you at this time. If you have questions regarding this matter, please write us or contact ##Staff Name## at ##Staff Telephone## (Voice), ##TDD Number## (TDD), or by e-mail at [Insert e-mail address]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

APPENDIX H: CLOSURE LETTER - COMPLAINT CONTAINS INSUFFICIENT INFORMATION (TEMPLATE)

[Return to: Contact the Complainant to Obtain Missing Information](#)

[Return to: The complainant's or injured party's refusal to cooperate](#)

[NAME AND ADDRESS OF COMPLAINANT]

OCR Transaction #: [NUMBER]

Dear [NAME]:

On [date], the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) received your complaint. OCR has determined that it will not proceed with case resolution activities with respect to your allegation(s). The basis for this determination is set forth below.

On [date], OCR contacted you to advise you that your complaint did not contain enough information for OCR to determine whether we had authority to investigate your complaint, and to request that you send us the necessary information within 20 days. OCR also advised you that if we did not receive the necessary information within 20 days, OCR would not be able to investigate your complaint and would close your case.

To date, OCR has not received that information. [OR, IF APPLICABLE – On [date], OCR received additional information from you. However, the information you provided is insufficient to enable us to determine whether we have authority to investigate your concerns.] Therefore, OCR has closed your case.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy

We regret we cannot be of further assistance to you. If you have any questions, please write us or contact ##Staff Name## at ##Staff Telephone## (Voice), ##TDD Number## (TDD), or by e-mail at [*Insert e-mail address*]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

[NAME OF REGIONAL MANAGER]
Regional Manager

**APPENDIX J: CLOSURE LETTER - NO RESPONSE OR INADEQUATE RESPONSE
TO REQUEST FOR INFORMATION / 20 DAY LETTER (TEMPLATE)**

[Return to: Contact the Complainant to Obtain Missing Information](#)

[Return to: Determine Whether the Complaint is Timely](#)

##Title## ##First Name## ##Last Name##

##Address##

##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR). OCR has determined that we will not be able to investigate your complaint. The basis for this determination is set forth below.

In a letter dated [DATE], OCR requested that you provide us with additional information in order for us to continue our initial review of your complaint. OCR also advised you that if we did not receive the requested information within 20 calendar days, OCR would not be able to investigate your complaint and would close your case.

To date, OCR has not received the requested information. Therefore, OCR has closed your case. [OR, IF APPLICABLE – On [DATE], OCR received additional information from you explaining why you did not file your complaint within 180 days of the alleged discriminatory act. However, the information you provided is not sufficient to extend the 180 day deadline for filing. Therefore, OCR has closed your case.]

You may file another complaint with this office when you are ready to submit the completed information. However, under the law, we can only investigate complaints that are filed within 180 days of an alleged discriminatory act. In some limited circumstances, OCR can give you more time, but only if you have a very good reason for having filed a late complaint.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

We regret that we cannot be of further assistance to you at this time. If you have any questions, please write us or contact ##Staff Name## at ##Staff Telephone## (Voice), ##TDD Number## (TDD), or by e-mail at [Insert e-mail address]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,
##Regional Manager Name#

**APPENDIX K: - ACKNOWLEDGEMENT LETTER - UNTIMELY COMPLAINT – 20 DAY
OPTION (TEMPLATE)**

[Return to: Determine Whether the Complaint is Timely](#)

##Title## ##First Name## ##Last Name##

##Address##

##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

OCR is responsible for enforcing a variety of Federal civil rights laws that prohibit discrimination. Specifically, OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS. Additionally, OCR has jurisdiction over health and human service programs operated by HHS or by state and local public entities in cases involving disability-based discrimination. In addition to disability discrimination claims, OCR investigates claims of race, color, national origin, age and, in limited instances, sex and religion discrimination. OCR also has jurisdiction over health plans, health care clearinghouses, and certain health care providers with respect to enforcement of the Federal Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule, 45 C.F.R. Parts 160 and 164, Subparts A and E).

Under the law, OCR can investigate only those complaints that are filed within 180 days of the alleged discriminatory act. Your complaint states that discrimination occurred on **[Insert Date of alleged discrimination]**, which is more than 180 days from when the complaint was filed.

Under certain circumstances, OCR can give you more time for filing your complaint. However, you must have a very good reason for why you did not file your complaint within 180 days of the discrimination. If you believe you have such a reason and want us to consider giving you more time, please let us know in writing **within 20 calendar days of the date of this letter. If we do not receive the requested information from you, we will not be able to investigate your complaint, and we will close your case.**

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have questions regarding this matter, please write us or contact ##Staff Name## at ##Staff Telephone## (Voice), ##TDD Number## (TDD), or by e-mail at [*Insert e-mail address*]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,
##Regional Manager Name##

**APPENDIX L: HILL-BURTON COMMUNITY SERVICE ASSURANCE LETTER
(TEMPLATE)**

[Return to: Determine Subject Matter Jurisdiction](#)

##Title## ##First Name## ##Last Name##

##Address##

##CITY##, ##STATE## ##ZIP CODE##

OUR REFERENCE NUMBER: ##TRANSACTION NUMBER##

DEAR ##TITLE## ##LAST NAME##:

THANK YOU FOR YOUR LETTER RECEIVED ON ##RECEIPT DATE##. IN YOUR LETTER, YOU STATE [INSERT ALLEGATIONS].

The Office for Civil Rights (OCR) is responsible for enforcing a Federal law that protects the privacy of health information and a variety of Federal civil rights laws that prohibit discrimination. Specifically, OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS in cases involving discrimination based on race, color, national origin, age, disability, and, under certain circumstances, sex and religion. Additionally, OCR has jurisdiction over health and human service programs operated by HHS or by state and local public entities in cases involving disability-based discrimination. OCR also has jurisdiction over health plans, health care clearinghouses, and certain health care providers with respect to enforcement of the Federal Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule, 45 C.F.R. Parts 160 and 164, Subparts A and E).

We have reviewed your letter and have decided that your complaint may involve violations of the Community Service Provisions of Title VI and XVI of the Public Health Service Act, also known as the "Hill Burton Act." Under the Hill Burton implementing regulation, we must send a copy of your complaint to ##Covered Entity##. 42 CFR 124.606(a) (2) (ii). Also, the regulations provide that, if we dismiss your complaint or if the Attorney General does not take compliance action within six (6) months, you may bring a lawsuit to enforce the law. 42 CFR 124.606(a) (4).

We have enclosed additional information about **OCR's Complaint Resolution Procedures**. Please read this information and keep it so you can refer to it later.

We have also enclosed a fact sheet, **Protecting Personal Information In Complaint Investigations**. This fact sheet tells you about how we protect information that you provide to us and when we are required by law to release information to the public. Please review the Notice. Please also sign and return the two authorization forms to this office within 10 days. We need these forms before we can send a copy of your complaint to ##Covered Entity##.

Our office is working to complete an initial review of your complaint as quickly as possible. In the meantime, if you have questions, please write us or contact ##Staff Name##, Investigator, at ##Staff Telephone## (Voice), ##TDD Number## (TDD). When contacting this office, please remember to include the identification number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,
##Regional Manager Name##
##Regional Manager Title##

Enclosures (2)

APPENDIX N: NOTICE OF REFERRAL TO FMCS (TEMPLATE)

[Return to: Age Discrimination Complaints](#)

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Our Reference number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your letter received on ##Receipt Date##. In your letter, you state [INSERT ALLEGATIONS].

The Office for Civil Rights (OCR) is responsible for enforcing a Federal law that protects the privacy of health information and a variety of Federal civil rights laws that prohibit discrimination. Specifically, OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS in cases involving discrimination based on race, color, national origin, age, disability, and, under certain circumstances, sex and religion. Additionally, OCR has jurisdiction over health and human service programs operated by HHS or by state and local public entities in cases involving disability-based discrimination. OCR also has jurisdiction over health plans, health care clearinghouses, and certain health care providers with respect to enforcement of the Federal Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule, 45 C.F.R. Parts 160 and 164, Subparts A and E).

We have reviewed your letter and have decided that your complaint may involve age discrimination. Based on our regulations, we must refer your complaint to the Federal Mediation and Conciliation Service (FMCS). FMCS will review your complaint and will try to work with all the parties to reach an agreement. If an agreement cannot be reached in 60 days, your complaint will be referred back to OCR for investigation. If 180 days has gone by since you filed the complaint, and OCR has not made a finding about your case, you may bring a lawsuit in Federal court against the entity that you say discriminated against you. OCR will provide you with additional notice if this happens.

We have enclosed additional information about **OCR's Complaint Resolution Procedures**. Please read this information and keep it so you can refer to it later.

We have also enclosed a fact sheet, **Protecting Personal Information In Complaint Investigations**. This fact sheet tells you how we protect information that you provide to us and under what circumstances we are required by law to release information to the public. Please review the Notice. Please also sign and return the two authorizations to this office within 10 days.

Our office is working to complete our initial review as quickly as possible. In the meantime, if you have questions, please write us or contact ##Staff Name##, Investigator, at ##Staff Telephone## (Voice), ##TDD Number## (TDD). When contacting this office, please remember to include the identification number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##

APPENDIX O: FMCS REFERRAL FORM

[RETURN TO: AGE DISCRIMINATION COMPLAINTS](#)

Federal Mediation and Conciliation Service

Age Discrimination Act Mediation Referral and Outcome Form

Information about Complainant (completed by referring federal agency)

Complainant Name	
Phone Number	
Mailing Address	
Respondent Name	
Phone Number	

Federal Agency Information (completed by referring agency) **File #**

Contact Information (Results must be provided to contact within 45 days)	
---	--

Mediator Information

Mediator's Name	
FMCS Case #	
Reimbursable #	

Mediator Activity	Date	# of Hours	Date	# of Hours	Date	# of Hours
Preparation and Planning						
Travel Time						
Actual Activity						
Total Hours						
Travel Expenses	Date	Amount	Date	Amount	Date	Amount
Airfare (approval needed)						
Car Rental						
Meals, Lodging, Mileage, Tolls						
Other (Phone, Fax, Photocopying, etc.)						
Totals						

Date Mediation Scheduled/Occurred:	Mediation Successful? <input type="checkbox"/> YES (agreement attached) <input type="checkbox"/> NO
---	--

If mediation did not occur or was not resolved, please explain why:

<input type="checkbox"/> Complainant refused to participate (No Charge)	<input type="checkbox"/> Cancelled less than 48 hours prior to scheduled time
<input type="checkbox"/> Entity refused to participate (No Charge)	<input type="checkbox"/> No Show (complainant) (entity)
<input type="checkbox"/> Unable to schedule within timeframe (No Charge)	<input type="checkbox"/> Unable to reach agreement
<input type="checkbox"/> Cancelled more than 48 hours prior to scheduled time (No	

Charge)	___ Other (explain)
---------	---------------------

Charge: \$0 \$800 + \$_____ (expenses) \$400.00
 Circle Federal Agency HHS DEd USDA DOL HUD OTHER_____

APPENDIX P: EEOC SELECTION FORM (TEMPLATE)

[Return to: Employment Discrimination Complaints on the Bases of Race, Color, National Origin, Sex or Religion](#)

##Title## ##First Name## ##Last Name##
 ##Address##
 ##City##, ##State## ##Zip Code##

Our Transaction Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

On ##Receipt Date## the U.S. Department of Health and Human Services' (HHS), Office for Civil Rights (OCR), received your complaint. In your correspondence, you allege that on the basis of your disability you have been discriminated in employment by

After reviewing your complaint, we have determined that OCR has the authority to investigate the allegations you presented under Section 504 of the Rehabilitation Act of 1973. We have also determined that the Equal Employment Opportunity Commission (EEOC) may have authority to investigate your complaint under Title I of the Americans With Disabilities Act of 1990 (ADA).

Important: We intend to forward your complaint to the EEOC for possible investigation because individual allegations, such as yours, are normally, handled by the EEOC. However, if you would prefer to have OCR investigate this complaint, please complete, sign, and return the enclosed Form to us within 20 days of the date of this letter.

To assist you in making this decision, we have enclosed (1) a set of questions and answers; and (2) some additional information about EEOC's procedures and remedies. Please review the enclosures carefully. If you have any questions, please contact ##Staff Name##, Investigator, at ##Staff Telephone## (Voice), ##TDD Number## (TDD).

Sincerely,

##Regional Manager Name##
 ##Regional Manager Title##

Enclosures

Questions YOU MIGHT ASK ABOUT THE OFFICE FOR CIVIL RIGHTS (OCR) AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

What will happen if EEOC investigates your complaint?

Once the EEOC receives your complaint and determines that it has jurisdiction over your complaint, it will notify you by letter that it will be investigating your complaint (called a "charge" by the EEOC). EEOC will investigate your charge under the Title I of the Americans with Disabilities Act of 1990 (ADA), which prohibits disability-based discrimination by employers with fifteen or more employees. We have enclosed a description of the procedures that the EEOC will follow when it investigates your charge.

What will happen if you decide to have OCR investigate your complaint?

Once OCR accepts your complaint, we will notify you that we will initiate an investigation. We will assign your case to an investigator who will discuss your complaint with you. After we have received written permission, the investigator will contact your employer and any other people who may have knowledge about your complaint. We may request employment records, medical records, and any other records or information we need to evaluate your complaint. In many cases we will attempt to use informal resolution techniques to resolve the allegations prior to completion of a full-scale investigation. At any point during the investigation, the employer may also offer to take corrective action.

Generally, if a completed investigation reveals that discrimination has occurred, we may issue a Letter of Findings to you and the employer. We will then attempt to negotiate with the employer to remedy the discrimination voluntarily. If we are unsuccessful in obtaining a negotiated settlement, and under appropriate circumstances, we may refer your complaint for enforcement proceedings. This may result in the employer losing Federal funding or in the Department of Justice filing suit against the employer in Federal district court.

What are some of the similarities and differences between OCR and EEOC?

The substantive standards used by OCR and EEOC are identical. This means that the rules about what is considered discrimination are identical. However, you will note from reading the two previous sections and the enclosed description of EEOC that there are important differences between the procedures that OCR will follow under Section 504 and the procedures that EEOC will follow under Title I of the ADA.

When either EEOC or OCR investigates the complaint, the investigatory agency will seek "make whole" relief on behalf of a complainant when it finds that discrimination has occurred. Make whole relief may include, as appropriate, back pay, reinstatement to the complainant's prior position, and injunctive relief, such as an order to provide reasonable accommodation. The EEOC may also seek damages in appropriate cases. (Please see the enclosed description for a discussion of the remedies available through the EEOC.)

Please keep in mind that both OCR and EEOC may choose to seek the remedies they believe appropriate in each case and are not required to seek all available remedies. In some cases, available remedies may differ.

What about action in court? – "private right of action"

Under Section 504, and Title I and Title II of the ADA, individuals have a “private right of action”. This means that you may file a lawsuit directly in the appropriate Federal court. When considering a lawsuit, please keep the following points in mind.

You may not file a lawsuit under Title I of the ADA unless you first file an administrative charge (complaint) with the EEOC and the EEOC then issues a “right-to-sue” letter. **If OCR forwards your complaint to EEOC, you will have satisfied EEOC’s administrative filing requirements under Title I. However, if OCR investigates your complaint, we will not forward your complaint to the EEOC for review under Title I of ADA, and your rights, if any, under Title I will not be preserved.**

Under Section 504 and Title II of the ADA, an individual may file a lawsuit directly in Federal court without first filing a complaint with OCR or any other administrative agency. **However, you should be aware that a private lawsuit must be filed within a specific time period, and that this time period may vary by jurisdiction. The fact that you filed an administrative complaint with the Federal government under Section 504 or under Title II does not extend this time period.**

ADDITIONAL INFORMATION ABOUT THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Summary of EEOC Complaint Procedures

The EEOC staff receives and investigates employment discrimination complaints (called charges) against private employers and state and local governments. The staff will interview you, as a potential charging party, to obtain as much information as possible about the alleged discrimination. If all legal jurisdictional requirements are met, a charge is properly drafted and staff will explain EEOC's investigative procedures to you.

In investigating the charge, EEOC will notify the employer about the charge and request information from the employer that addresses the issues directly affecting the charging party as well as other potentially aggrieved persons. Any witnesses who have direct knowledge of the alleged discriminatory act will be interviewed.

If the evidence shows that there is no reasonable cause to believe discrimination occurred, you as the charging party may exercise the right to bring private court action. If the evidence shows there is reasonable cause to believe discrimination occurred, EEOC will attempt to persuade the employer to eliminate and remedy the discrimination voluntarily. If attempts fail, EEOC may file a lawsuit in Federal district court on behalf of the charging party (ies). You should be aware, however, that the Department of Justice is the only Federal agency that may sue a state or local government for a violation of the American With Disabilities Act (ADA). If the EEOC decides not to litigate a charge, a notice of the right to file a private suit in Federal district court will be given to the charging party.

Charging parties may initiate private civil action on their own in lieu of EEOC litigation. At the charging party's request, EEOC will issue a notice of right-to-sue at any time after the expiration of 180 days from the date the charge was filed. An individual must file a private suit within 90 days of receiving a notice of right-to-sue from EEOC.

EEOC Policies on Relief and Remedies

The EEOC's policy is to seek full and effective relief for each and every victim of employment discrimination, whether sought in court or in conciliation agreements before litigation, and to provide remedies designed to correct the discrimination and prevent its recurrence. In general, relief and remedies may include:

- Reinstatement of an aggrieved person to the job he or she would have had but for the discrimination, reasonable accommodation to a qualified applicant or employee with a disability, back pay, restoration of lost benefits and damages to compensate for actual monetary loss.
- Limited monetary damages may also be available to compensate for future monetary loss, mental anguish or pain and suffering, and to penalize a respondent who acted with malice or reckless indifference.

- The employer may also be required to post a notice in the workplace advising employees that it has complied with the order to remedy the discrimination.

How to File a Charge with EEOC

If you believe you have been discriminated against by an employer, labor union or employment agency applying for a job or while on the job because of race, color, sex, religion, national origin, age, or disability, you may file a charge of discrimination with the U.S. Equal Employment Opportunity Commission. Charges may be filed in person, by mail or by telephone by contacting the nearest EEOC office. If there is not an EEOC office in the immediate area, call toll free 800-669-4000 (voice or 800-800-3302 (TDD) for more information. To avoid delay, call or write beforehand if you need special assistance, such as an interpreter, to file a charge.

Time Frames for Filing a Charge

American With Disabilities Act (ADA) charges must be filed with EEOC within 180 days of the alleged discriminatory act. In states or localities where there is an

anti-discrimination law and an agency authorized to grant or seek relief; a charge must be presented to that state or local agency. In such jurisdictions, you may file charges with EEOC with 300 days of the discriminatory act or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier. It is best to contact EEOC promptly when discrimination is suspected. If you don't file the charge within these time frames, your right to file a private lawsuit may be unavailable.

If You Need More Information

If you need further information, you may call EEOC toll free on 1-800-669-EEOC. The TDD number is 1-800-800-3302. For calls from the Washington, D.C., metropolitan area, dial (202) 663-4900.

A brochure with further information is also available, upon request, in large print, Braille or on tape by writing to the Office of Equal Employment Opportunity, EEOC, 1801 L St., NW, Washington, DC 20507.

RETURN THIS FORM TO: U.S. Department of Health and Human Services
Office for Civil Rights
##RO Address##
##RO City##, ##RO State## ##RO Zip Code##

RE: ##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Our Reference number: ##Transaction Number##
Date of notification letter

To assist us in processing your complaint appropriately, please check the selection below that applies to you, sign your name under your selection, and return this form to the address listed at the top of the page.

I want OCR to retain my complaint for investigation.

Signature _____ Date _____

I would rather have EEOC investigate my complaint.

Signature _____ Date _____

I have also filed a complaint (charge) covering the same issues with the EEOC.

Date I filed the complaint with EEOC

Signature _____ Date _____

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence upon request by the public. In the event OCR receives such a request, we shall make every effort to protect information that identifies individuals or that, if released, would constitute an unwarranted invasion of personal privacy.

APPENDIX Q: DISABILITY EMPLOYMENT REFERRAL LETTER (TEMPLATE)

[Return to: Disability Employment Discrimination Complaints](#)

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##
Our Transaction Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

On ##Receipt Date## the U.S. Department of Health and Human Services' (HHS), Office for Civil Rights (OCR), received your complaint. In your correspondence, you allege that on the basis of your disability you have been discriminated in employment by

After reviewing your complaint, we have determined that OCR has the authority to investigate the allegations you presented under Section 504 of the Rehabilitation Act of 1973. We have also determined that the Equal Employment Opportunity Commission (EEOC) may have authority to investigate your complaint under Title I of the Americans With Disabilities Act of 1990 (ADA).

Important: We intend to forward your complaint to the EEOC for possible investigation because individual allegations, such as yours, are normally, handled by the EEOC. However, if you would prefer to have OCR investigate this complaint, please complete, sign, and return the enclosed Form to us within 20 days of the date of this letter.

To assist you in making this decision, we have enclosed (1) a set of questions and answers; and (2) some additional information about EEOC's procedures and remedies. Please review the enclosures carefully. If you have any questions, please contact ##Staff Name##, Investigator, at ##Staff Telephone## (Voice), ##TDD Number## (TDD).

Sincerely,

##Regional Manager Name##

##Regional Manager Title##

APPENDIX R: NON-JURISDICTIONAL – UNLAWFUL CONDITIONS OF CONFINEMENT REFERRAL LETTER: DISABILITY; RACE, COLOR, NATIONAL ORIGIN; RELIGION; GENERAL CONDITIONS – STATE FACILITY; GENERAL CONDITIONS – FEDERAL FACILITY (TEMPLATE)

[Return to: Complaints Involving Discrimination based on Disability or Unlawful Conditions of Confinement or Institutionalization from Persons who are Incarcerated](#)

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence to the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR).

OCR is responsible for enforcing a variety of Federal civil rights laws that prohibit discrimination, as well as a Federal law protecting the privacy of individuals' health information. Specifically, OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS in cases involving discrimination based on race, color, national origin, age, disability, and under certain circumstances, sex and religion. Additionally, in cases involving disability-based discrimination, OCR has jurisdiction over health and human service programs operated by HHS or by state and local public entities. OCR also has jurisdiction over certain health plans, health care clearinghouses and health care providers with respect to enforcement of the Federal standards for privacy of individually identifiable health information (The Privacy Rule, @ 45 C.F.R. Parts 160 and 164, Subparts A and E).

Based upon review of your correspondence, we have determined that the HHS Office for Civil Rights does not have the authority to investigate your complaint because the issue(s) you raise is/are not within our jurisdiction. Your complaint may fall within the jurisdiction of the agency indicated below and has been forwarded to that agency for review. **[Note: Delete previous sentence if not making referral to a Federal agency.]**

Prisoner - Discrimination on the basis of Disability

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Telephone: (202) 307-2227
Fax: (202) 307-1198
Website: <http://www.usdoj.gov/crt/drs/drshome.htm>

Prisoner - Discrimination on the Basis of Race, Color, National Origin, and Religion

Coordination and Review Section, Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Telephone: 1-888-848-5306
Website: <http://www.usdoj.gov/crt/cor/index.htm>

Prisoner - General Conditions - State Facility

Special Litigation Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 514-6255
Website: <http://www.usdoj.gov/crt/split/index.html>

The Special Litigation Section may have authority to address the issues you raise as part of its authority under the Civil Rights of Institutionalized Persons Act. Please be aware, however, that the DOJ Special Litigation Section does not investigate individual complaints or represent individuals in matters regarding institutional conditions. Rather, the Special Litigation Section investigates state or local government institutions and facilities under contract with a state or local government to determine whether there is a pattern or practice of violations of the Federal civil rights of institutionalized individuals.

Prisoner - General Conditions - Federal Facility

Civil Rights and Civil Liberties Complaints
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Room 4322
Washington, DC 20530
Website: <http://www.usdoj.gov/oig/ighp01.htm>

We hope that this response is helpful to you.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

APPENDIX S: Non-Jurisdictional – Hill-Burton Uncompensated Services Letter
(Template)

[Return to: Enforcement of the Community Service Assurance \(Hill-Burton Uncompensated Service Complaints\)](#)

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Transaction Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your letter received on ##Receipt Date## by the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR). In your letter, you allege a violation of the Hill-Burton Act.

OCR is responsible for enforcing a variety of Federal civil rights laws that prohibit discrimination and the Privacy Rule issued pursuant to the Health Insurance Portability and Accountability Act, which protects the privacy of individuals' health information. Specifically, OCR has jurisdiction to investigate complaints alleging discrimination on the basis of race, color, national origin, age, disability, and, under certain circumstances, sex and religion in health and human services programs or activities conducted by recipients of Federal financial assistance from HHS. Additionally, OCR has jurisdiction to investigate complaints alleging discrimination on the basis of disability in HHS federally conducted programs and in health and human services programs or activities operated by state and local governments. OCR also has jurisdiction over health plans, health care clearinghouses, and certain health care providers with respect to enforcement of the Federal Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule, 45 C.F.R. Parts 160 and 164, Subparts A and E).

OCR also enforces the Community Service Assurance provisions of Title VI and Title XVI of the Public Health Service Act (Hill-Burton). The Hill-Burton Act authorizes assistance to public and other nonprofit medical facilities such as acute care general hospitals, special hospitals, nursing homes, public health centers, and rehabilitation facilities. The assistance is in the form of grants and loans for medical facility construction, modernization and equipment. We have enclosed a copy of OCR's Hill-Burton Fact Sheet for your information.

Your complaint, however, alleges a violation of the Hill-Burton Act's uncompensated care provision, which requires assisted facilities to make a reasonable volume of free or reduced-cost services available to persons who are unable to pay. OCR does not have jurisdiction to enforce compliance with the uncompensated care requirement in the Hill-Burton Act.

For information on filing a complaint against a Hill-Burton assisted facility for violating its uncompensated care obligation, please call the Hill-Burton Hotline at 1-800-638-0742 or visit: <http://www.hrsa.gov/hillburton/default.htm>. You may also file a complaint regarding

uncompensated care by mailing it to the Director, Division of Facilities Compliance and Recovery, 5600 Fishers Lane, Room 10-105, Rockville, MD 20857. Your complaint must be in writing and can be a letter that simply states the facts and dates concerning the complaint.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

Enclosures

**APPENDIX T: NON-JURISDICTIONAL – ARCHITECTURAL BARRIERS ACT:
FEDERALLY-FUNDED BUILDING ACCESSIBILITY REQUIREMENTS
(TEMPLATE)**

[Return to: Building/Facility Accessibility Complaints](#)

Name and Address

Reference Number: _____

Dear _____:

Thank you for your correspondence received on (DATE) by the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR). In your letter, you ask for information regarding accessibility guidelines pertaining to the facility in which you are currently incarcerated.

OCR is responsible for enforcing a variety of Federal civil rights laws that prohibit discrimination and for protection of the privacy of medical records. Specifically, OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS in cases involving discrimination based on race, color, national origin, age, disability and under certain circumstances, sex and religion. Additionally, OCR has jurisdiction over health and human service programs operated by HHS or by state and local public entities in cases involving disability-based discrimination. OCR also has jurisdiction over health plans, health clearinghouses and certain health care providers with respect to enforcement of the Federal standards for privacy of individually identifiable health information (“the Privacy Rule,” 45 C.F.R. Parts 160 and 164, Subparts A and E).

Based upon review of your correspondence, we have determined that the HHS Office for Civil Rights cannot properly respond to your request. You may wish to contact the United States Access Board. The Board enforces accessibility requirements for facilities that are Federally funded under a law known as the Architectural Barriers Act. Should your concerns pertain to other types of facilities or to issues unrelated to building design, the Board can direct you to the right resource. The Access Board can be contacted at the following address:

Compliance and Enforcement Section
1331 F Street, NW, Suite 1000
Washington, DC 20004-1111
Telephone: (202) 272-0081

We regret that we are unable to provide you with further assistance.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

APPENDIX U: NOTIFICATION LETTER – JURISDICTION: FFA AUTHORITIES & HILL-BURTON (TEMPLATE)

[Return to: Hill-Burton Complaints](#)

##Title## ##POC First Name## ##POC Last Name##
##POC Official Title##
##Covered Entity##
##Covered Entity Address##
##Covered Entity City##, ##Covered Entity State## ##Covered Entity Zip Code##

Our Reference number: ##Transaction Number##

Dear ##Title## ##POC Last Name##:

Please be advised that the Department of Health and Human Services (HHS), Office for Civil Rights (OCR) has received a complaint on ##Receipt Date##, alleging that ##Covered Entity## is engaged in unlawful discrimination based on **[Insert Basis(es)]**. Specifically, the complaint alleges **[Optional - Add Specific Factual Allegations]**. OCR has reviewed the complaint allegations and determined that we have the authority to investigate the issues raised. **[For Hill-Burton Cases ONLY, Add the following sentence]**: A copy of the complaint is enclosed for your records.

[INSERT 1: ONE FFA AUTHORITY (AGE, TITLE VI, 504, TITLE IX)]

OCR is responsible for enforcing **[Specific Authority]** as it applies to entities that receive federal financial assistance from HHS. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]**, and applies to all of the recipient's programs and activities.

[INSERT 2: TWO FFA AUTHORITIES (AGE, TITLE VI, 504, TITLE IX)]

OCR is responsible for enforcing **[Specific Authority]** as it applies to entities that receive federal financial assistance from HHS. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]**, and applies to all of the recipient's programs and activities. OCR also is responsible for enforcing **[Specific Authority]** as it applies to entities that receive HHS federal financial assistance. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]** and also applies to all of the recipient's programs and activities.

[INSERT 3 - ADA, TITLE II]

OCR is responsible for enforcing Title II of the Americans with Disabilities Act (ADA) as it applies to public entities providing health care and social services. ADA, Title II applies to all programs and activities of state and local government agencies regardless of whether they are recipients of Federal financial assistance.

[INSERT FOUR: ADA and ONE FFA AUTHORITY (e.g., Section 504)]

OCR is responsible for enforcing Title II of the Americans with Disabilities Act (ADA) as it applies to public entities providing health care and social services. ADA Title II applies to all programs and activities of state and local government agencies regardless of whether they are recipients of Federal financial assistance. OCR also is responsible for enforcing **[Specific Authority]** as it applies to entities that receive HHS federal financial assistance. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]** and also applies to all of the recipient's programs and activities.

[INSERT FIVE: TITLE II, ADA and TWO FFA AUTHORITIES]

OCR is responsible for enforcing Title II of the Americans with Disabilities Act (ADA) as it applies to public entities providing health care and social services. ADA Title II applies to all programs and activities of state and local government agencies regardless of whether they are recipients of receive Federal financial assistance. OCR also is responsible for enforcing **[Specific Authority]** as they apply to entities that receive HHS federal financial assistance. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]** , while **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]**. Both apply to all of the recipient's programs and activities.

[INSERT SIX: HILL BURTON CASES]

OCR is responsible for enforcing the community service obligations of Title VI and XVI of the Public Health Service Act (commonly called the "Hill Burton Act") and its implementing regulations, 42 C.F.R. § 124.601 et seq. Under the community service obligations of the Hill Burton Act, facilities that have received Federal financial assistance under Title VI and XVI of the Public Health Service Act are required to make their services available to all persons residing in the facility's service area without discrimination based on race, color, national origin, creed or any other ground unrelated to the individual's need for the service or the availability of the service in the facility.

[INSERT SEVEN: FFA AUTHORITY AND HILL BURTON]

OCR is responsible for enforcing **[Specific Authority]** as it applies to entities that receive federal financial assistance from HHS. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]**., and applies to all of the recipient's programs and activities. OCR is also responsible for enforcing the community service obligations of Title VI and XVI of the Public Health Service Act (commonly called the "Hill Burton Act") and its implementing regulations, 42 C.F.R. § 124.601 et seq. Under the community service obligations of the Hill Burton Act, facilities that have received Federal financial assistance under Title VI and XVI of the Public Health Service Act are required to make their services available to all persons residing in the facility's service area without discrimination based on race, color, national origin, creed or any other ground unrelated to the individual's need for the service or the availability of the service in the facility.

A copy of the applicable regulation[s] is enclosed for your convenience.

OCR is initiating an investigation of the complaint allegations to determine if there has been a failure to comply with the requirements of the applicable regulations. Our authority to collect information in order to determine the compliance status of your entity is found at

[Insert 1 - for all authorities except Hill Burton]

45 CFR §80.6(c), which states:

Each recipient shall permit access by the responsible department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. . . .

[Insert II - for Hill Burton Cases ONLY]

42 C.F.R. § 124.606(a)(3), which states:

When the Secretary investigates a facility, the facility shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

Insert III: For cases involving more than one authority where one is Hill Burton]

45 CFR §80.6(c), which states:

Each recipient shall permit access by the responsible department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. . . .

OCR also is authorized to access information needed to investigate this complaint under the Hill Burton Act. Specifically, 42 C.F.R. § 124.606(a)(3) provides:

When the Secretary investigates a facility, the facility shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

We will attempt to complete the investigation of this complaint and advise you of our findings as quickly as possible. If we determine that a violation of a regulation or statute has occurred, we will seek voluntary corrective action. If we are unsuccessful in obtaining a voluntary resolution of this matter, we will refer this matter to our headquarters for appropriate action which may include formal enforcement proceedings through an administrative hearing or referral to the Department of Justice.

[For Non Hill Burton Cases]

Please be advised that OCR's regulations prohibit an agency or institution from harassing, intimidating or retaliating against an individual who has filed a complaint or participated in the investigation of a complaint. Any such action may constitute a violation of 45 C.F.R. Section 80.7(e), which applies to OCR investigations. We request that you take all necessary steps to assure that this prohibition is not violated in connection with this complaint.

[For Hill Burton Cases]

Please be advised that a complainant may have the right to a private action in connection with a complaint. 42 CFR Section 124.606(a)(4), states:

The Act provides that if the Secretary dismisses a complaint or the Attorney General has not brought an action for compliance within six months from the date on which the complaint is filed the person filing it may bring a private action to effectuate compliance with the assurance. If the Secretary determines that he will be unable to issue a decision on a complaint or otherwise take appropriate action within the six month period, he may, based on priorities for the disposition of complaints that are established to promote the most effective use of enforcement resources, or on the request of the complainant, dismiss the complaint without a finding as to compliance prior to the end of the six month period, but no earlier than 45 days after the complaint is filed.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please be assured that our office is committed to resolving this matter in an efficient and timely manner. If you have any questions, please do not hesitate to contact ##Staff Name##, Investigator, at ##Staff Telephone## (Voice), ##TDD Number## (TDD). When contacting this office, please remember to include the transaction number that we have given this file. That number is located in the upper left-hand corner of this letter.

Sincerely yours,

##Regional Manager Name##

##Regional Manager Title##

Enclosures

APPENDIX V: Closure Letter (No Jurisdiction with Quality of Care Information)
(Template)

[Return to: Medical Quality of Care Complaints](#)

##Title## ##First Name## ##Last Name##

##Address##

##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

Upon review of your correspondence, we have determined that OCR does not have authority to investigate your complaint. Therefore, we are closing this matter.

We note, however, that in your complaint you raised concerns about the quality of medical care you received. You may be able to obtain an independent review of the quality of your medical care.

If you are a **Medicare** beneficiary, you may wish to contact to contact your state's Quality Improvement Organization (QIO), [AGENCY NAME], regarding your medical care, and for information on filing a quality of care complaint. Your QIO may be reached at [INSERT 1-800 NUMBER].

If you are a **Medicaid** beneficiary, you may wish to contact the customer service number provided on the back of your Medicaid Identification Card for guidance on quality of care grievances.

Whether or not you are a beneficiary of Medicare or Medicaid services, you may wish to contact your state's Medical Review Board [or (Optional – *Insert name(s) of local organization(s)*)] for additional guidance about your health care concerns.

OCR's determination, as stated in this letter, applies only to the allegations in this complaint that were reviewed by OCR.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

We regret that we cannot be of further assistance to you at this time. If you have questions regarding this matter, please write us or contact ##Staff Name## at ##Staff Telephone## (Voice), ##TDD Number## (TDD), or by e-mail at [*Insert e-mail address*]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##

##Regional Manager Title##

**APPENDIX W: ACCEPTANCE OF COMPLAINT FOR INVESTIGATION LETTER –
QUALITY OF CARE INFORMATION (TEMPLATE)**

[Return to: Medical Quality of Care Complaints](#)

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

OCR is responsible for enforcing a variety of Federal civil rights laws that prohibit discrimination. Specifically, OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS. Additionally, OCR has jurisdiction over health and human service programs operated by HHS or by state and local public entities in cases involving disability-based discrimination. In addition to disability discrimination claims, OCR investigates claims of race, color, national origin, age and, in limited instances, sex and religion discrimination. OCR also has jurisdiction over health plans, health care clearinghouses, and certain health care providers with respect to enforcement of the Federal Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule, 45 C.F.R. Parts 160 and 164, Subparts A and E).

OCR has accepted your civil rights complaint for investigation, and will investigate the following allegation(s): *[Insert the specific allegations and the covered entities that OCR will investigate]*. An investigator will contact you in the near future regarding these allegations.

We note that in your complaint, you raised concerns about the quality of medical care that you received. You may also be able to obtain an independent review of the quality of your medical care.

If you are a **Medicare** beneficiary, you may wish to contact your state's Quality Improvement Organization (QIO), ##Agency Name##, regarding your medical care, and for information on filing a quality of care complaint. Your QIO may be reached at [INSERT 1-800 NUMBER].

If you are a **Medicaid** beneficiary, you may wish to contact the customer service number provided on the back of your Medicaid Identification Card for guidance on quality of care grievances.

Whether or not you are a beneficiary of Medicare or Medicaid services, you may wish to contact your state's Medical Review Board [or (Optional – *Insert name(s) of local organization(s)*)] for additional guidance about your health care concerns.

Enclosed please find a copy of additional information about OCR's **Complaint Resolution Process**. Please read this information and keep it so you can refer to it later.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

In the event that you move, change your telephone number or obtain a new email address during the course of OCR's investigation, please inform us so we can keep our records current.

Our office is committed to resolving your complaint as quickly as possible. In the meantime, if you have questions regarding this matter, please write us or contact **##Staff Name##**, Investigator, at **##Staff Telephone##** (Voice), **##TDD Number##** (TDD), or by e-mail at [*Insert e-mail address*]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

Enclosure

APPENDIX X: CLOSURE LETTER - COMPLAINT CONTAINS INSUFFICIENT INFORMATION (TEMPLATE)

[Return to: Administrative Closure](#)

[NAME AND ADDRESS OF COMPLAINANT]

OCR Transaction #: [NUMBER]

Dear [NAME]:

On [date], the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) received your complaint. OCR has determined that it will not proceed with case resolution activities with respect to your allegation(s). The basis for this determination is set forth below.

On [date], OCR contacted you to advise you that your complaint did not contain enough information for OCR to determine whether we had authority to investigate your complaint, and to request that you send us the necessary information within 20 days. OCR also advised you that if we did not receive the necessary information within 20 days, OCR would not be able to investigate your complaint and would close your case.

To date, OCR has not received that information. [OR, IF APPLICABLE – On [date], OCR received additional information from you. However, the information you provided is insufficient to enable us to determine whether we have authority to investigate your concerns.] Therefore, OCR has closed your case.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy

We regret we cannot be of further assistance to you. If you have any questions, please write us or contact **##Staff Name##** at **##Staff Telephone##** (Voice), **##TDD Number##** (TDD), or by e-mail at [*Insert e-mail address*]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

[NAME OF REGIONAL MANAGER]
Regional Manager

APPENDIX Y: ACCEPTANCE OF COMPLAINT FOR INVESTIGATION LETTER (TEMPLATE)

Preparing the Acceptance Letter, Consent Forms, and Notification Letter

##Title## ##First Name## ##Last Name##
##Address##
##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your correspondence received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

OCR has accepted your civil rights complaint for investigation, and will investigate the following allegation(s): [*Insert the Specific Allegations and Covered Entities that OCR will investigate*]. [IF APPLICABLE – However, we determined that your complaint also raises issues that OCR does not have authority to investigate. Therefore, we will not investigate the following allegation(s): {*Insert the Specific Allegations and Covered Entities that OCR will NOT investigate, and explain why we do not have authority to investigate.*}] An investigator will contact you in the near future.

Enclosed please find a copy of additional information about OCR's **Complaint Resolution Process**. Please read this information and keep it so you can refer to it later.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

In the event that you move, change your telephone number or obtain a new email address during the course of OCR's investigation, please inform us so we can keep our records current.

Our office is committed to resolving your complaint as quickly as possible. In the meantime, if you have questions regarding this matter, please write us or contact ##Staff Name##, Investigator, at ##Staff Telephone## (Voice), ##TDD Number## (TDD), or by e-mail at [*Insert e-mail address*]. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##

APPENDIX Z: Protection and Advocacy Systems

[Return to Case Prioritization, Urgency](#)

The following Protection and Advocacy Programs are federally funded by various agencies to provide services to individuals with disabilities. They are often co-located in one state P&A System; sometimes they are housed in different entities depending on type. See <http://www.napas.org/aboutus/pwd.htm#cap> for more information about the types of issues P&A's handle and to find the one(s) serving a particular state.

Protection and Advocacy for Individuals with Mental Illness Program (PAIMI)

(HHS/SAMHSA) is a system to protect and advocate for the rights of people with mental illnesses.

Protection and advocacy services include general information and referrals; investigation of alleged abuse, neglect, and rights violations in facilities; and use of legal, legislative, systemic, and other remedies to correct verified incidents. Anyone with a mental illness who resides in, or recently has been discharged from a facility, such as a hospital, group home, homeless shelter, residential treatment center, jail, or prison, may be eligible to receive these services through the PAIMI program. For assistance, please contact your State P&A system, to see if your request is within the agency's annual service priorities.

State Protection and Advocacy for individuals with Developmental Disabilities (PADD),

(HHS/ADD) provide services to the developmentally disabled for:

- the protection and advocacy of legal and human rights
- education
- abuse
- neglect
- institutional or habilitation
- guardianship
- housing.

Client Assistance Program (ED/RSA) advises and informs clients, client applicants, and other individuals with disabilities of all the available services and benefits under the REHABILITATION ACT OF 1973, as amended, and of the services and benefits available to them under Title I of the AMERICANS WITH DISABILITIES ACT (ADA). In addition, grantees may assist and advocate for clients and client applicants in relation to projects, programs, and services provided under the REHABILITATION ACT. In providing assistance and advocacy under Title I of the REHABILITATION ACT, a CAP agency may provide assistance and advocacy with respect to services that are directly related to employment for the client or client applicant.

Protection and Advocacy of Individual Rights (PAIR) (ED/RSA) supports the protection and advocacy system in each state to protect the legal and human rights of individuals with disabilities. In order to be eligible for advocacy services from the PAIR program, an individual with a disability must meet three criteria.

- The individual's concern must be beyond the scope of the Client Assistance Program.

- The individual must be ineligible for services from the Protection and Advocacy of Developmental Disabilities (PADD) program.
- The individual must also be ineligible for the Protection and Advocacy for Individuals with Mental Illness (PAIMI) program.

Most PAIR programs set priorities and objectives aimed at reducing barriers to education, employment, transportation, and housing. In addition, PAIR programs advocate on behalf of individuals with significant disabilities to promote community integration and full participation in society. Eligible systems have the authority to pursue legal, administrative, and other appropriate remedies or approaches to protect and advocate for the rights of individuals with disabilities. Protection and advocacy systems may be housed in public or private entities designated by the governor.

Protection and Advocacy for Assistive Technology (PAAT) (ED/RSA) program provides protection and advocacy services to assist individuals of all ages with disabilities in the acquisition, utilization or maintenance of assistive technology services or devices.

Projects support information, advocacy and representation, training, technical assistance, and general guidance for protection and advocacy entities to increase access to and provision of assistive technology devices and services. The emphasis is on consumer advocacy and capacity-building through protection and advocacy agencies in the states.

Traumatic Brain Injury Protection and Advocacy Systems Grants program(HRSA): allows P&As to assess their State P&A Systems' responsiveness to TBI issues and provide advocacy support to individuals with TBI and their families.

The purpose of this program is to advise and inform clients, client applicants, and other individuals with disabilities of all the available services and benefits under the *Rehabilitation Act of 1973*, as amended, and of the services and benefits available to them under Title I of the *Americans with Disabilities Act (ADA)*. In addition, grantees may assist and advocate for clients and client applicants in relation to projects, programs, and services provided under the *Rehabilitation Act*. In providing assistance and advocacy under Title I of the *Rehabilitation Act*, a CAP agency may provide assistance and advocacy with respect to services that are directly related to employment for the client or client applicant.

Protection and Advocacy Program for Beneficiaries of Social Security (SSA/PABSS)

Assists beneficiaries with disabilities in obtaining information and advice about receiving vocational rehabilitation and employment services and provides advocacy or other related services that beneficiaries with disabilities may need to secure, regain, or maintain gainful employment. Areas that PABSS may help with include:

- Access to and disputes with Community Services
- Special Education and Transition
- Health Care
- Disability Benefits and Work Incentives
- Rights and Conditions of employment
- Vocational Rehabilitation and preparation
- Rights, Responsibilities, and Reasonable Accommodations under the ADA
- Wage and hour issues

- Transportation
- Housing
- Assistance with removing barriers to a beneficiary's return to work goal

APPENDIX AA: THEORY OF A DISCRIMINATION CASE (PASEEQ)

[Return to: Case Planning](#)

[Parties in Interest](#)

[Allegations](#)

[Statutes and Regulations Involved](#)

[Elements of Claim](#)

[Evidence Necessary to Prove or Disprove a Claim](#)

[Evidence in Support of and Against Claim](#)

[Analysis of Recipient's Response to Complainant's Allegations](#)

[Summary of OCR's Theory of the Case](#)

[Summary of Recipient's Defense of the Case](#)

Resources

- [Mid- or End of Investigation Assessment of the Case Form](#)
- [Examples of Elements of the Claim](#)
- [Examples of Other Elements that May Be Required](#)

Questions to ask:

1. Did the complainant file the complaint with OCR within 180 days of the date on which the alleged discriminatory act occurred?
 If not, what is the reason (are the reasons) for accepting the case even though it was filed late?
2. Assuming that all the facts are exactly as the Complainant portrays them, and that the Respondent cannot offer any facts in rebuttal, is there a legal theory under which the Complainant states a violation over which OCR can exercise jurisdiction and take action?
 If the answer to this question is "No," then the case should be closed.
3. What are the documents/evidence we should ask the Complainant to produce?
4. What are the documents/evidence we should ask the Respondent to produce?
5. What witnesses will we likely want to interview?
6. Will an onsite visit likely be necessary? If so, at approximately what point in the process?

Parties in Interest

	Name and Contact Information
Complainant	
Injured Party (if not the Complainant)	
Respondent	
Other Interested Parties (Entities/Individuals)	

Include Specific Association with Claim / Nature of Interest	
--	--

Allegations

Summary of Complainant's Allegations:

- 1.
- 2.

Questions to ask:

Did the complainant file the complaint with OCR within 180 days of the date on which the alleged discriminatory act occurred?

Yes No

If not, what is the reason (are the reasons) for accepting the case even though it was filed late?

Statutes and Regulations Involved

Federal Anti-Discrimination Statutes:

- 1.

Federal Anti-Discrimination Regulations:

- 1.

Other Relevant Federal/State Statutes/Regulations

- 1.

Elements of the Claim—the Prima Facie Case

“Elements” are the critical aspects of the claim defined in the applicable statute and regulations which must be documented as true before a violation can be proven.

Unless the elements are factually proven, the evidence will not support a violation finding.

NOTE: The elements do not replace OCR’s traditional use of the “issue statement,” e.g., “Whether or not the Sleepy Hollow Nursing Home denied the complainant admission on the basis of his race (African American) in violation of Title VI and 45 CFR 80 (b)(1)(1).” The issue statement is a precursor to setting out the legal requirements (elements) of the relevant statute and regulations which have to be supported by evidence.

[SEE examples](#)

1. OCR Jurisdiction over Claim:

Yes - Basis of Jurisdiction: _____

- Statutory Authority
- HHS Funding
- Title II of the ADA (respondent is a state or local government administered health or social service program)

No - Reason Why No Jurisdiction: _____

If No, Should Case be Referred to Another Agency? Yes No

If Yes, Which Agency? _____

2. Other Elements: [\(SEE examples\)](#)

- a.
- b.

Evidence Necessary to Prove or Disprove a Claim

Questions to ask:

1. What are the documents/evidence we should ask the Complainant to produce?
2. What are the documents/evidence we should ask the Respondent to produce?
3. What witnesses will we likely want to interview?
4. Will an onsite visit likely be necessary? If so, at approximately what point in the process?

Element	Type of Evidence that Would Support Element	Likely Source of Supporting Evidence	Type of Evidence that Would Dispute Element	Likely Source of Disputing Evidence

Questions to ask:

1. Did the complainant file the complaint with OCR within 180 days of the date on which the alleged discriminatory act occurred?

Yes No

If not, what is the reason (are the reasons) for accepting the case even though it was filed late?

2. Assuming that all the facts are exactly as the Complainant portrays them, and that the Respondent cannot offer any facts in rebuttal, is there a legal theory under which the Complainant states a violation over which OCR can exercise jurisdiction and take action?

Yes No

If the answer to this question is "No," then the case should be closed.

Analysis of Recipient's Response to Complainant's Allegations

After the complaint letter has been received, an information request has been sent to the recipient, and a response received, it is important to compare the allegations in the complaint with the response to determine what facts are agreed to by the parties and what facts remain disputed. Obviously, this narrows the field of "What's left to prove." The chart facilitates this analysis.

NOTE: If the Recipient admits the allegation or the response supports the allegation, generally no more proof is needed. If additional proof is needed, what type of evidence will be required?

Elements of the Defense to the Claim

- 1.
- 2.

Allegation	Response	Additional Evidence Needed to Prove Allegation

Summary of OCR's Theory of the Case

The factual story that justifies relief within the legal framework provided by the framework of the applicable statute(s) and regulation(s).

Available Relief

- 1.
- 2.

Summary of Recipient's Defense of the Case

- 1.
- 2.
- 3.

Mid- or End of Investigation Assessment of the Case

Element	Summary of Proof Gathered in Support of Element	Summary of Proof Gathered in Opposition to Element

Available Relief

- 1.
- 2.

Examples of Elements of the Claim

1. The respondent is a recipient of HHS funds.
2. The person (complainant or injured party) is a member of a class of persons covered under the applicable statute (i.e., person of a particular race, color, or national origin)
3. The person applied for, and was eligible for a benefit or service available under a federally assisted program.
4. Despite the person’s eligibility, he/she was rejected.
5. The recipient selected applicants of a different race, color, or national origin than the complainant; or the program remained open and the recipient continued to accept applicants of a different race, color, or national origin than the complainant.

Examples of Other Elements that May Be Required

Once the prima facie elements are established, if a recipient claims there was a legitimate nondiscriminatory reason for the challenged action, additional elements are required to support a violation finding.

1. OCR must determine if the recipient’s stated reason is pretextual.
2. If the claim is one that involves “pattern and practice,” OCR must demonstrate that the challenged action is more than a mere isolated occurrence, but is instead standard operating procedure.

APPENDIX BB: TITLE VI DISPARATE IMPACT / EFFECT DISCRIMINATION CASE – PASEEQ

[Return to: Case Planning](#)

<p>Parties in Interest</p>	<p>Complainant: Name, Address, Phone Number, Race, Color or National Origin Recipient: Name, Address, Phone Number of Other Party Which Allegedly Committed Discriminatory Act Against Complainant Others: Name, Address, Phone Number and Nature of Any Other Interested Party</p>
<p>Allegations</p>	<p>A recipient utilizes a facially neutral policy or procedure that has the effect of subjecting persons of a particular racial or ethnic group to discrimination in the provision of services/benefits under a federally assisted program or activity.</p>
<p>Statute(s) and Applicable Regulatory Provision(s)</p>	<p>Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; 45 C.F.R. § 80.3(b)(2) – A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such programs, or the class of individuals to whom, or the situations in which, such services, financial aid, or other benefits or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements; utilize criteria (policies) or methods of administration (procedures) which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.</p>

<p>Elements of Claim</p>	<p>Essential legal requirements that must be factually proven:</p> <p>Recipient utilizes a neutral policy or practice that has a disparate impact on persons of a particular racial or ethnic group and such policy/procedure lacks a substantial legitimate justification. Focus of a disparate impact investigation should be on the consequences of a recipient's policy or procedure rather than the intent.</p> <p>Ask:</p> <p>(1) Does the recipient use a facially neutral policy or practice? (2) Does the policy or practice have a disproportionate adverse impact on a particular racial or national origin group? (3) Does the practice or policy lack a substantial legitimate justification? Where the recipient does articulate a substantial legitimate justification-are there equally effective alternatives which have a lesser adverse impact?</p> <p>Example of a disproportionate adverse impact case: A complaint is filed with OCR alleging that a network of licensed home health care agencies employing skilled nurses, physical therapists, occupational therapists, home health aides and homemakers violated Title VI and the HBS regulations when it refused to serve an African American family. The reason given by the network~ for the</p>
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	<p>refusal to provide services was that the family resided in a low-income housing complex which is considered to be a "high risk." area. The network had adopted "Employee Safety Guidelines," a policy which stated that employees would make no visits, or limited the hours of visits, to clients residing on certain streets and in specific housing complexes in the city. Evidence was presented, however, showing that at the time, the network was providing services to an adjacent complex which is almost all white.</p>
<p>Evidence in Support of and Against Claim</p>	<p>To establish a prima facie case of discrimination under a disparate impact theory:</p> <p>Determine whether the recipient utilizes a facially neutral policy or procedure that has a disproportionate impact/effect on persons of a particular racial or ethnic group, OCR must establish that the policy or procedure has a disproportionate adverse impact on a protected group. Once OCR establishes that the policy or procedure has a disproportionate adverse impact on a particular racial or ethnic group, the recipient must articulate a substantial legitimate justification for the challenged policy or procedure, i.e., it is necessary to achieve legitimate, important program objectives.</p> <p>If the recipient articulates a substantial legitimate justification for the policy/procedure, OCR must determine (1) whether the justification proffered by the recipient is in fact a pretext for discrimination or (2) whether there are equally effective alternatives that would further the recipient's program objectives, but would have a lesser disproportionate effect. If OCR determines that there are equally effective alternatives that would have less disproportional while still serving the recipient's program objectives, then a violation would be established. If there is evidence that the recipient's justification for the challenged policy/procedure is a pretext for discrimination; the analysis for disparate treatment (intentional discrimination) cases also should be applied. (See PASEEQ Template on Tide VI Disparate Treatment)</p> <p>Evidence in disparate impact claims will generally be statistical in nature. For example, If a hospital decides that for financial reasons, all paying patients in a maternity unit should be housed on one floor, and Medicaid or uninsured patients in another location. Depending on the demographics of the obstetrical patients in the hospital's service area, it may be that this facially neutral policy has the. impact of segregating minority patients. This type of data may be culled from patient records, In the absence of such data, OCR may obtain a rough approximation by reference to block; level census data, or relevant school district information.</p>
<p>Questions re: Claim</p>	<p>1 Does the complaint state a violation over which OCR can exercise jurisdiction and take action? If the answer to this question is "No," state the reason _____ Should the complaint be referred to another agency?</p> <p>i. Yes ___ No___ Which Agency? _____</p> <p>2 Type of Financial Assistance (for example, Medicaid, Medicare Part A,</p>

	HHS Grants or Contract (other than procurement contracts) Funds, TANF or other form of assistance) _____; Type of entity (e.g., hospital, nursing home, home health agency, social services agency) _____
3	Was the complaint filed with OCR within 180 days of the alleged discriminatory act? If not, is there good cause for waiving the filing requirement (e.g., complainant could not reasonably be expected to know that the act was discriminatory within 180 days; complaint was timely filed with another agency that lacked jurisdiction; illness or other incapacity)? Explain.
4	What are the contested factual issues in this case?

Analysis of Recipient's Response to Complainant's Allegations

It is important to compare the allegations in the complaint with the response to determine what facts are agreed to by the parties and what facts are disputed. This chart facilitates that analysis.)

Complainant's Allegation	Recipient's Response	Is Additional Evidence Needed to Prove the Allegation? If yes, what type? (If the Recipient has admitted the allegation, generally no more proof is needed.)

Evidence Necessary to Prove or Disprove Claim

Element	Type of Evidence that Would Support Element	Likely Source of Supporting Evidence	Type of Evidence that Would Dispute Element	Likely Source of Disputing Evidence
1 st Element:	1) composition by	Recipient's		

<p>Facially neutral policy or procedure has a disproportionate impact on persons of a particular racial or ethnic group (may require presentation of statistical evidence based on identification of relevant pools for comparison)</p>	<p>race/ethnicity of population that would be expected to participate in the recipient's program</p> <p>2) composition by race/ethnicity of the population that participates in the recipient's program</p> <p>3) evidence (statistical or otherwise) that any disparity is (a) significant; (b) adverse; and (c) the result of the application of the neutral rule policy in question</p>	<p>patient participant census data by race/ethnicity and the census demographic data for the target population in the recipient's geographic service area</p>		
<p>2nd Element Does the recipient have a substantial legitimate justification for the challenged policy/procedure? Is the reason offered a pretext for discrimination?</p>	<p>Interviews, documentary evidence, e.g., internal policy party statements or memoranda; correspondence; manuals; minutes or transcripts of meetings</p>	<p>Recipient, complainant, or other interested party</p>		
<p>3rd Element Are there any equally effective alternative policies/procedures that would result in less racial disproportionality utilized by other recipients?</p>	<p>Interviews; documentary evidence concerning alternative; information about alternatives</p>			

Summary of the Complainant's Factual and Legal Theories

A. Factual Allegations

B. Legal Theory

Summary of the Recipient's Factual Allegations and Legal Theories

A. Factual Allegations

B. Legal Theory

Assessment of the Case

Allegation	Summary of Proof Gathered in Support of Allegation	Summary of Proof Gathered in Opposition to Allegation
Allegation 1		
Allegation 2		
Allegation 3		

Is there sufficient basis to make a violation finding:? If so,

Available Relief

- A.**
- B.**
- C.**

**APPENDIX CC: THEORY OF A DISPARATE TREATMENT CASE TITLE VI
(PASSEQ)**

[Return to: Case Planning](#)

<p>Parties in Interest</p>	<p>Complainant: Name, Address, Phone Number, Race, Color or National Origin Recipient: Name, Address, Phone Number of Other Party Which Allegedly Committed Discriminatory Act Against Complainant Others: Name, Address, Phone Number and Nature of Any Other Interested Party</p>
<p>Allegations</p>	<p>A recipient treats similarly situated persons differently based on their race, color, or national origin under a federally assisted program or activity</p>
<p>Statute(s) and Applicable Regulatory Provision(s)</p>	<p>Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Regulations at 45 C.F.R. Part 80</p> <p>Does the recipient deny an individual any service, financial aid, or other benefit provided under the program on the basis of race, color, or national origin? See 45 C.F.R. § 80.3(b)(1)(i).</p> <p>Does the recipient provide any service, financial aid, or other benefit to an individual that is different, or is provided in a different manner, from that provided to others under the program on the basis of race, color, or national origin? See 45 C.F.R. § 80.3(b)(1)(ii). Does the recipient subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program on the basis of race, color, or national origin? See 45 C.F.R. § 80.3(b)(1)(iii).</p> <p>Does the recipient restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program on the basis of race, color, or national origin? See 45 C.F.R. § 80.3(b)(1)(iv).</p> <p>Does the recipient treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program on the basis of race, color, or national origin? See 45 C.F.R. § 80.3(b)(1)(v).</p> <p>Does the recipient deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program on the basis of race, color, or national origin? See 45 C.F.R. § 80.3(b)(1)(vi).</p> <p>Does the recipient deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program on the basis of race, color, or national origin? See 45 C.F.R. § 80.3(b)(1)(vii).</p>

<p>Elements of Claim</p>	<p>Essential legal requirements of a claim which must be factually proven:</p> <p>Complainant is a member of a protected class that applied for, and was eligible to receive benefits/services under a federally assisted program. Challenged action was taken on the basis of race, color, or national origin.</p> <p>Recipient was aware of the complainant's race, color, or national origin and acted in part because of it.</p> <p>Despite the complainant's eligibility, he or she was denied participation in, or receipt of benefits under, a federally assisted program and the recipient provided program benefits/services to similarly situated applicants or participants of a different race, color, or national origin.</p> <p>Recipient deviated from standard procedure (failed to consider factors normally considered) in determining eligibility for receipt of benefits or program participation. Once a prima facie case is established, OCR must determine whether the recipient has a legitimate nondiscriminatory reason for the challenged action. If the recipient articulates a legitimate nondiscriminatory reason for the challenged action, OCR must determine whether there is sufficient evidence to establish that the recipient's justification is a "pretext" for discrimination.</p> <p>Pretext is defined as a false or weak reason or motive advanced to hide the actual reason or motive behind an individual or entity's actions. An example of "pretext": A complaint is filed with OCR alleging that a network of licensed home health care agencies employing skilled nurses, physical therapists, occupational therapists, home health aides and homemakers violated Title VI and the HHS regulations when it refused to serve an African American family. The reason given by the network for the refusal to provide services was that the family resided in a low-income housing complex which is considered to be a "high risk" or area. The network had adopted "Employee Safety Guidelines," a policy which stated that employees would make no visits, or limited the hours of visits, to clients residing on certain streets and in specific housing complexes in the city. Evidence was presented, showing that at the time, the network was providing services to an adjacent complex which is almost all white. Based on this evidence, the complainants may assert that the reason stated by the network (safety) was a pretext for discrimination based on race.</p>
<p>Evidence in Support of and Against Claim</p>	<p>Proof of disparate treatment may be established by direct or indirect (circumstantial) evidence:</p> <p>Direct evidence -Written or verbal policies that demonstrate a bias against persons of a particular race, color or national origin that is linked to the challenged action; policies or practices that treat persons differently on the basis, of membership in a particular group; or statements by recipient or person acting on behalf of the recipient that indicate that race, color, or national origin was a motivating factor for the challenged action.</p> <p>Indirect (Circumstantial) Evidence -(inference of discrimination can be drawn by establishing a prima facie case). Elements of a prima facie case vary depending upon the facts of the complaint but typically include the following:</p> <p>Historical background – sequence of events that led to challenged action or decision;</p>

	<p>past history of discriminatory conduct. The sequence of events leading to the challenged action may be either direct or indirect. Many of such "events" will be in the nature of indirect evidence. For example: A student 'It a nursing school claims that he was dismissed from the program due to his race. Some of the "events" leading up to the dismissal might include: receipt of warning notices or course failure notices, meetings between the student and faculty members or administrators about the student's performance at which a heated discussion occurred (without direct reference to the complainant's race); instances involving other similarly situated students not of the complainant's race "let off the hook"; with a warning. None of this evidence directly demonstrates racial bias or discriminatory treatment, but constitutes pieces of a puzzle which, when considered along with all the other evidence, might lead a fact finder to conclude that the recipient was motivated by race in dismissing the student.</p>
<p>Questions re: Claim</p>	<p>5 Does the complaint state a violation over which OCR can exercise jurisdiction and take action? If the answer to this question is "No," state the reason _____ Should the complaint be referred to another agency? i. Yes ___ No___ Which Agency? _____</p> <p>6 Type of Financial Assistance (for example, Medicaid, Medicare Part A, HHS Grants or Contract (other than procurement contracts) Funds, TANF or other form of assistance) _____; Type of entity (e.g., hospital, nursing home, home health agency, social services agency) _____</p> <p>7 Was the complaint filed with OCR within 180 days of the alleged discriminatory act? If not, is there good cause for waiving the filing requirement (e.g., complainant could not reasonably be expected to know that the act was discriminatory within 180 days; complaint was timely filed with another agency that lacked jurisdiction; illness or other incapacity)? Explain.</p> <p>8 What are the contested factual issues in this case?</p>

Analysis of Recipient's Response to Complainant's Allegations

It is important to compare the allegations in the complaint with the response to determine what facts are agreed to by the parties and what facts are disputed. This chart facilitates that analysis.)

Complainant's Allegation	Recipient's Response	Is Additional Evidence Needed to Prove the Allegation? If yes, what type? (If the Recipient has admitted the allegation, generally no more proof is needed.)

Evidence Necessary to Prove or Disprove Claim

Element	Type of Evidence that Would Support Element	Likely Source of Supporting Evidence	Type of Evidence that Would Dispute Element	Likely Source of Disputing Evidence
1st Element: Complainant is a member of a protected class that applied for, and was eligible to receive, or was receiving benefits/services under a federally assisted program				
2nd Element Despite the complainant's eligibility, he or she was denied participation in,				

or receipt of benefits under, a federally assisted program (this includes any form of denial described in 45 C.F.R. § 80.3(b))				
3rd Element Recipient provided benefits/services to similarly situated applicants or program participants of a different race, color, or national origin				
4th Element Is there a legitimate nondiscriminatory reason asserted by the recipient for the challenged action?				
5th Element Is the reason proffered by the recipient a pretext for discrimination?				

Summary of the Complainant's Factual and Legal Theories

A. Factual Allegations

B. Legal Theory

Summary of the Recipient's Factual Allegations and Legal Theories

A. Factual Allegations

B. Legal Theory

APPENDIX EE: ANALYTICAL FRAMEWORK & BURDENS OF PROOF IN HIV/AIDS DISCRIMINATION CASES

[Return to: Case Planning](#)

Threshold Questions

1. Is the Complainant an individual with a disability?
2. Was the Complainant qualified to receive the services or treatment he/she sought from the Recipient?
3. Was the Complainant denied services or treated differently because of his/her HIV Status?

If the answers to each of these questions is **YES**, then ask:

- A. **Is there Direct Evidence**? Did the Recipient engage in conduct that shows without inference or presumption its intent to deny services or treat the Complainant differently because of his/her HIV status?

Examples:

Derogatory or blatant references to the Complainant's HIV status by the decision maker.

- Admission by the Recipient that the denial of services was based on the Complainant's HIV status.
- Complainant asked to submit to HIV testing as a condition of providing services although it is not the Recipient's normal practice

If The Answer to A. is **YES**, proceed using [Direct Evidence Analysis](#).

If The Answer to A. is **NO**, proceed using [Indirect or Circumstantial Evidence Analysis](#)

Direct Evidence Analysis

- I. Did the Recipient engage in conduct that shows without inference or presumption its intent to deny services or treat the Complainant differently because of his/her HIV status?
- I. If the answer to #1 is **NO**, then analysis turns to whether the Recipient would have reached the same decision absent consideration of the Complainant's HIV status.
- II. 3. If the answer to #1 is **YES**, does the Recipient contend that it denied services or treated the Complainant differently under circumstances involving concerns over the risk of HIV transmission and the health & safety of others?
- III. If the answer to #3 is **YES**, then use the following [Direct Threat](#) Analysis.

Direct Threat Analysis

"Direct threat" is a significant risk to the health and safety of others that:

- Cannot be eliminated by a modification of policies, practices, and procedures.
- Cannot be based on generalizations or stereotypes. “Direct threat” is a significant risk to the health and safety of others that
 - Cannot be eliminated by a modification of policies, practices and procedures.
 - Cannot be based on generalizations or stereotypes.

Determination of “Direct Threat” must be based on an individualized assessment that relies on current medical evidence.

Indirect or Circumstantial Evidence Analysis

Indirect or Circumstantial Evidence Analysis is also known as McDonnell Douglas v. Green burden shifting.

Step 1 – Establish Prima Facie Case

1. Is the Complainant an individual with a disability?
2. Was the Complainant qualified to receive services provided by the Recipient?
3. Is there data that creates an inference that the Complainant was treated differently or denied services because of his/her HIV status?

Step 2 - Legitimate Non-Discriminatory Reason

If the answer to each of the questions in Step 1 is **YES**, then the analysis turns to whether the Recipient can articulate a reason which, if believed, would support a finding that the Complainant’s HIV status was not the cause of the denial of service or differential treatment?

Examples:

- HIV+ foster parent’s application to adopt was denied due to parent’s violations of foster home rules, not his HIV status.
- Denial of health plan coverage for liver transplant was because procedure was part of an experimental trial and not due to patient’s HIV status.

Step 3 - Pretext

If the answer to Step 2 is **YES**, is there data demonstrating that the Recipient’s proffered reason was false, and that discrimination was the real reason for the Recipient’s actions?

The ultimate burden to show that the recipient engaged in discriminatory conduct rests with the complainant & OCR.

APPENDIX FF: ELEMENTS OF AN ADA, TITLE II/504 “MIS” CLAIM

[Return to: Case Planning](#)

ELEMENT	Explanatory Information - Likely source/type of evidence	Questions to Ask	Summary of Proof
<p>1. Preliminary Review & Processing</p> <p>Is the complaint timely?</p> <p>Has the complaint been filed against the proper party?</p> <p>Complainant Authorization for release of information/identify</p>	<p>Filed within 180 calendar days of the last act of alleged discrimination? Alleges a continuing pattern of discrimination? Determine need to extend time for filing where appropriate?</p> <p>(For discussion)</p>	<p>Based on facts alleged, should the complaint be filed or be construed to be filed against a State or local gov't, rather than (or in addition to) a private facility that receives no FFA.</p> <p>Is the complaint within the jurisdiction of DOJ, DOL, DOE, EEOC, etc.?</p>	

<p>2. OCR Jurisdiction Over Claim:</p> <p>a. Does the “named” respondent receive HHS federal financial assistance?</p>	<p>FFA includes both monetary and nonmonetary assistance. It may direct or indirect. FFA does not include contracts of guarantee or insurance, regulated programs, licenses, procurement contracts at fair market value, or programs that provide direct benefits. Sources: HHS § 504 regulations at 45 C.F.R. § 84.3 and HHS commentary to the regs (Appendix A to 45 C.F.R. Part 84) for definition of “recipient.”</p>	<p>Does the respondent receive:</p> <p>Medicaid Medicare, Part A Other HHS grant or contract funds Use or rent of federal property below market value Federal training Personnel on loan subsidies?</p>	
<p>b. Is the “named” respondent a public entity?</p>	<p>Public entity is -any State or local government -any department, agency, special purpose district or other instrumentality of a State, or States or local government</p> <p>(28 C.F.R. § 35.104)</p>		
<p>c. Finding: Jurisdiction Established? Yes _____ No _____</p> <p>If no, determine whether case should be referred to another agency, identify agency and make referral.</p>			

<p>3. Is the “affected person” (AP) a qualified person with a disability?</p> <p>a. Disability</p> <p>- Does the AP have a physical or mental impairment?</p> <p>- Does the impairment substantially limit one or more major life activities?</p>	<p>Sources: Complainant/affected person, medical records</p> <p>28 C.F.R. § 35.104; DOJ commentary to the regs (Appendix A to 28 C.F.R. Part 35) for definition and DOJ interpretations of “disability,” “physical or mental impairment” and “substantial limitation of major life activity.”</p> <p>HHS § 504 regulations at 45 C.F.R. § 84.3(j) and HHS commentary to the regs (Appendix A to 45 C.F.R. Part 84) for definition of “handicapped person,” “physical or mental impairment” and “major life activities.”</p>	<p>What is the nature of the person’s impairment?</p> <p>In what activities is the person limited? How significant is the limitation?</p>	
<p>- Does the AP use medications or any device to mitigate the effects of their disability?</p>	<p>Source: Interviews with AP/family members/providers/review of records.</p>	<p>-Does the device/measure solve the entire problem? -Is the person no longer limited in activities because AP uses device/measure? -Does the device/measure have side effects that limit a major life activity?</p>	

<p>If the AP does not have an impairment that substantially limits a major life activity:</p> <p>- does the AP have a record of disability, or</p> <p>- is the AP regarded as having an impairment that substantially a major life activity?</p>	<p><u>Sources:</u> Complainant/AP; family members; treatment records;</p> <p>Federal regulations (28 C.F.R. § 35.104) and Dept. of Justice commentary to the regulations (Appendix A to 28 C.F.R. Part 35) for definition and Dept. of Justice interpretation of “disability,” “physical or mental impairment,” “record of impairment,” “regarded as” impaired, and “substantial limitation of major life activity”</p> <p>HHS § 504 regulations at 45 C.F.R. § 84.3(j) and HHS commentary to the regs (Appendix A to 45 C.F.R. Part 84) for definition of “handicapped person,” “physical or mental impairment,” “major life activities,” “record of impairment” and “regarded as” impaired.</p>	<p>-What information is there about the AP’s past impairments and the extent of the limitations imposed on the person by these impairments?</p> <p>-What information is there concerning the manner in which a covered entity perceives the AP as being a person with a disability?</p>	
<p>b. Qualified</p> <p>Does the AP meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity?</p>	<p><u>Sources:</u> Information provided by the program about its eligibility criteria (annual reports, brochures, internet information, etc.); State or federal regulations regarding the nature of the program and the individuals to be served by the program; Information contained in the AP’s records regarding the AP’s eligibility for the program; interviews with AP/complainant; family members.</p>	<p>-What are the programs or activities provided by the recipient/entity that the complainant seeks?</p> <p>-What are the eligibility criteria for these programs?</p> <p>-Residency?</p> <p>-Financial eligibility?</p> <p>-Diagnostic or functional?</p> <p>-Other?</p>	

4. Questions Regarding MIS			
<p>a. Is this person currently institutionalized?</p> <p>If yes, is this person in the most integrated setting appropriate to their needs?</p>	<p><u>Sources:</u> Interviews with affected person/family/staff.</p> <p>Assessments, care/treatment/habilitation plans, discharge plans, periodic reviews (in nurses/physician notes), utilization review documents, PASARR screens and assessments; court or administrative rulings.</p>	<p>-What are the criteria for admission /continued stay and discharge from the facility?</p> <p>-What services are actually being provided?</p> <p>-What information exists about the needs of the individual?</p> <p>-How does the individual spend his/her day?</p> <p>-Are there people living in more integrated settings with disabilities similar to the disabilities of the affected individual?</p> <p>-Is this a setting in which the AP interacts with non-disabled peers? To what extent?</p>	

<p>b. What have treating professionals determined about whether the AP can be treated in a more integrated setting?</p>	<p><u>Sources:</u> (same as “is this the most integrated setting,” above)</p>	<p>-What process, if any, does facility/treating professionals use to assess appropriateness of placement in more integrated setting? -Have those processes been utilized with respect to the affected individual? -If yes, what is the result? -If no, why not? -What have treating professionals documented re: determination? -What have treating professionals communicated to the AP/family members/others?</p>	
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<p>c. Have the treating professionals exercised reasoned professional judgment to reach their determinations?</p>	<p><u>Sources:</u> (same as “is this the most integrated setting,” above)</p>	<p>-Did the professionals have the appropriate qualifications and credentials to make this assessment? -Are the professionals aware of current standards in the field regarding the provision of community-based services to individuals with disabilities such as the AP? -Are the professionals aware of existing community resources or those that could reasonably be developed to serve people such as the AP? -Was the assessment based solely on whether the services the AP needs are available? -Did the professionals follow the State’s/facility’s own process for assessing appropriateness of placement in more integrated setting? -Was the AP involved in or consulted about the determination? -Has the AP ever sought review of treatment professional’s determinations regarding placement - to what end?</p>	
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d. If not institutionalized, where is the AP living?	Interviews		
e. Is the AP at risk of institutionalization?	Sources: Interviews with AP/ family/staff. Assessments, care/treatment/habilitation plans, discharge plans, periodic reviews (in nurses/physician notes), utilization review documents, PASARR screens and assessments; court or administrative rulings; court settlements/orders, planning documents (state mental health and mental retardation plans, Medicaid managed care contracts, statutes and regulations concerning the care of vulnerable adults including APS etc).	<ul style="list-style-type: none"> -What is the AP's current health status? -Level of care? -Plan of care? -Are there any assessments of (1) the level/type of services needed by the individual; (2) the adequacy of current services/supports; (3) the likelihood of unnecessary institutionalization and when it might occur? -Are current supports adequate? Likely to continue? -Has anything happened that threatens the continuation of services? -Is anything likely to happen in the near future (e.g. ill health or age of parent caretaker)? -Does the state define "at risk" in statutes, regs, policies, court documents? 	
f. Is there an allegation that this setting, although not an institution, is not the most integrated one appropriate to the AP's needs?	Interviews, records.	-Are there appropriate supports or services that would allow the AP to interact non-disabled peers to the fullest extent possible?	

<p>g. Does the AP oppose treatment or services in the most integrated setting?</p>	<p>Interview with AP, staff, family members.</p>	<p>Has the AP been asked his/her preference?</p> <p>Has the affected person expressed a preference for one type of placement over another?</p>	
<p>h. Did the AP make an informed choice?</p>		<p>-What information was given to the AP about feasible community options and the availability of services?</p> <p>-Was the AP given any information that might dissuade the AP from making an informed choice?</p> <p>-Was the AP provided an opportunity to visit community programs?</p>	

<p>i. Is there a guardian, family member or other person who purports to speak for the AP?</p>	<p>Note: Consult with headquarters regarding cases involving family members or guardians who are opposing community placement.</p>	<ul style="list-style-type: none"> -Have treatment professionals had the opportunity to assess this AP for placement? -What result? -Does the family member/guardian have legal authority to act as a surrogate decision maker for the AP individual? -What is the relationship of the family member/guardian to the AP? -Has the family member/guardian identified specific reasons for opposing placement? -What does AP want? -Can the AP understand and weigh the risks and benefits of the choices presented? -Does the AP have capacity to make an informed choice? - Does the entity have a policy/procedures to address these issues? -Has the family member/guardian been given information that could facilitate an informed choice? 	
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<p>5. Questions Relating to Defenses</p> <p>a. Can treatment or services in a more integrated setting be reasonably accommodated?</p> <p>b. Will the provision of services in a more integrated setting result in a fundamental alteration of the relevant program?</p>	<p>Sources: State/institutional/program budget documents; State/institutional/program information (e.g. annual reports) regarding range of services offered, purpose of programs and services, plans for/goals to expand or further develop community-based services and sources of funding for those services (e.g. State funding, Medicaid waiver programs, Medicare, programs supported by special grants or foundations); interviews of/documents provided by community providers regarding the cost, capacity and nature of their services and potential for expanding such services; interviews of/documents provided by CMS staff regarding availability of CMS-funded programs and CMS policies that could facilitate the development of community-based services and supports; interviews with affected individuals and with State/institutional/program staff regarding the cost of providing the individual with care in the most integrated setting; court decisions/settlements addressing and interpreting “reasonable modification” and “fundamental alteration.”</p>	<p>-What is the cost of providing the AP with services in the most integrated setting? -What are the resources available to provide such treatment or services? -What is the cost of providing services to avoid unnecessary institutionalization for an individual who is “at risk”? -What are the resources available to provide such services?</p> <p>-Would providing services to the AP in the most integrated setting (or providing services needed to avoid unnecessary institutionalization) fundamentally alter the nature of the relevant service, program or activity?</p> <p>-Is providing services in the most integrated setting consistent with the nature and purpose of the relevant service, program, or activity?</p>	
<p>c. Does the covered entity have other potential defenses with respect to reasonable</p>	<p>Sources: State <u>Olmstead</u> plan and/or other relevant planning documents regarding the provision of services in the most</p>	<p>-Does a “comprehensive, effectively working plan” exist for providing individuals</p>	

<p>accommodation and/or fundamental alteration?</p>	<p>integrated setting; documents regarding waiting lists for community services; court decisions/settlements regarding the rights of individual on wait lists to receive services; interviews of/ documents provided by individuals involved in <u>Olmstead</u> or other planning efforts.</p>	<p>with disabilities with services in the most integrated setting appropriate to their needs? -Are the issues in the complaint regarding the affected individual addressed in State planning efforts? -Is there a waiting list(s) that moves “at a reasonable pace” to provide individuals with disabilities with services in the most integrated setting appropriate to their needs? -Will the State’s ability to maintain a range of services for people with disabilities be affected if the individual is provided services in the community or in a more integrated setting? -Will the State’s ability to administer services fairly be affected?</p>	
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APPENDIX JJ: DATA REQUEST LETTER (TEMPLATE)

[Return to: Data Request Letters](#)

##Date##
##Title## ##POC First Name## ##POC Last Name##
##POC Official Title##
##Address##
##City##, ##State## ##Zip Code##

Our Reference number: ##Transaction Number##

Dear ##Title## ##POC Last Name##:

Please be advised that the Department of Health and Human Services (HHS), Office for Civil Rights (OCR) has received a complaint on ##Receipt Date##, alleging that ##Covered Entity## is engaged in unlawful discrimination based on **[Insert Basis(es)]**. Specifically, the complaint alleges **[Optional - Add Specific Factual Allegations]**. OCR has reviewed the complaint allegations and determined that we have the authority to investigate the issues raised. **[For Hill-Burton Cases ONLY, Add the following sentence]:** A copy of the complaint is enclosed for your records.

[INSERT 1: ONE FFA AUTHORITY (AGE, TITLE VI, 504, TITLE IX)]

OCR is responsible for enforcing **[Specific Authority]** as it applies to entities that receive federal financial assistance from HHS. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]**, and applies to all of the recipient's programs and activities.

[INSERT 2: TWO FFA AUTHORITIES (AGE, TITLE VI, 504, TITLE IX)]

OCR is responsible for enforcing **[Specific Authority]** as it applies to entities that receive federal financial assistance from HHS. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]**, and applies to all of the recipient's programs and activities. OCR also is responsible for enforcing **[Specific Authority]** as it applies to entities that receive HHS federal financial assistance. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]** and also applies to all of the recipient's programs and activities.

[INSERT 3 - ADA, TITLE II]

OCR is responsible for enforcing Title II of the Americans with Disabilities Act (ADA) as it applies to public entities providing health care and social services. ADA, Title II applies to all programs and activities of state and local government entities regardless of whether they are recipients of Federal financial assistance.

[INSERT FOUR: ADA and ONE FFA AUTHORITY (e.g., Section 504).]

OCR is responsible for enforcing Title II of the Americans with Disabilities Act (ADA) as it applies to public entities providing health care and social services. ADA Title II applies to all

programs and activities of state and local government entities regardless of whether they are recipients of Federal financial assistance. OCR also is responsible for enforcing **[Specific Authority]** as it applies to entities that receive HHS federal financial assistance. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]** and also applies to all of the recipient's programs and activities.

[INSERT FIVE: TITLE II, ADA and TWO FFA AUTHORITIES]

OCR is responsible for enforcing Title II of the Americans with Disabilities Act (ADA) as it applies to public entities providing health care and social services. ADA Title II applies to all programs and activities of state and local government entities regardless of whether they are recipients of receive Federal financial assistance. OCR also is responsible for enforcing **[Specific Authority]** as they apply to entities that receive HHS federal financial assistance. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]** , while **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]**. Both apply to all of the recipient's programs and activities.

[INSERT SIX: HILL BURTON CASES]

OCR is responsible for enforcing the community service obligations of Title VI and XVI of the Public Health Service Act (commonly called the "Hill Burton Act") and its implementing regulations, 42 C.F.R. § 124.601 et seq. Under the community service obligations of the Hill Burton Act, facilities that have received Federal financial assistance under Title VI and XVI of the Public Health Service Act are required to make their services available to all persons residing in the facility's service area without discrimination based on race, color, national origin, creed or any other ground unrelated to the individual's need for the service or the availability of the service in the facility.

[INSERT SEVEN: FFA AUTHORITY AND HILL BURTON]

OCR is responsible for enforcing **[Specific Authority]** as it applies to entities that receive federal financial assistance from HHS. **[Specific Authority]** prohibits discrimination based on **[Specific Basis(es)]**, and applies to all of the recipient's programs and activities. OCR is also responsible for enforcing the community service obligations of Title VI and XVI of the Public Health Service Act (commonly called the "Hill Burton Act") and its implementing regulations, 42 C.F.R. § 124.601 et seq. Under the community service obligations of the Hill Burton Act, facilities that have received Federal financial assistance under Title VI and XVI of the Public Health Service Act are required to make their services available to all persons residing in the facility's service area without discrimination based on race, color, national origin, creed or any other ground unrelated to the individual's need for the service or the availability of the service in the facility.

A copy of the applicable regulation[s] is [are] enclosed for your convenience.

OCR is initiating an investigation of the complaint allegations to determine if there has been a failure to comply with the requirements of the applicable regulations. To facilitate our investigation, we have attached a list of needed data and information and request that you submit your responses to us within 30 days of receipt of the date of this letter. Please number

each response to correspond with the number in the data request. We also encourage you to furnish any additional material you would like us to consider in determining your compliance status. If an on-site review is necessary, we will contact you or your designee to make appropriate arrangements.

Our authority to collect information in order to determine the compliance status of your entity is found at ***[Insert I- for all authorities except Hill Burton]***

45 CFR §80.6(c), which states:

Each recipient shall permit access by the responsible department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. . . .

[Insert II - for Hill Burton Cases ONLY]

42 C.F.R. § 124.606(a)(3), which states:

When the Secretary investigates a facility, the facility shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

[Insert III: For cases involving more than one authority where one is Hill Burton]

45 CFR §80.6(c), which states:

Each recipient shall permit access by the responsible department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. . . .

OCR also is authorized to access information needed to investigate this complaint under the Hill Burton Act. Specifically, 42 C.F.R. § 124.606(a)(3) provides:

When the Secretary investigates a facility, the facility shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

We will attempt to complete the investigation of this complaint and advise you of our findings as quickly as possible. If we determine that a violation of a regulation or statute has occurred, we will seek voluntary corrective action. If we are unsuccessful in obtaining a voluntary resolution of this matter, we will refer this matter to our headquarters for appropriate action, which may include formal enforcement proceedings through an administrative hearing or referral to the Department of Justice.

[For Non Hill Burton Cases]

Please be advised that OCR's regulations prohibit an agency or institution from harassing, intimidating or retaliating against an individual who has filed a complaint or participated in the investigation of a complaint. Any such action may constitute a violation of 45 C.F.R. Section 80.7(e), which applies to OCR investigations. We request that you take all necessary steps to assure that this prohibition is not violated in connection with this complaint.

[For Hill Burton Cases]

Please be advised that a complainant may have the right to a private action in connection with a Hill Burton complaint. 42 CFR Section 124.606(a)(4), states:

The Act provides that if the Secretary dismisses a complaint or the Attorney General has not brought an action for compliance within six months from the date on which the complaint is filed the person filing it may bring a private action to effectuate compliance with the assurance. If the Secretary determines that he will be unable to issue a decision on a complaint or otherwise take appropriate action within the six month period, he may, based on priorities for the disposition of complaints that are established to promote the most effective use of enforcement resources, or on the request of the complainant, dismiss the complaint without a finding as to compliance prior to the end of the six month period, but no earlier than 45 days after the complaint is filed.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please be assured that our office is committed to resolving this matter in an efficient and timely manner. If you have any questions, please do not hesitate to contact **##Staff Name##**, Investigator, at **##Staff Telephone##** (Voice), **##TDD Number##** (TDD) When contacting this office, please remember to include the transaction number that we have given this file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##

##Regional Manager Title##

Enclosures

Transaction number: ##Transaction Number##

DATA REQUEST

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

APPENDIX LL: DENIAL OF ACCESS LETTER EXAMPLE

[Return to: Covered Entity's Response to Information Request](#)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Our Reference Number: XX-XXXXX

RECIPIENT CONTACT NAME AND ADDRESS

Dear Mr. _____:

In our (DATE) and (DATE), letters, the Office for Civil Rights (OCR) requested that you provide our office with data pertaining to X's' discrimination complaint. We followed up these requests by telephone and facsimiles. During your most recent (Date) telephone conversation with _____, the OCR Investigator assigned to this case, you assured him that the Center would provide OCR with the requested data by (DATE). To date we have received none of the requested information.

OCR has previously advised the Center of OCR's authority under 45 C.F.R. § 80.6(c) to access records and other information which may be pertinent to our investigation. Section 80.6(c) provides in pertinent part:

Each recipient shall permit access by the responsible department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance.

Section 80.6(c) is contained in the regulation which implements Title VI of the Civil Rights Act of 1964, 45 C.F.R. § 80. The procedural provisions of section 80, set forth at 45 C.F.R. §§ 80.6-80.10, are made applicable to section 504 of the Rehabilitation Act through 45 C.F.R. § 84.61. These regulations represent a congressional delegation to exercise quasi-legislative authority and were enacted in accordance with the procedural requirements of the Administrative Procedures Act. They therefore have the force and effect of Federal law. See *Chrysler Corp. v. Brawn*, 441 U.S. 281, 295-96, 301-03,313-314 (1979).

Unless we receive the requested data **within 15 days** of receipt of this letter, OCR will make arrangements to visit the Center's facility during normal business hours to access the data. If at that point the Center refuses to permit OCR access, OCR will be forced to conclude that the Center has elected to deny OCR access in violation of 45 C.F.R. § 80.6(c). I should remind you that a violation of Section 504 or its implementing regulations can result in a loss of Federal financial assistance or the imposition of other sanctions.

I look forward to receiving the data we requested. If you have any questions, please contact Mr. (NAME) of my staff at (TEL.#) or by e-mail at (NAME)@hhs.gov.

Sincerely,

Regional Manager

Enclosure: Data Request

APPENDIX MM: LETTER TO COMPLAINANT REQUESTING ADDITIONAL INFORMATION DURING THE COURSE OF THE INVESTIGATION (TEMPLATE)

[Return to: Verification of Facts](#)

[Return to: The complainant's or injured party's refusal to cooperate](#)

##Title## ##First Name## ##Last Name##

##Address##

##City##, ##State## ##Zip Code##

Our Reference Number: ##Transaction Number##

Dear ##Title## ##Last Name##:

Thank you for your complaint received on [DATE] by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

During the course of our investigation, we have determined that we need some additional information from you in order to continue investigating the concerns raised in your complaint. Within (20) days, please contact [STAFF NAME, TITLE], who is assigned to your complaint, at [TELEPHONE NUMBER VOICE AND TDD] or by e-mail at [ADDRESS]. If you are unable to contact us by telephone or e-mail, please mail us the following information:

[Insert description of what OCR needs]

Please return the requested information to our office within 20 calendar days of the date of this letter. If we do not receive the requested information from you, we will not be able to continue our investigation, and we will close your case.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have any questions, please write us or contact ##Staff Name## at ##Staff Telephone## (Voice), ##TDD Number## (TDD), or by e-mail at *[Insert e-mail address]*. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

Sincerely,

##Regional Manager Name##

##Regional Manager Title##

APPENDIX NN: SAMPLE INVESTIGATIVE REPORT

[Return to: Analysis of Investigative Data](#)

[Return to: Headquarters Review and Approval Requirements](#)

I. Case Identification Data

- A. Transaction Number: XX-XXXX
- B. Covered Entity: (NAME) County Department of Social Services; (ADDRESS)
- C. Complainant: The Complainant
- D. Staff: (NAME), Equal Opportunity Specialist
- E. Supervisor: : (NAME), Deputy Regional Manager

II. Statement of Jurisdiction

A. Legal Authorities

Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35.

Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, et. seq., and its implementing regulation at 45 C.F.R. Part 84.

B. Legal Framework

OCR conducted this investigation pursuant to the ADA and its implementing regulation at 28 CFR Part 35, and Section 504 and its implementing regulation found at 45 C.F.R. Part 84. Both the ADA and Section 504 prohibits discrimination on the basis of disability and apply to all of an entity's programs and activities. OCR has jurisdiction over this matter under the provisions of Title II of the ADA as it applies to public entities providing health care and social services. Title II of the ADA applies to all programs and activities of state and local governmental entities regardless of whether they are recipients of Federal financial assistance.

OCR also has jurisdiction over this matter under the provisions of Section 504 as it applies to entities that receive Federal financial assistance. As a recipient of Federal financial assistance, the (NAME) County Department of Social Services (XCDSS) is obligated to comply with Section 504. OCR is authorized to conduct this investigation pursuant to 28 C.F.R. § 35.190(b)(3) and 45 C.F.R. § 80.7, which is incorporated by reference into Section 504 at 45 C.F.R. § 84.61.

C. Federal Financial Assistance

XCDSS is a recipient of Federal financial assistance from the U.S. Department of Health and Human Services under Title XVIII and XIX of the Social Security Act of 1965 (Medicare and Medicaid). As a recipient, XCDSS must comply with the requirements of Section 504 of the Rehabilitation Act of 1973.

III. Issue

Whether XCDSS discriminated against the complainant and other individuals with physical disabilities by denying them equal access to XCDSS' facilities because structural barriers and other deficiencies make the programs, services, and activities offered in XCDSS' facilities inaccessible to individuals with mobility impairments.

IV. Background

The complainant filed a complaint with OCR on January ____, 200X alleging that the XCDSS discriminated against him on the basis of disability. The complainant has a mobility impairment which requires him to walk with a cane and is unable to travel up or down stairs. The complainant alleged that he and other individuals with physical disabilities do not have equal access to XCDSS' facilities because the entrances to XCDSS' buildings at (NAME)Street and (NAME)Boulevard can not be accessed independently, there are no designated accessible parking spaces and the restrooms are inaccessible to individuals with disabilities. The complainant also alleged that XCDSS has not designated a person to coordinate its efforts to comply with the ADA and Section 504.

According to the official website of XCDSS, XCDSS operates more than ten programs and the majority of the financial resources needed to fund the programs come from a combination of county, state and federal sources including HHS. During OCR's on-site interview of XCDSS' Commissioner, OCR was informed that XCDSS operates its programs primarily out of two buildings and has a staff of approximately 70 individuals. According to the 2006 U.S. Census Bureau more than 25,800 individuals with disabilities live in (NAME) County.

V. Data Analysis

A. Recipient's Data

OCR reviewed **(NAME) County Department of Social Services' Position Statement (Position Statement)** from (NAME), the Deputy County Attorney. The Position Statement describes XCDSS' position concerning the complainant's allegations. The Position Statement indicates that XCDSS' main office building at (NUMBER) (NAME) Street was constructed between 1850 and 1875 and is not accessible to individuals with physical disabilities. The Position Statement further indicates that XCDSS plans to move all services at the (NAME)Street building to a new building, currently under construction at (NUMBER)(STREET), by (DATE). The Position Statement also indicates that the new building will be in full compliance with the ADA and Section 504.

The Position Statement indicated that the (NAME) Street building has signage posted around the outside of the building that indicates if a person needs access then he should call the telephone number on the sign. The Position Statement also indicated that individuals with

disabilities who require services from (NAME) Street are either seen at an alternate location or in their home, if required. In addition, the Position Statement indicated that the two accessible alternate locations used to accommodate individuals with disabilities, who are unable to access the (NAME) Street office, are buildings at (NUMBER) (NAME) Boulevard and (STREET). According to the Position Statement, the (NAME) Boulevard building was refurbished and renovated approximately in 2002 and both alternate locations are in full compliance with the ADA and Section 504. However, the Position Statement acknowledged that there are no disability accessible parking signs erected in the parking lot of the (NAME) Boulevard facility.

According to the Position Statement, the Commissioner of XCDSS is designated as the ADA coordinator along with the Director of Facilities and XCDSS has no written grievance procedures.

OCR examined **Photographs of (NAME) County Department of Social Services' (NAME) Boulevard Facility (the Photographs)**. The Photographs are depictions of the front entrance to the building which consist of two sets of double doors, the interior hallway, and the door to a public restroom which has signage on it with the universal symbol for disability accessible. The Photographs also include depictions of the inside of the public restroom which has a separate toilet stall with grab bars, a sink, mirror, and soap dispenser. The Photographs further include depictions of the parking lot that has accessible parking spaces as evidenced by the universal symbol for disability accessible painted in the spaces and accessible signage hanging on the walls.

OCR reviewed the (DATE) **Commissioner's Memo to the Deputy County Attorney (the Memo)**. The Memo indicated that the (NAME) Boulevard facility is used as an alternate site to provide services to individuals with disabilities who are unable to access the (NAME) Street office but no programs or services have been relocated from (NAME) Street to (NAME) Boulevard. The Memo further indicated that the (NAME) Street office conducts activities to establish and maintain eligibility for the following programs: Food Stamps, Medicaid, HEAP, Family Assistance, and Fair Hearings while the (NAME) Boulevard facility is used for the following programs: Child Protective Services, Long Term Preventive Services, Foster Care Services, Adoption Services, and Childcare Eligibility Services. The Memo also indicated that XCDSS' staff schedule appointments with consumers, provide them with directions and then meet them at the (NAME) Boulevard office to conduct face-to-face contact. In addition, the Memo indicated that XCDSS has no written grievance procedures and the Commissioner maintains an open door policy to address issues about access to XCDSS' facilities.

B. Complainant's Data

OCR examined XCDSS' 2005 **ADA Self-Evaluation Survey (Survey)**, which was provided by the complainant, that assessed XCDSS' programs, policies, and practices to determine their compliance with the ADA. The Survey indicated that XCDSS does not provide notice to applicants and beneficiaries with information about their rights under the ADA and does not have written grievance procedures for resolving complaints of disability discrimination arising under the ADA. The Survey also indicated that XCDSS does not have written procedures for providing reasonable accommodations to individuals who are unable to access XCDSS' programs and services. The Survey further indicated that applicants and beneficiaries who can

not access XCDSS' facilities learn about XCDSS' accessible alternate locations through "word of mouth".

OCR also reviewed a **(DATE) letter (the Letter)** written to XCDSS by the (NAME) State Office of Temporary and Disability Assistance (OTDA), which has oversight responsibilities for XCDSS' programs, services and activities. The Letter indicated that OTDA received three complaints about individuals with disabilities who were unable to access XCDSS' (NAME) Street office and had to be assisted by XCDSS staff outside on the sidewalk. The Letter further indicated that although XCDSS has alternate locations to assist individuals who can not access the (NAME) Street office, XCDSS does not advertise to the public the availability of the alternate sites. The Letter also indicated that OTDA has issued directives to local social services departments to develop procedures that ensure persons with disabilities have equal access to programs, services and activities.

C. Summary of Interviews

OCR interviewed **the Complainant** on several occasions throughout the investigation. The Complainant indicated on (DATE) that XCDSS' building on (NAME) Street is not accessible to individuals with physical disabilities because there are two separate flights of stairs to the entrance of the building and there is no ramp, elevator or other way to enter the building. The complainant also indicated that XCDSS conducts administrative fair hearings in the (NAME) Street building and individuals with disabilities frequently can not get same day service if they visit the building unannounced. The complainant further indicated that XCDSS' building on (NAME) Boulevard is also not accessible to individuals with physical disabilities because there are no designated parking spaces for individuals with disabilities, the bathrooms and front door to the building are not accessible for wheelchairs, and the stalls in the bathroom lack wheelchair access.

The complainant was also interviewed on (DATE) and indicated that when he went on (DATE) to the XCDSS office on (NAME) Street for recertification for public assistance, he had to stand in the rain and wait for a XCDSS employee to come out to the curb to collect his paperwork. The complainant further indicated that he had to alert the building security guard to notify the XCDSS staff that he was there for his appointment. In addition, the complainant stated that it takes XCDSS at least two to three days to arrange appointments for the provision of services at the alternate sites.

OCR interviewed on (DATE) the **Complainant's Witness**, (NAME), to ascertain her understanding of the accessibility status of XCDSS' facilities. Ms. (NAME) indicated that she is the former Coordinator of Disability Services for the City of (NAME) and has been in a wheelchair for approximately 30 years. Ms. (NAME) further indicated that she has been to the XCDSS' building on (NAME) Boulevard on several occasions and it is not accessible to people with physical disabilities. Ms. (NAME) also indicated that the parking lot does not have accessible parking spaces for a van, the front door to the building is too heavy to open without assistance, and the restroom stall is too narrow to access. In addition, Ms. (NAME) indicated that XCDSS does not provide notice about the (NAME) Boulevard facility as an alternate site to accommodate individuals with disabilities.

OCR interviewed on (DATE) **XCDSS' Commissioner (NAME)** at the (NAME) Boulevard building. Commissioner (NAME) indicated that he has managed XCDSS for six years and has a staff of about 70 individuals. Commissioner (NAME) also indicated that XCDSS' main office on (NAME) Street is inaccessible to individuals with physical disabilities and the (NAME) Boulevard facility is used as an alternate site to provide services to individuals who can not access the (NAME) Street office. Commissioner (NAME) further indicated that XCDSS is moving all of the services at (NAME) Street to a new office building which will be ready for occupancy either in December 20XX or January 20XX. In addition, Commissioner (NAME) indicated that he will serve as XCDSS' ADA coordinator and that there are no ADA notices issued by XCDSS informing the public of its rights under the ADA.

VI. On-Site Examination

On (DATE), OCR staff took measurements of various facilities and items at the XCDSS building on (NAME) Boulevard. OCR staff identified several accessibility concerns. The (NAME) Boulevard building is subject to the ADA Accessibility Guidelines (ADAAG) because the office building was refurbished and renovated approximately in 2002 after the enactment and enforcement of ADAAG.

I. Entrances and Interior Doors

Actual Measurement: The interior doors in the front entrance of the building on (NAME) Boulevard had a pull force that measured over nine pounds.

ADAAG Requirement – The maximum force for pushing or pulling open an interior door shall be five pounds.

II. Restroom

Signage

Actual Measurement: The sign designating the handicap accessible restroom on the first floor is fifty-nine inches high and has no raised text or Braille on it.

ADAAG Requirement – Where permanent identification is provided for rooms and spaces, signs shall be mounted at a height of sixty inches above the finish floor to the centerline of the sign. Letters and numerals shall be raised and shall be accompanied with Braille.

Door Hardware

Actual Measurement: The latch lock on the inside of the accessible restroom door is fifty-five inches high.

ADAAG Requirement – Handles, pulls, latches, locks, and other operating devices on accessible doors shall be mounted no higher than forty-eight inches above the finished floor.

Dispensers

Actual Measurement: The hand towel dispenser in the accessible restroom is fifty-five inches high.

ADAAG Requirement – The highest operable part of dispensers shall be forty-eight inches if the clear floor space only allows a forward approach by a person in a wheelchair to the object.

Mirrors

Actual Measurement: The bottom edge of the mirror in the restroom was measured at approximately fifty-three inches from the floor.

ADAAG Requirement – Mirrors shall be mounted with the bottom edge of the reflecting surface no higher than forty inches above the finish floor.

Exposed Pipes and Surfaces

Actual Measurement: The drain pipes under the sink are not insulated.

ADAAG Requirement – Hot water and drain pipes exposed under sinks shall be insulated or otherwise configured so as to protect against contact. There shall be no sharp or abrasive surfaces under sinks.

III. Parking

Actual Measurement: The two van accessible parking spaces directly adjacent to the building in front of the *PSI* signage do not have additional signs indicating that they are van accessible.

ADAAG Requirement – Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Van accessible spaces shall have an additional sign “Van-Accessible” mounted below the symbol of accessibility. Handicap accessible signs shall be located so they cannot be obscured by a vehicle parked in the space.

Legal Analysis

Under the ADA, a public entity is required to operate each program, service or activity it provides so that, when viewed in its entirety, the program, service or activity is readily accessible to and usable by individuals with disabilities. See, C.F.R. § 35.150. XCDSS acknowledged that its main office at (NUMBER) (NAME) Street is inaccessible to individuals with physical disabilities and can not be structurally modified or altered to comply with the ADA and Section 504. OCR learned that XCDSS’ (NAME) Street office has signage at the front of the building with a phone number alerting visitors who need special assistance to call for help. OCR was informed that a staff person is assigned to answer the phone line that is associated with the signage and that it could take a few days for XCDSS to get back to someone who calls and leaves a message requesting special assistance. In addition, OCR learned that it may take one to two days for an individual with a physical disability to get an appointment for services at a XCDSS alternate site and that it is not uncommon for individuals with disabilities requesting services at (NAME) Street to have to wait outside on the sidewalk until they receive assistance by XCDSS staff. Furthermore, OCR learned that XCDSS does not advertise the availability of

the alternate sites to accommodate individuals with physical disabilities who require services from XCDSS' (NAME) Street office.

In addition, OCR learned during an on-site review that XCDSS' alternate site, (NUMBER) (NAME) Boulevard, where arrangements have been made to provide services to individuals with physical disabilities who are unable to access the (NAME) Street office also has barriers that make the alternate site inaccessible to individuals with physical disabilities. As such, the programs, services, and activities provided by XCDSS at the (NAME) Street and (NAME) Boulevard offices do not appear to be accessible to and usable by individuals with physical disabilities. Therefore, XCDSS' facilities are not accessible to individuals with physical disabilities.

The ADA also requires public entities to carry out several administrative functions to ensure that individuals with disabilities receive an equal opportunity to benefit from a public entity's programs, services, or activities. Each public entity is required to, among other things, provide public notice to applicants, participants and other interested persons about the ADA requirements and adopt and publish procedures for resolving grievances arising under the ADA. See, 42 C.F.R. §35.106. In addition, the public notice must be available in alternate formats so that it is accessible to all individuals. XCDSS acknowledged that it has not provided public notice about the ADA requirements to applicants and participants of programs administered by XCDSS. Furthermore, XCDSS also acknowledged that it has no written procedures for resolving grievances under the ADA and Section 504.

VIII. Conclusion

Based on the above-described compliance issues, OCR finds that XCDSS discriminates against individuals with physical disabilities by denying them equal access to the programs, services and activities administered by XCDSS. Therefore, XCDSS is not in compliance with the ADA and Section 504.

Since XCDSS has indicated a willingness to resolve the compliance issues as expeditiously as possible OCR believes that the appropriate course of action is to address these concerns via a resolution agreement. Under the proposed Resolution Agreement XCDSS would undertake the following actions: continue to take steps to ensure that the new building under construction at (NUMBER) (STREET) complies with the ADA and Section 504, make alterations to the alternate site at (NUMBER) (NAME) Boulevard to ensure that the site is readily accessible to individuals with physical disabilities, provide public notice about the ADA requirements to applicants and participants of programs administered by XCDSS, adopt and publish grievance procedures for resolving complaints of disability discrimination arising under the ADA and Section 504, develop and implement interim policies and procedures for the provision of services to individuals with physical disabilities who request services at the (NAME) Street office and advertise to the public the availability of an alternate location for the provision of services at XCDSS' (NAME) Street office and the procedures for obtaining such services.

APPENDIX OO: Sample Action Memo

[Return to: Analysis of Investigative Data](#)

[Return to: Headquarters Review and Approval Requirements](#)

MEMORANDUM

TO: (NAME)
Director

THROUGH: (NAME)
Deputy Director, Civil Rights Division

FROM: (NAME)
Regional Manager, Region II

DATE: XXXXX

SUBJECT: Action Requested by: (DATE); Approval of OGC-Reviewed Draft Resolution Agreement XX-XXXXX Complainant v. (NAME) County Department of Social Services)

ISSUE

Region II requests review and approval of the attached agreement concerning (NAME) County Department of Social Services (XCDSS). The agreement resolves several compliance issues discovered during a complaint investigation. As interim procedures are needed to ensure that individuals with physical disabilities are provided with equal access to all of XCDSS' programs, services, and activities Region II request an expeditious review.

DISCUSSION

Region II received a complaint on (DATE), filed by the complainant alleging that the XCDSS discriminated against him on the basis of disability. Specifically, the complainant alleged that he and other individuals with physical disabilities do not have equal access to XCDSS' facilities because the entrances to XCDSS' buildings can not be accessed independently, there are no designated accessible parking spaces and the restrooms are inaccessible to individuals with disabilities. The complainant also alleged that XCDSS has not designated a person to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of The Rehabilitation Act of 1973 (Section 504).

XCDSS operates more than ten programs and the majority of the financial resources needed to fund the programs come from a combination of county, state and federal sources including HHS. XCDSS operates its programs primarily out of two buildings, (NUMBER) (NAME) Street and (NUMBER) (NAME) Boulevard, and has a staff of approximately 70 individuals. The main office building located at (NUMBER) (NAME) Street was constructed between 1850 and 1875 and the (NAME) Boulevard facility was renovated and refurbished in 2002. More than 25,800 individuals with disabilities live in (NAME) County.

Under both the ADA and Section 504, a covered entity is required to operate each program, service or activity it provides so that, when viewed in its entirety, the program, service or activity is readily accessible to and usable by individuals with disabilities. See, C.F.R. § 35.150. XCDSS acknowledged that its main office at (NUMBER) (NAME) Street is inaccessible to individuals with physical disabilities and can not be structurally modified or altered to comply with the ADA and Section 504. OCR learned that XCDSS' (NAME) Street office has signage at the front of the building with a phone number alerting visitors who need special assistance to call for help. OCR was informed that a staff person is assigned to answer the phone line that is associated with the signage and that it could take a few days for XCDSS to get back to someone who calls and leaves a message requesting special assistance. In addition, OCR learned that it may take one to two days for an individual with a physical disability to get an appointment for services at a XCDSS alternate site and that it is not uncommon for individuals with disabilities requesting services at (NAME) Street to have to wait outside on the sidewalk until they receive assistance by XCDSS staff. Furthermore, OCR learned that XCDSS does not advertise the availability of the alternate sites to accommodate individuals with physical disabilities who require services from XCDSS' (NAME) Street office.

OCR conducted, along with OGC regional counsel, an on-site review of XCDSS' alternate site at (NAME) (NAME) Boulevard. Prior to the on-site, OCR staff was provided with instructions and training on accessibility standards by two architects and an engineer at the Department of Housing and Urban Development, Office of Insured Health Care Facilities (OIHCF), Division of Architecture and Engineering (DAE). OIHCF and DAE are former components of HHS. Staff at OIHCF and DAE also examined photographs and site plans of XCDSS' (NUMBER) (NAME) Boulevard facility with OCR staff prior to the on-site review. During the on-site review measurements of various facilities and items at (NUMBER) (NAME) Boulevard were taken using the *ADA Checklist for Existing Facilities* version 2.1 which can be found at <http://www.ada.gov/racheck.pdf>. OCR's measurements of the facility are contained in the investigative report. Of particular relevance, OCR found that the parking lot and curb leading to the entrance at (NUMBER) (NAME) Boulevard are on the same level and the unisex restroom stall is ADA compliant under Figure 30(b) in § 4.17.3 of the ADA Accessibility Guidelines.

In addition, OCR learned during the on-site that the alternate site at (NUMBER) (NAME) Boulevard, where arrangements have been made to provide services to individuals with physical disabilities who are unable to access the (NAME) Street office also has barriers that make the alternate site inaccessible to individuals with physical disabilities. As such, the programs, services, and activities provided by XCDSS at the (NAME) Street and (NAME) Boulevard offices do not appear to be accessible to and usable by individuals with physical disabilities. Therefore, XCDSS' facilities are not accessible to individuals with physical disabilities.

The ADA and Section 504 also requires public entities to carry out several administrative functions to ensure that individuals with disabilities receive an equal opportunity to benefit from a public entity's programs, services, or activities. Each public entity is required to, among other things, provide public notice to applicants, participants and other interested persons about the ADA requirements and adopt and publish procedures for resolving grievances arising under the ADA. See, 42 C.F.R. §35.106 and 45 C.F.R. § 84.8. In addition, the public notice must be available in alternate formats so that it is accessible to all individuals. XCDSS acknowledged that it has not provided public notice about the ADA requirements to applicants and participants

of programs administered by XCDSS. Furthermore, XCDSS also acknowledged that it has no written procedures for resolving grievances under the ADA and Section 504.

XCDSS informed OCR that it plans to move all services located in the (NAME)Street building into a new building, currently under construction, by (DATE) and indicated that the new building will be in full compliance with the ADA and Section 504. XCDSS also informed OCR that its commissioner has been designated as the individual to serve as the ADA/Section 504 Coordinator. As the ADA/Section 504 Coordinator is a new designation, OCR recommends training for the coordinator concerning the ADA requirements.

Given the existence of such compliance issues, OCR believes that the appropriate course of action is to address these concerns via a resolution agreement. XCDSS has indicated a willingness to enter into a Resolution Agreement with OCR, and the (NAME) State Office of Temporary and Disability Assistance (OTDA), which has oversight responsibilities for XCDSS' programs, services and activities, has expressed an interest in using the ADA notice and grievance procedures established pursuant to this investigation as a model to be used throughout all 58 counties of (NAME) State.

According to the proposed Resolution Agreement XCDSS would undertake the following actions: continue to take steps to ensure that the new building under construction at (NUMBER) (STREET) complies with the ADA and Section 504, make alterations to the alternate site at (NUMBER) (NAME) Boulevard to ensure that the site is readily accessible to individuals with physical disabilities, provide public notice about the ADA requirements to applicants and participants of programs administered by XCDSS, adopt and publish grievance procedures for resolving complaints of disability discrimination arising under the ADA and Section 504, develop and implement interim policies and procedures for the provision of services to individuals with physical disabilities who request services at the (NAME) Street office and advertise to the public the availability of an alternate location for the provision of services at XCDSS' (NAME)Street office.

LEGAL REVIEW

The Regional Civil Rights Attorney, (NAME), has reviewed the case file and draft resolution agreement in this matter and concurs with OCR's proposed Resolution Agreement.

RECOMMENDATION

OCR Region II recommends the approval of the OGC-reviewed Draft Resolution Agreement with XCDSS.

DECISION

Approved _____ Disapproved _____ Date _____

APPENDIX PP: Early Case Resolution Guidance

[Return to: Early Complaint Resolution](#)

The Early Complaint Resolution (ECR) process in OCR is designed to expedite the resolution of complaints by providing the parties involved the opportunity to voluntarily resolve the issues prompting the complaints before formal investigation begins. The ECR actions and timeframes set forth below, which are intended to guide Regions in promptly and effectively conducting ECR, are not mandatory, with one exception. The ECR process must be concluded within 60 days, unless an extension of time is granted.

Responsibility

The Regional Manager will have full responsibility over the entire ECR process for a case that arises in his/her region. If ECR is unsuccessful, the Regional Manager shall ensure that the mediator in the ECR process does not investigate the complaint.

Criteria for Selection

Complaints may be selected for ECR if they have no class implications, raise no legal issues or involve an unresolved policy, raise no age allegations, raise no complex issues, or were not filed as the result of a breach of a negotiated agreement under ECR.

Although a complaint may meet the ECR selection criteria, it may not be appropriate for ECR if: (1) OCR is currently involved in proceedings against the covered entity; (2) a noncompliance letter of findings is being prepared or has been issued; (3) OCR is currently negotiating with the covered entity as a result of a compliance review or another complaint; and (4) the covered entity is the subject of controversy, e.g., significant media attention.

Acknowledgement to Complainant

Within 15 days of receipt of a complete complaint that meets the ECR selection criteria, the complainant must be sent, by certified mail, return receipt requested, an acknowledgement letter accompanied by the appropriate forms, explanations and statements.

Notification to Recipient

Within 5 days of receipt of a complete complaint that meets the ECR selection criteria and after the complainant has agreed to participate in the ECR process and submitted a signed consent form, the covered entity must be notified in writing by certified mail, return receipt requested of the complete complaint and its acceptance for ECR. The covered entity must be provided the appropriate forms, explanations and statements.

Unwillingness to Participate

If either the complainant or the covered entity is unwilling to participate in the ECR process, each must be informed in writing of the unwillingness of one or both parties to participate in ECR. An investigation of the complaint should then be initiated. If either or both parties fail to respond within seven (7) calendar days to the appropriate notification letters, they should be contacted by telephone to determine their willingness to participate in the ECR process. Both parties must be informed of their rights and responsibilities under the appropriate law, and if ECR fails, an investigation of the complaint will proceed.

Mediation Process

After it has been determined that both parties are willing to participate in the ECR process, a separate discussion must be held with each party to determine:

1. Their desire for representation during ECR;
2. Their desire for separate meetings, joint meetings, or if they are in different cities, a three-way conference call; and
3. If any questions remain unanswered about the ECR process.

Initial Discussion with Complainant

During the initial discussion with the complainant, the OCR mediator should ascertain from the complainant what it would take to resolve the issues raised in the complaint.

Initial Discussion with Covered Entity

During the initial discussion with the covered entity, the OCR mediator should identify the complainant to the covered entity, and state the allegations and the reasons given by the complainant for believing that he/she had been discriminated against. The covered entity must be given an opportunity to present its position on the allegations raised and to provide suggestions for possible resolution of the complaint.

Follow-up Discussion with Both Parties

A follow-up discussion should be held with both parties after the initial discussions with each party to discuss the issues involved, explore various resolution possibilities, transmit offers and counter offers, and secure a final agreement between the parties. Listed below are four forms of mediation that may be used alone or in combination, and if both parties agree, other forms of mediation may be used.

1. Formal Meetings with Both Parties Present

Meetings generally should be held on a neutral turf (e.g. an OCR office or a public facility rather than at the office of the responsible official of the covered entity). The OCR representative should serve as the mediator. The length of the meetings should be predetermined, but the parties can always agree to end them sooner or extend them.

2. Separate Meetings with Each Party

Separate meetings may be used as a form of mediation. However, both parties must be informed that they are taking place and the purpose is to help both parties find a common ground for resolving their differences.

3. Telephone Mediation

Telephone mediation may be used to facilitate resolution of differences between the parties if the parties are in different cities.

4. Joint Meetings without OCR's Presence

Joint meetings between the parties may be held if they agree that the OCR mediator's presence is not wanted or unnecessary. The parties, however, should be reminded of the ECR time frame and ground rules. The mediator should check with the parties after such meetings to determine the next step in the process and to make sure that neither party feels harassed, intimidated, or coerced by the meetings.

Concluding Early Complaint Resolution

The early complaint resolution process is concluded when anyone of the following takes place:

1. A voluntary resolution is achieved and the complainant withdraws the complaint;
2. Either the complainant or recipient terminates ECR efforts and OCR proceeds with an investigation;
3. OCR terminates ECR and commences an investigation because the ECR time frames have expired;
4. The complainant decides to withdraw the complaint without an agreement being achieved;
or
5. OCR determines that further early resolution efforts will not be productive and notifies the parties that it is proceeding to investigation of the complaint.

Complaint Withdrawal Prior to ECR Agreement

The complainant may withdraw his/her complaint voluntarily at any time prior to reaching an ECR agreement with the recipient.

Termination of ECR Prior to an Agreement

If either party wishes to terminate ECR prior to an agreement, the party must notify OCR. Both parties must be notified in writing that ECR is being terminated and the case investigation initiated.

OCR may terminate ECR prior to an agreement if efforts to resolve the complaint prove to be fruitless and the parties have reached a stalemate. The parties should be orally informed that they have five (5) days to reevaluate their desire to work productively together to resolve the complaint through ECR before they receive written notification that ECR is being terminated and a formal investigation will be initiated.

Resolution Agreements

A complaint will be considered resolved through early resolution efforts when (1) the parties sign a settlement agreement and (2) the complainant voluntarily withdraws the complaint.

Resolution agreements will be treated as binding between the complainant and the covered entity and no such agreements shall in any way restrict the right of OCR to conduct complaint investigations and compliance reviews of the covered entity regarding the same or different issues.

The terms of a resolution agreement do not have to meet OCR standards nor will OCR approve, endorse, or sign any agreement reached between the parties. OCR will, however, ensure that the parties have been informed of their rights, the voluntary nature of the resolution, and if a breach occurs, OCR must be notified within 90 days of the date of the alleged breach.

Unresolved Issues in Complaint

If an agreement is reached between the parties on only some of the issues raised in the complaint, the parties must sign an agreement with respect to those issues that have been resolved and forward the agreement to OCR requesting that those issues be deleted from the original complaint. A letter of confirmation should be sent to the parties acknowledging receipt of the signed agreement and honoring the request to delete from the original complaint those issues that have been resolved.

With respect to the unresolved issues, the mediator should send the original complaint, the confirmation letter, and a copy of the settlement agreement to the Regional Manager to proceed with an investigation on the remaining unresolved issues.

Recording Change

OCR will not monitor resolution agreements. However, any changes resulting in the agreement should be entered into the PIMS transaction folder.

Alleged Breach of Agreement

A complainant must notify OCR of an alleged breach of an agreement no later than ninety (90) days from the date of the alleged breach. The 90-day time limit may be waived by the Regional Manager and the complaint reopened if the complainant can show good cause for extending the time limit.

The complainant must be notified in writing that he/she will be given ten (10) days from receipt of notice to show good cause to extend the time limit. Within 10 days of receipt of any explanatory materials from the complainant, a decision on extension of the 90-day time limit must be made in writing and transmitted to the complainant.

Waiver of the Time Limit

Reasons acceptable for waiving the 90-day time limit may include:

1. Illness or other incapacitating circumstances precluded the complainant from notifying OCR in a timely manner; and
2. The complainant first tried to resolve the matter through an internal grievance procedure but was dissatisfied with the outcome.
3. If the complainant timely notifies OCR that he/she believes the recipient has breached the resolution agreement, the complainant must be informed that he/she is required to submit the following information in writing:
 - a. Approximate date of the breach;

- b. A detailed description of what transpired to cause the complainant to believe that the recipient breached the agreement to warrant OCR to communicate with the recipient and/or initiate a formal investigation; and
- c. A request that the original complaint be reopened.

After reviewing the information submitted by the complainant in support of his/her belief that the recipient has breached the resolution agreement, OCR may:

1. Attempt further resolution if the problem can be resolved informally within 15 days; or
2. Reopen the original complaint and proceed with an investigation if repeat ECR fails or would be futile.

Development of Investigative Plan during ECR

An investigative plan and a data request may be developed at any time while ECR is in progress if ECR is unsuccessful. However, the investigative plan cannot be implemented, the covered entity contacted in connection with any formal investigative activities, or the data request sent before the ECR process has been formally terminated.

RECORDKEEPING

Resolution Proposals and Discussions

Information pertaining to resolution proposals and discussions is confidential. Official records of such proposals or discussions, including tape recordings and stenographical records, should not be maintained unless the mediator secures in writing permission from both parties.

Information of Evidentiary Value

Written information during early resolution attempts which has evidentiary value should be maintained as part of the PIMS transaction folder and can be used in subsequent investigations except as indicated above.

ECR Contact Log

Contacts made as part of early resolution efforts should be maintained as part of the official case file. Copies of all other official correspondence should also be maintained as part of the official case file.

ECR ACTION Time Frames

1. Receipt of complete complaint. 1st
2. Determine jurisdiction and determine if complaint meets selection criteria 15th
3. Acknowledgement letter with offer of ECR to complainant. 15th
4. Response from complainant to acknowledgement letter. 22nd

5. Begin willingness discussions with complainant and request submission of Complainant Consent form, if not previously received. 22nd
6. Final day allowed for complainant to agree to participate in EGR and to return signed Complainant Consent Form. 27th
7. Notification letter with offer of ECR to covered entity 27th
8. Response from covered entity to notification letter. 34th
9. Begin willingness discussions with covered entity. 34th
10. Final day for covered entity to agree participate in ECR. 39th
11. Initial mediation discussions with parties. 39th
12. Begin follow-up discussions with parties to achieve resolution. 40th
13. Final day to secure signed resolution agreement from parties and signed withdrawal document from complainant. 60th
14. Terminate ECR whether successful or unsuccessful. If unsuccessful, initiate formal investigation. 60th

Extensions

In exceptional circumstances, the time frames outlined above can be extended by a maximum of ten (10) days with the permission of the Regional Manager. Acceptable reasons for granting an extension might be:

- It appears to the facilitator/mediator that the terms of a resolution agreement can be agreed upon within a maximum of five (5) additional days;
- The parties are in the process of putting the terms of the agreement reached in writing and/or the complainant is in the process of writing a letter withdrawing the complaint; or
- There is an interruption to the process such as the unavailability of either party due to legitimate reasons, i.e., illness.

The PIMS transaction folder must contain the reasons an extension was granted.

APPENDIX QQ: Sample Letter Confirming Voluntary Action

[Return to: Letter Confirming Voluntary Action Taken or to be Taken by a Covered Entity](#)

(NAME)
Chief Executive Officer
(COVERED ENTITY NAME)
(ADDRESS)

COMPLAINANT

RE: Transaction Number XX-XXXX

Dear Ms. (NAME) and Mr. _____:

This is to advise you that the Office for Civil Rights (OCR) of the U. S. Department of Health and Human Services (HHS) has completed its investigation of the discrimination complaint filed by the Complainant, an African-American veteran of the United States Armed Forces. The Complainant alleges that the (FACILITY NAME), Inc., a skilled nursing facility, denied him admission based on his disability (HIV/AIDS) and his age (XX), in violation of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794 (Section 504), and the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq. (Age Discrimination Act).

The (FACILITY NAME) (99 beds), the (SECOND FACILITY NAME) (36 beds), and the (THIRD FACILITY NAME) (49 beds) are all skilled nursing facilities owned by (COVERED ENTITY NAME), Inc. (NAME) is the proprietor and chief executive officer of (COVERED ENTITY NAME).

Legal Authority

OCR conducted this investigation pursuant to its authority to enforce Section 504 and its implementing regulation, 45 CFR Part 84, which prohibit discrimination on the basis of disability, and the Age Discrimination Act and its implementing regulation, 45 CFR Part 91, which prohibit discrimination on the basis of age, by recipients of HHS funding. As recipients of HHS funds, (FACILITY NAME), (SECOND FACILITY NAME), and the (THIRD FACILITY NAME) are subject to the requirements of Section 504 and the Age Discrimination Act.

Background

The Complainant had hip replacement surgery at the Veterans Administration Medical Center (VA) in (CITY), and required post-operative rehabilitation at a skilled nursing facility. The VA determined that (FACILITY NAME), a skilled nursing facility in (CITY), where the Complainant lived, would be an appropriate placement. On or about (DATE), a VA social worker provided (FACILITY NAME) staff with information on the Complainant's medical condition, HIV status, need for short-term recovery, and VA financial reimbursement eligibility.

On or about (DATE), (FACILITY NAME) staff returned the VA social worker's call requesting that the Complainant be admitted by (FACILITY NAME). During the call, (FACILITY NAME)

staff left a message on the VA social worker's answering machine stating that (FACILITY NAME) would not accept the Complainant for admission because he was too young and HIV positive.

The Complainant was eventually admitted to another skilled nursing facility located in (CITY). He filed this complaint with OCR on (DATE).

(COVERED ENTITY NAME) denies that it engaged in any discriminatory practices in refusing admission to the Complainant to (FACILITY NAME). (COVERED ENTITY NAME) also denies that it violated Section 504 or the Age Discrimination Act.

In order to resolve this matter, (COVERED ENTITY NAME), Inc., on behalf of its facilities, (FACILITY NAME), (SECOND FACILITY NAME), and the (THIRD FACILITY NAME), has assured OCR of its intention not to discriminate against persons on the basis of HIV status or age. In addition, (COVERED ENTITY NAME), Inc., has provided documentation to OCR that it has voluntarily taken the following corrective actions:

Corrective Actions Taken

1. On (DATE), (DATE), and (DATE), (FACILITY NAME) provided training to its staff on universal precautions for infectious diseases.
2. Since (DATE), (FACILITY NAME) has admitted four patients with HIV/AIDS.
3. (FACILITY NAME) has notified discharge planners at its major referral sources ((NAME), the (CITY) VA Medical Center, (NAME) and other private facilities) that it has a nondiscrimination policy and that it admits otherwise qualified persons with HIV/AIDS.
4. On or about (DATE), (FACILITY NAME) placed the following policy in its brochure for prospective patients:

Pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and their implementing regulations, (FACILITY NAME) does not discriminate in the provision of services and/or employment because of race, religion, color, national origin, disability, age [or] sex....

5. On (DATE), (COVERED ENTITY NAME)' Chief Executive Officer, (NAME), and her senior staff, received on-site technical assistance from OCR representatives.
6. (COVERED ENTITY NAME)' senior staff received additional technical assistance from OCR on (DATE), (DATE), and (DATE).
7. On (DATE), (NAME) implemented the following policy at (COVERED ENTITY NAME), (FACILITY NAME), (SECOND FACILITY NAME), and (THIRD FACILITY NAME):

Policy and Procedure for Admitting Residents with HIV

POLICY:

It is the policy of (COVERED ENTITY NAME), (FACILITY NAME), (SECOND FACILITY NAME), and (THIRD FACILITY NAME) that we do not discriminate on the basis of race, color, national origin, age, or disability, including HIV/AIDS, and comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

PROCEDURE:

If the facility receives a referral for admission on a resident that has a diagnosis of HIV/AIDS, the facility must notify (NAME), CEO, if the proposed referral is being denied. The facility must provide specific documentation or justification that the proposed denial of admission is based on legitimate nondiscriminatory factors, such as failure to meet nondiscriminatory eligibility criteria, and is not based solely on the individual's HIV status.

The above-stated policy and procedure will be re-issued annually to all staff involved in decisions regarding admission at each facility. Any questions regarding this issue shall be addressed to the CEO, who will provide any training that is necessary.

There will be no less than an annual mandatory in-service given to all patient care staff regarding care for residents who carry blood-borne pathogens.

8. On (DATES), (COVERED ENTITY NAME) required all employees of (FACILITY NAME), (SECOND FACILITY NAME), and (THIRD FACILITY NAME) to attend an annual mandatory in-service training, which included presentations on: (1) (COVERED ENTITY NAME)' nondiscrimination policy; (2) (COVERED ENTITY NAME)' policy and procedure for admitting persons with HIV/AIDS; (3) the use of universal precautions in patient care; and (4) the protection of the health information privacy of patients and applicants for admission to (FACILITY NAME), (SECOND FACILITY NAME), and (THIRD FACILITY NAME).

Conclusions

As a result of the corrective actions taken by (COVERED ENTITY NAME), Inc., (FACILITY NAME), (SECOND FACILITY NAME), and (THIRD FACILITY NAME), OCR has closed this case. These corrective actions do not address the Complainant specifically because he no longer requires care at a skilled nursing facility.

The closure of this case is not intended and should not be construed to cover any other issues regarding compliance with Section 504 or the Age Discrimination Act that may exist but were not specifically addressed during our investigation.

OCR shall place no restriction on the publication of the contents of this letter and may release this document and related materials consistent with the Freedom of Information Act, 5 U.S.C Section 522, and its implementing regulation 45 CFR Part 5.

Thank you for your cooperation. If you have any questions, please do not hesitate to contact (NAME), Senior Equal Opportunity Specialist, at (TEL. #), or myself at (TEL. #).

Sincerely,

NAME
Regional Manager

APPENDIX RR: SAMPLE LETTER OF CONCERN

[Return to: Letter of Concern](#)

Transaction Numbers: XX-XXXXX, XX-XXXXX, XX-XXXXX

(ATTORNEY FOR THE COMPLAINANT)

(NAME)

(COVERED ENTITY)

Dear ATTORNEY:

(NAME):

This letter is to advise you that the Department of Health & Human Services (HHS) Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaints, the first of which was received in our office on (DATE), the second on (DATE), and the third on (DATE). Our investigation revealed a number of problem areas in (COVERED ENTITY)'s policies and procedures concerning provision of services to deaf and hard of hearing individuals, many of which were reflected in (COVERED ENTITY)'s interactions with the complainants. The purpose of this letter is to outline OCR's concerns about those policies and procedures and provide (COVERED ENTITY) with the opportunity to make changes to ensure that it complies with the applicable statute and regulation.

Legal Authority

Our investigation was conducted under the authority of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. 794, and its implementing regulation, 45 C.F.R. Part 84. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance through the Department of Health and Human Services. As a recipient of Federal financial assistance through the Medicare and Medicaid programs, (COVERED ENTITY) is obligated to comply with the applicable provisions of the statute and regulation cited above.

Background

OCR initiated an investigation to determine whether (COVERED ENTITY) provides appropriate auxiliary aids and services to deaf patients after receiving a complaint on (DATE), from C1 on behalf of his mother, AP1, alleging that (COVERED ENTITY) failed to provide a sign language interpreter for AP1's appointments at (COVERED ENTITY). On (DATE), AP1 sent a complaint alleging that (COVERED ENTITY) had failed to provide her with an interpreter at her (DATE) appointment. OCR received a complaint on (DATE) from C2, alleging that (COVERED ENTITY) had refused to provide him with an interpreter for his appointments at (COVERED ENTITY).

AP1/C1 Complaints:

AP1 is deaf and speaks American Sign Language as her first and primary language. She writes English, but, according to C1, is not proficient. C1, who has medical power of attorney for AP1, is also deaf.

From (DATE) through (DATE), AP1 was seen nine times by Dr. (NAME 1), a physiatrist at (COVERED ENTITY), for back pain. According to C1, he first requested an interpreter while scheduling the (DATE) appointment; however, the woman scheduling the appointment told him that AP1 would need to see the doctor before an interpreter could be scheduled.

C1 alleges that they made additional requests for interpreters to the (COVERED ENTITY) doctors they saw, scheduling staff, office managers, and (NAME), the Chief Operating Officer. (COVERED ENTITY) has no record of these requests and (COVERED ENTITY) denies that C1 or AP1 made any requests other than one on (DATE).

At all appointments except for the final appointment, when AP1 brought her own interpreter, (COVERED ENTITY) doctors and staff communicated with AP1 and C1 using a combination of hand-written notes and lip reading. C1 provided OCR with copies of the appointment notes he has in his possession. These notes appear to be only part of the handwritten notes used by (COVERED ENTITY) doctors while treating AP1. Some of the notes are undated and it is not entirely clear with which appointments they were associated.

At the (DATE) visit, Dr. (NAME 1) communicated with AP1 and C1 using hand-written notes. According to the notes from this visit, at one point during the visit, Dr. (NAME 1) wrote, "Sorry we didn't have an interpreter. I hope your wrist isn't sore from writing." The remaining notes from this visit are somewhat disjointed and abbreviated. For example, after telling AP1 that he would be prescribing two new medications, Dr. (NAME 1) wrote, "Instruction how to take them will be on bottle [sic]." He also explained that one of the new medications, "helps with nerve pain," and that the other, "is for general pain, but is not a narcotic." There was no further discussion of the new medications or their side effects.

AP1 received several epidural injections from (COVERED ENTITY), two each on (DATE), (DATE), and (DATE). The injections were an in-office procedure. No interpreter was provided for these injections³.

At the (DATE) appointment, while discussing the possibility of surgery, the doctor wrote, "Surgery, at her age, is a last resort. (No guarantee that back surgery will help)." C1 wrote, "Does it damage when she went back surgery [sic]?" The doctor responded, "May or may not help with pain." In addition, the doctor wrote, "She would have a lot of scar tissue and lose some range of motion," in the margins of the paper, apparently in response to the question about surgery.

At the (DATE) appointment, Dr. (NAME 1) recommended home electrical stimulation for pain relief. A demonstration of the machine was carried out in the office by a representative of the medical company with the use of hand-written notes.

³ During the onsite interviews, Dr. Pappas stated that an interpreter was provided for the injections. However, there was no record of an interpreter being provided, and Ms. Wallace and Mr. Laferriere deny that an interpreter was provided. Dr. Pappas seemed to confuse Ms. Wallace with another deaf patient he had. The other patient also received epidural injections for back pain, and MMI provided her with an interpreter for this procedure.

C1 also met with Dr. (NAME 1) at the (DATE) appointment. C1 wrote, “[After attending a seminar⁴ we understand better than before.” (Emphasis in original). After several specific questions, C1 wrote, “We need some answers from you because we did not understand what exact diagnosis does she have now [sic],” and asked to be referred to another doctor at (COVERED ENTITY). Dr. (NAME 1) referred AP1 to Dr. (NAME 2). In his progress notes for this visit, Dr. (NAME 1) noted, “it appears that she has pain that radiates down into both legs, but communication is difficult.” When asked about this statement, Dr. (NAME 1) explained that he does not remember the visits very well, but that he thought he and the patient communicated well, and that AP1 was provided an interpreter when one was needed⁵.

At the appointment with Dr. (NAME 2), on (DATE), the physician explained via hand-written notes that he did not feel surgery was appropriate for AP1, “Surgery in her back would be primarily for her leg pain, but since she has 1° [circled, with the word “primarily” written above it] back back [sic] I would not recommend it due to the lack of success with surgery relieving back pain.” (Emphasis in original). In response, AP1 wrote, “I don’t understand.” Dr. (NAME 2) summarized the visit in his progress notes as follows:

AP1 is a pleasant (AGE) female, who is deaf . . . Based on as much interpretation as I can get she has got constant back pain that is worse with activities such as standing, walking, twisting, and is reduced with lying or sitting . . . At this time, I tried my best to explain her [sic] that surgery for the (CONDITION) would help alleviate leg pain, but unfortunately she has primarily back pain . . . Again this is difficult for her to interpret and understand.

Dr. (NAME 3) does not recall this patient well, and had little recollection of the office visit. He explained his comments about AP1’s difficulty in understanding as due to the fact that AP1 “shut down” when she learned that he would not recommend surgery, rather than a problem with the hand-written communication. Dr. (NAME 2) believes that AP1 understood the “no surgery” part of the discussion and also understood when he offered to refer her for a second opinion.

AP1 made an appointment to see Dr. (NAME 3) on (DATE). AP1 called (COVERED ENTITY) on (DATE) and requested an interpreter. (NAME 3), Office Manager, explained to AP1 that Dr. (NAME 4) would decide whether an interpreter was necessary. There is no record of whether Dr. (NAME 4) considered the request, and he does not recall AP1 requesting an interpreter.

On (DATE), AP1 sent a letter to Dr. (NAME 1) regarding her experience with Dr. (NAME 2). In the letter, AP1 wrote, (about her visit with Dr. (NAME 2). She did not understand the doctor, and wanted her questions answered.)

At AP1’s final appointment at (COVERED ENTITY) with Dr. (NAME 3) on (DATE), AP1 brought and paid for her own sign language interpreter. Dr. (NAME 3) told her that he did not feel surgery was appropriate.

⁴ Mr. Laferriere and Ms. Wallace attended a seminar in August 2006 about back pain. The seminar was not affiliated with MMI in any way.

⁵ Again, Dr. Pappas seems to be confusing Ms. Wallace with another deaf patient he had.

C2/C3 Complaint:

C2 and his wife, C3, are both congenitally deaf. C2 grew up in an (ETHNICITY) family in New York and did not learn ASL until elementary school. He never learned to write English well. C3 also grew up in New York, and her mother had her learn lip reading, speech in English, and writing in English.

C2 saw Dr. (NAME 3) for (A CONDITION) over a period of several years. According to C2 and C3, who accompanied him for all of the appointments at (COVERED ENTITY), they requested an interpreter when they scheduled the first appointment over the phone and were told that the office does not usually provide interpreters. (COVERED ENTITY) has no record of this request.

C2 and C3 believe they also asked Dr. (NAME 3) for an interpreter, although they are not sure of the date of the request. According to C2 and C3, Dr. (NAME 3) told them that an interpreter was unnecessary. C3 also asked for an interpreter at subsequent appointments, although she is unsure of the dates of the requests. (COVERED ENTITY) has no record of the requests being made.

Dr. (NAME 3) communicated with C2 using hand-written notes and with C3 using hand-written notes and lip reading.

In early (DATE), Dr. (NAME 3) performed surgery on C2's left elbow to remove the (CONDITION). The surgery was performed at an outpatient surgical center. The surgical center appears to have provided an interpreter. Dr. (NAME 3) believes an interpreter was provided for the surgery, and his notes indicated that an interpreter spoke to C2 about post-surgical care.

C2 and C3 feel that Dr. (NAME 3) did a poor job of communicating postoperative care instructions and explaining what would happen during the surgery, glossing over treatment and diagnosis with brief answers.

According to Dr. (NAME 3), he does not generally discuss postoperative care with the patient, due to the medications and sedatives surrounding the operation, but will usually discuss care with the patient's family. He does not recall whether he discussed postoperative care with C3. In addition, he provides a postoperative care sheet to the surgical center, and one of the surgical center nurses discusses the sheet with the patient when the patient has fully awakened from surgery.

Dr. (NAME 3)'s (DATE) progress notes do indicate that C3 had expressed concerns about her lack of understanding of the post-surgical care: "The wife today is voicing some concern that she was not included in the postoperative instructions that an interrupter [sic] was used for him and that he did not remember some of the instructions because of the medications that he was given for surgery. She feels very frustrated about this. She did not know how it helped to take care of this [sic]. She was surprised to see the staples. She did not understand there would be staples. She is also upset about the fact that he is having back pain, does not understand this as well [sic]. I spent time with them and spoke to them about the standard of care with _____ [sic] staples."

According to the progress notes, she complained again on (DATE): “[C2’s] wife was very upset that at the time of surgery at the hospital, she was not allowed to come into the recovery room, but the deaf interpreter was. I explained that these are hospital policies, I have no control over that nor do I have any complaint with it.”

Dr. (NAME 3) stated that he provided the same information to the C2/C3s that he would have provided to any patient, and the C2/C3s seemed to understand him.

(COVERED ENTITY)’s Policies and Procedures

(COVERED ENTITY), which has more than 15 employees, is a medium-sized clinic in (CITY) with 11 doctors, 2 physician assistants, and various full-time and part-time support staff.

(COVERED ENTITY) has approximately 1000 patient visits per month. Because (COVERED ENTITY) does not track the number of deaf patients seen, it is not clear how many of (COVERED ENTITY)’s patients are deaf; however, staff interviews suggest that (COVERED ENTITY) has at least six deaf patient visits per month.

(COVERED ENTITY)’s “Accommodation of Disabled Patients Policy” states, “The practice shall work [to] accommodate disabled patients as necessary, consistent with good medical practice, customer service, public policy, and federal and state laws. The decision on how to accommodate patients with various disabilities shall vary and shall be made by management on a case-by-case basis.”

According to (COVERED ENTITY)’s “Accommodation of Disabled Patients Procedure,”

1. When a patient contacts the office to schedule an appointment[,] the staff shall inquire about any special needs that must be accommodated . . .
6. Due to the number of hearing impaired individuals in the community, specific note is made of patients with this disability.
 - a. Patients who inquire about a sign [language] interpreter shall be informed [that] the physicians prefer to meet with the patient before deciding what type of accommodation is needed.
 - b. The physicians initially accommodate by allowing additional time for the office visit.
 - c. Once the physician meets the patient he/she will decide whether a sign interpreter is needed.
 - d. During the initial visit[,] the patient shall be accommodated by using written notes between the physician and patient and additional time for the office visit shall be scheduled.
 - e. If a sign interpreter is needed[,] the practice shall make arrangements for same, at its own expense . . .
8. Scheduling staff shall document, in their Telephone Logs, each conversation regarding accommodation. No Exceptions.

Patients set up appointments by calling the clinic. If the patient is deaf, he or she will usually call (COVERED ENTITY) by using the telephone relay service or by having a friend or family member call the clinic for him or her. The receptionist will then collect basic information, such as name, address, and insurance, from the patient and update information as necessary. No information is gathered about the patient's ability to understand written English.

As a matter of course, deaf patients are given double the time of other patients for their appointments at (COVERED ENTITY) in order to accommodate the patient and allow for sufficient time for note writing. In addition, the receptionist will attempt to schedule the patient before lunch or at the end of the day to provide the doctor additional flexibility if the appointment runs long.

If the patient specifically requests an interpreter while scheduling an appointment, the receptionist explains (COVERED ENTITY) policy and that the doctor will make the decision at the first visit. If the patient insists upon an interpreter, the receptionist will refer the matter to an office manager.

The office manager will notify the patient's physician of the patient's request, and the physician will determine whether or not the patient needs an interpreter. Although (COVERED ENTITY) procedure requires that each conversation regarding accommodation be documented in the Telephone Logs, (COVERED ENTITY) does not have a record of interpreter requests or the outcomes of the determinations.

At the first visit, the physician will use hand-written notes or, occasionally, lip-reading to communicate with the patient, and the doctor will decide whether or not to request an interpreter using his or her own medical judgment. The doctor's decision is not reviewed. (COVERED ENTITY) does not have any standard criteria for determining whether an interpreter is necessary, and the doctors all utilize different criteria for making the determination.

Although no records are maintained, (COVERED ENTITY) interviews indicated that (COVERED ENTITY) provides interpreters for about 10% of its deaf patients or less, on average. Some of the doctors request interpreters more frequently while others use them much more rarely. One of the doctors interviewed expressed a strong preference for use of hand-written notes, while the others interviewed were more open to requesting interpreters, generally.

The doctors interviewed had varying opinions regarding when a sign language interpreter would be necessary. For example, two doctors stated that they did not feel a sign language interpreter would always be necessary for surgery, while another stated that an interpreter should always be provided for surgeries or more complicated procedures.

None of the doctors mentioned English proficiency as a factor in their decision, and none appeared to have a clear understanding of the varying levels of English proficiency among the deaf population. In addition, several doctors mentioned that they use lip reading as a method of communication on occasion.

The decision of whether or not to obtain an interpreter is left solely to the physician's discretion, and there is no later review of the physician's decision. However, one of the doctors interviewed stated that he left the decision to someone else, such as one of the office managers

or the chief operating officer; both office managers and the chief operating officer stated that they leave the decision entirely to the treating physician, indicating that the physicians may not all have a full understanding of (COVERED ENTITY) procedures.

(COVERED ENTITY) does not have a grievance procedure to resolve patient disputes regarding accommodations.

The office managers train all new receptionists on the policies and procedures. Other staff are trained on the policies and procedures during their mandatory orientation.

Discussion and Analysis

The regulation implementing Section 504 of the Rehabilitation Act of 1973, at 45 C.F.R., §84.4 provides as follows:

(a) No qualified handicapped person shall, on the basis of being handicapped, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others.

Further, 45 C.F.R. §84.52(d)(1) provides as follows:

A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

45 C.F.R. §84.7(b) requires recipients that employ fifteen or more people to adopt grievance procedures that “incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by [Section 504].”

(COVERED ENTITY) employs over 15 staff members and must therefore comply with §§84.52(d)(1) and 84.7(b).

A person with a disability is defined at 45 C.F.R. §84.3(j)(1)(i) as one who has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. An individual who is deaf or hard of hearing to a degree that substantially limits his or her ability to perform a major life activity, *i.e.*, hearing, meets the requirements for person with a disability, as defined by this

regulation. An individual who is deaf or hard of hearing is qualified if he or she meets the essential eligibility requirements for receipt of services.

Section 504 and 45 C.F.R. § 84.52(d) require recipients to ensure effective communication between the recipient and qualified individuals with disabilities. Recipients are required to provide appropriate auxiliary aids and services when necessary to ensure effective communication⁶. OCR's investigation revealed that (COVERED ENTITY)'s policies, procedures and practices regarding the provision of communication services to its deaf and hard of hearing patients contain flaws which serve to hinder, rather than ensure, effective communication.

(COVERED ENTITY)'s policies and procedures for assessing and determining a deaf or hard-of-hearing patient's need for an auxiliary aid or service can lead to arbitrary and inconsistent provision of such aids and services. The policy emphasizes that the decision of whether to provide an interpreter is made by management on a case-by-case basis. Except in very rare circumstances⁷, (COVERED ENTITY) requires deaf patients to attend an initial appointment with a physician before (COVERED ENTITY) makes its determination of whether interpreter services are necessary. At this appointment, the physician, communicating with hand-written notes, assesses the patient's need for an interpreter. Interviews with staff showed that physicians had no set criteria for evaluating a patient's communication skills, and it appears that a communication assessment may not be conducted for every deaf patient. Only in situations where the physician determines that an interpreter is needed is one of the office managers notified and the office manager arranges for interpreting services. If, in the physician's medical judgment, no interpreter is required, the physician will continue to communicate with the patient via hand-written notes. A physician is not required to provide a reason for turning down a request for an auxiliary aid or service.

The inconsistent documentation of instances where interpreter services are requested or provided prevents (COVERED ENTITY) management from knowing how its policies are being implemented. According to the policy, scheduling staff should document each conversation regarding accommodations. However, (COVERED ENTITY) was unable to provide an estimate of the number of requests for interpreters it has received. In addition, physicians do not always document interpreter requests or their determination of whether an interpreter is necessary.

Although (COVERED ENTITY) does provide sign language interpreters for some patients, (COVERED ENTITY)'s apparent preference for using handwritten notes or lip reading for the majority of its deaf patients may lead to circumstances where hand-written notes are used when an interpreter would be necessary for effective communication. The practice of exchanging hand-written notes between a health care provider and a deaf or hard of hearing individual will likely be effective only for brief and relatively simple face-to-face conversations. For more complicated and interactive communications, such as discussion of symptoms or treatment options with patients and/or family members, it may be necessary to provide a qualified sign

⁶ See *Saltzman v. Bd. of Comm'rs of N. Broward Hosp. Dist.*, 239 F. App'x 484, 487 (11th Cir. 2007), available at No. 06-12734, 2007 WL 1732893 (11th Cir. Jun. 15, 2007).

⁷ Mr. Davis provided the example of an elderly patient with Alzheimer's and severe arthritis as an example of a patient who would be provided an interpreter at the first appointment.

language interpreter⁸. Further, for prelingually deaf adults, “their abilities to read and write English may be seriously impaired. Therefore, many deaf patients may fail to comprehend what physicians are attempting to convey in writing⁹.” In addition, the process of writing back and forth can be arduous and time consuming for both the provider and the patient or family. As a result, such messages may be abbreviated, resulting in incomplete communication.

Several of the physicians interviewed mentioned using lip reading as one of the methods they use to communicate with deaf patients. Lip reading is rarely an effective form of communication. According to research, only about 30% of the sounds used in English are visible using lip reading, and about half of consonant sounds look identical using lip reading¹⁰. Further, even under ideal conditions, only about 60% comprehension can be achieved, on average¹¹.

Of particular concern is the use, by (COVERED ENTITY) staff and physicians, of hand-written notes and lip reading even in more complicated interactions, such as discussion of medical procedures, including epidural injections; surgery and possible side-effects of surgery; and post-surgical care.

In short, due to a lack of clear communication assessment guidelines, varying understanding of the policies and procedures among staff and physicians, and misunderstanding among physicians of the efficacy of various communication techniques, patients may not always receive effective communication.

Finally, 45 C.F.R. §84.7(b) requires (COVERED ENTITY) to adopt grievance procedures with appropriate due process standards. (COVERED ENTITY) has no such procedures.

Conclusion and Remedy

Our investigation of the above complaints leads OCR to conclude that the policies, procedures and practices (COVERED ENTITY) has employed with respect to the provision of auxiliary aids and services to deaf and hard-of-hearing individuals may result in the lack of effective communication between those individuals and (COVERED ENTITY) treatment personnel. Some of the problems posed by such policies, procedures and practices were reflected in the interactions between (COVERED ENTITY) and the individuals who filed the complaints discussed herein,. Rather than make findings at this time with respect to the individual complaints, OCR is affording (COVERED ENTITY) an opportunity to make changes that will help ensure compliance with the applicable regulations. We have therefore attached a

⁸ ADA Business Brief: Communicating with People Who Are Deaf or Hard of Hearing in Hospital Settings, U.S. Department of Justice.

⁹ Ebert, David A., MD and Heckerling, Paul S., MD, Communication with Deaf Patients, JAMA, January 18, 1995, Vol. 273, No. 3, pp. 227-229.

¹⁰ Harmer, Lisa M., Health Care Delivery and Deaf People: Practice, Problems, and Recommendations for Change, Journal of Deaf Studies and Deaf Education, Spring 1999, pp. 94-95.

¹¹ Id. p. 95.

proposed Resolution Agreement, which outlines a series of steps that (COVERED ENTITY) should take to ensure full compliance with Section 504.

We request that (COVERED ENTITY) review the enclosed Resolution Agreement and contact (NAME), Investigator, at (TEL. #) within **15 days** of the date of this letter to discuss the proposed compliance measures.

We wish to advise you that under the Freedom of Information Act, it may be necessary to release this document and related correspondence in response to an inquiry. In the event we receive such a request, we will make every effort to protect information which identifies individuals, or that, if released, would constitute an unwarranted invasion of privacy. We appreciate your cooperation regarding this matter.

Sincerely yours,

(NAME)
Regional Manager

APPENDIX SS: SAMPLE RESOLUTION AGREEMENT – EFFECTIVE COMMUNICATION

[Return to: Voluntary Resolution Agreement \(VRA\)](#)

Also see other sample Resolution Agreements in [PIMS / Civil Rights Library / Investigational Resources / Headquarters Approved Regional Documents](#).

OFFICE FOR CIVIL RIGHTS REGION II VOLUNTARY RESOLUTION AGREEMENT

BACKGROUND

The parties to this Voluntary Resolution Agreement (hereinafter referred to as the “Agreement”) are (COVERED ENTITY) (hereinafter referred to as “XRMC”) located in (TOWN) and the Office for Civil Rights of the U.S. Department of Health and Human Services, Region II, New York, New York (hereinafter referred to as “OCR”).

XRMC acknowledges that, as a recipient of Federal financial assistance via Title XVIII (Medicare) of the Social Security Act of 1965, 42 U.S.C. § 1395 et seq., and Title XIX (Medicaid) of the Social Security Act of 1965, 42 U.S.C. § 1396 et seq., it is subject to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (hereinafter referred to as “Section 504”) and its implementing regulation promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Part 84.

On (DATE), OCR received a complaint from (NAME) (hereinafter referred to as the “Complainant”) against XRMC, alleging discrimination on the basis of disability. Specifically, the Complainant alleged that XRMC discriminated against her on the basis of disability (deaf or hard-of-hearing), by failing to provide her with a qualified sign language interpreter, in violation of Section 504.

In order to resolve this matter expeditiously and without further burden or expense of government investigation or litigation, XRMC agrees to the terms of this Agreement with OCR, which Agreement addresses the issues in the complaint and reiterates XRMC’s assurance of its intention to comply with all provisions of Section 504 and its implementing regulation.

CERTAIN DEFINITIONS

The term “Appropriate Auxiliary Aids” includes, but is not limited to: qualified sign language or oral interpreters; computer-assisted real time transcription services; written materials; telephone handset amplifiers; assistive listening devices and systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning; TTY/TDD; videotext displays; or video interpreting services. See 45 C.F.R. § 84.52(d)(3).

The term “XRMC Personnel” shall mean all employees and independent contractors with contracts to work on a substantially full-time basis for (or on a part-time basis exclusively for)

XRMC, including, without limitation, nurses, physicians, social workers, technicians, admitting personnel, billing staff, security staff, therapists, volunteers, and anyone else who has or is likely to have direct contact with Patients or Companions.

The term "Parties" shall mean XRMC and OCR.

The term "Patient" or "Patients" shall be broadly construed to include any individual who is seeking or receiving services from XRMC.

"Companion" means a person who is deaf or hard-of-hearing and is one of the following: (a) a person whom the Patient indicates should communicate with XRMC Personnel about the Patient, participate in any treatment decision, play a role in communicating the Patient's needs, condition, history, or symptoms to XRMC Personnel or help the Patient act on the information, advice, or instructions provided by XRMC Personnel; or (b) a person legally authorized to make health care decisions on behalf of the Patient; or (c) such other person with whom the XRMC Personnel would ordinarily and regularly communicate the Patient's medical condition.

The term "Qualified Interpreter," "sign language interpreter," "oral interpreter" or "interpreter" shall mean a person who is able to interpret competently, accurately, impartially and effectively, both receptively and expressively, using any specialized terminology necessary for effective communication in a hospital such as XRMC with a deaf or hard-of-hearing Patient or Companion. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language is not necessarily qualified to interpret orally. Also, someone who has rudimentary familiarity with sign language or finger spelling is not a qualified sign language interpreter under this Agreement. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into proper signs or to observe someone else signing and change their signed or finger spelled communication into spoken words is not a qualified sign language interpreter. A "Qualified Interpreter" may include a "relay interpreter" who has special skill and training in acting as an intermediary between a Patient or Companion and a sign language interpreter in instances when the interpreter cannot otherwise independently understand the consumer's primary mode of communication.

The terms "TTY" (teletypewriter) or "TDD" (telecommunications device for deaf persons) shall mean devices that are used with a telephone to communicate with persons who are deaf or hard-of-hearing or who have speech impairments by typing and reading communications.

GENERAL PROVISIONS

Scope. This Agreement resolves the specific issues addressed in the complaint referenced above, and is not intended to preclude or prejudice any other compliance review or complaint investigation that may be pending before OCR now or in the future. Any other compliance matters arising from subsequent compliance reviews or complaint investigations shall be dealt with and resolved separately.

Non-Waiver. Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as a waiver of OCR's right to enforce other deadlines or any provision of this Agreement.

No Admission of Non-Compliance. This Agreement shall not be construed as an admission or evidence that XRMC has not complied with Section 504 or its respective implementing regulation with respect to the allegations in the complaint.

Effective Date and Term of the Agreement. The Parties agree that this Agreement shall become effective as of the date that both Parties have signed it (the "Effective Date"). This Agreement shall remain in effect for eighteen (18) months following the Effective Date of this Agreement (the "Term"). At such time, this Agreement shall terminate, provided that XRMC is in substantial compliance with this Agreement. Notwithstanding the Term of this Agreement, XRMC acknowledges that it shall comply with Section 504 for so long as it continues to receive Federal financial assistance.

No Discrimination or Retaliation. The Parties agree that there shall be no discrimination or retaliation of any kind against any person because he or she provided any testimony or otherwise assisted OCR during the investigation of this complaint or because he or she in the future may participate in any manner in any investigation, proceeding or hearing regarding this complaint investigation or regarding compliance with this Agreement.

Records; Data Requests. Throughout the Term of this Agreement, XRMC agrees to retain all records specified in this Agreement and to provide the written documentation required by this Agreement. XRMC also agrees to provide such other information as may be requested and reasonably necessary to assure OCR that the provisions of the Agreement have been fulfilled.

Review of Compliance. OCR may, at any time, review XRMC's compliance with this Agreement. As part of such review, OCR may require written reports, interview witnesses and/or examine and copy XRMC documents. XRMC agrees to retain the records required by OCR to assess XRMC's compliance with the Agreement. OCR shall maintain the confidentiality of all documents, files and records received from XRMC and shall not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.

Notice of Non-Compliance. During the duration of this Agreement, if at any time OCR determines that XRMC has failed to comply with any provision of this Agreement, OCR shall notify XRMC in writing. The notice shall include a statement of the basis for OCR's determination and shall allow XRMC fifteen (15) working days either: (a) to explain in writing the reasons for its actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement; or (b) to dispute the accuracy of OCR's findings. On notice to XRMC, OCR may shorten the fifteen (15) day period if it determines that a delay would result in irreparable injury to the Complainant or to other affected parties. If XRMC does not respond to the notice, or if, upon review of XRMC's response, OCR finds that XRMC has not substantially complied with the terms of the Agreement, OCR may, refer the matter to the Department of Justice or, as it deems appropriate, initiate legal proceedings to enforce this Agreement upon notice to XRMC.

Technical Assistance. OCR agrees to provide appropriate technical assistance to XRMC regarding compliance with this Agreement, as requested and as reasonably necessary.

Modifications; Entire Agreement. This Agreement may only be modified by mutual agreement of the Parties in writing. This Agreement constitutes the entire agreement by the Parties and no other statement, promise or agreement, either written or oral, made by either Party or any

agents of a Party, that is not contained in this written Agreement, including any attachments, shall be enforceable.

Severability. In the event that a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain valid and enforceable; provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, they shall, through reasonable, good faith negotiations, agree upon such other amendments hereto as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

Compliance with Applicable Laws. Any modification or amendment of this Agreement does not affect XRMC's independent responsibilities under any applicable Federal, state or local laws or regulations.

GENERAL OBLIGATIONS

Disability Nondiscrimination. XRMC shall provide deaf or hard-of-hearing Patients and Companions with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of XRMC as required by Section 504.

Nondiscrimination by Association. XRMC shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of the person with someone who is deaf or hard-of-hearing.

PROVISION OF APPROPRIATE AUXILIARY AIDS

Appropriate Auxiliary Aids. XRMC shall provide to deaf or hard-of-hearing Patients and Companions any appropriate auxiliary aids that may be necessary for effective communication.

General Assessment Criteria. XRMC shall consult with individual Patients who are deaf or hard of hearing and Companions wherever possible to determine what type of auxiliary aid or interpretive service is needed to ensure effective communication. While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of XRMC, provided that the method chosen results in effective communication. The assessment made by XRMC Personnel shall take into account all relevant facts and circumstances, including without limitation the following:

- the nature, length, and importance of the communication at issue;
- the individual's communication skills and knowledge;
- the Patient's health status or changes thereto;
- the Patient's and/or Companion's request for or statement of the need for an auxiliary aid; and
- the reasonably foreseeable health care activities of the Patient (e.g., group therapy sessions, medical tests or procedures, rehabilitation services, meetings with health care professionals

or social workers, or discussions concerning billing, insurance, self-care, prognoses, diagnoses, history, and discharge).

In the event that communication is not effective, XPMC Personnel shall reassess which appropriate auxiliary aids are necessary, in consultation with the person with a disability, where possible.

Time for Assessment

Scheduled Appointments. In consultation with the Patient or Companion, per paragraph E. (2) (above), XPMC Personnel shall determine which appropriate auxiliary aids are necessary to ensure effective communication, and the timing, duration, and frequency with which they will be provided, at the time an appointment is scheduled for the deaf or hard-of-hearing Patient or the Patient with a deaf or hard-of-hearing Companion. XPMC Personnel shall perform and document, in the deaf or hard-of-hearing Patient's medical chart, a communication assessment as part of each initial in-patient assessment.

Non-Scheduled Incidents. In consultation with the Patient or Companion, per paragraph E. (2) (above), the determination of which appropriate auxiliary aids are necessary to ensure effective communication, and the timing, duration, and frequency with which they will be provided shall be made by XPMC Personnel upon the arrival of the deaf or hard-of-hearing Patient or Companion at the XPMC. XPMC Personnel shall perform and document, in the deaf or hard-of-hearing Patient's medical chart, a communication assessment as part of each initial in-patient assessment.

Continuation of Provision of Appropriate Auxiliary Aids. After conducting the assessment described in Section E.2 above, XPMC shall continue to provide appropriate auxiliary aids to the deaf or hard-of-hearing Patient or his or her Companion, in accordance with Sections F.1 and F.2 of this Agreement, during the entire period of the Patient's hospitalization and subsequent visits without requiring subsequent requests for the appropriate auxiliary aids by the Patient or Companion. XPMC Personnel shall keep records that reflect the ongoing provision of appropriate auxiliary aids to deaf or hard-of-hearing Patients and Companions, such as notations in the Patients' medical charts.

Medical Concerns. Nothing in this Agreement shall require that an electronic device or equipment constituting an appropriate auxiliary aid be used when or where its use may interfere with medical or monitoring equipment or may otherwise constitute a threat to any Patient's medical condition.

Determination Not to Provide Appropriate Auxiliary Aid. If, after conducting the assessment as described in Section E.2. of this Agreement, XPMC determines that the circumstances do not warrant provision of an appropriate auxiliary aid, XPMC Personnel shall so advise the person requesting such aid and shall document the date and time of the denial, the name and title of the XPMC Personnel who made the determination, and the basis for the determination. A copy of this documentation shall be provided to the deaf or hard-of-hearing Patient (and Companion, if applicable and appropriate); shall be maintained with the Auxiliary Aid Log described in Section E.7 of this Agreement; and shall be placed in the Patient's medical chart.

Auxiliary Aid Log. For eighteen (18) months following the Effective Date of this Agreement (unless such time period is extended by OCR's providing written notice to XRMC of such extension), XRMC shall keep a log (which may be one log or the aggregate of multiple logs) of appropriate auxiliary aids it provides (the "Auxiliary Aid Log"). A copy of the Auxiliary Aid Log shall be attached to the Compliance Reports as described in Section J.1 of this Agreement and shall include the following information:

the time and date each appropriate auxiliary aid is provided;

the time and date a request is made for an appropriate auxiliary aid by a deaf or hard-of-hearing Patient or Companion (if a request is made by such Patient or Companion);

the time and date XRMC Personnel requests an appropriate auxiliary aid;

a code which identifies the deaf or hard-of-hearing Patient (and Companion, if applicable and appropriate);

the time and date of the scheduled appointment (if a scheduled appointment was made); and

the nature of the appropriate auxiliary aid provided; or a statement that the appropriate auxiliary aid was not provided, the reason why it was not provided and whether an alternative was provided (if so, identify the alternative).

As part of the Auxiliary Aid Log, XRMC also shall collect information regarding the response times, as described in Section F.3 of this Agreement, for each request for an interpreter, as well as the qualifications (certification levels) of each interpreter who responds to a request to interpret. Such Auxiliary Aid Log shall be retained by XRMC throughout the Term of this Agreement.

504 Coordinator. Within thirty (30) days after the Effective Date of this Agreement, XRMC shall reaffirm its designation of a staff person as its Section 504 coordinator, who shall effectively implement the provision of this Agreement, including without limitation:

ensuring that training required by this Agreement is completed;

developing and disseminating specific procedures to fully implement this Agreement;

drafting, maintaining, and providing all reports required by this Agreement;

analyzing data collected in the Auxiliary Aid Log and implementing any corrective action plan, if warranted; and

being able to answer questions and provide appropriate assistance regarding immediate access to, and proper use of, appropriate auxiliary aids required by this Agreement.

Complaint Resolution. XRMC shall develop a Patient Grievance/Complaint Policy and Process for the resolution of concerns or grievances/complaints raised by deaf or hard-of-hearing Patients and Companions regarding effective communication. XRMC shall notify deaf or hard-of-hearing Patients and Companions of XRMC's complaint resolution mechanism, to whom

complaints should be made, and the right to receive a written response to the complaint if requested. XRMCM shall use the 504 Coordinator and other appropriate XRMCM Personnel to respond to and address any concerns or grievances/complaints raised by deaf or hard-of-hearing Patients and Companions regarding effective communication as soon as reasonably possible, with a goal of resolving all such matters raised while the Patient is in the XRMCM so that effective communication is provided while the Patient is in the XRMCM. XRMCM shall promptly provide the deaf or hard-of-hearing Patient and/or Companion a written response to the complaint, but no later than thirty (30) days after the resolution of the grievance/complaint. XRMCM shall maintain records of all grievances/complaints regarding effective communication with deaf or hard-of-hearing Patients and Companions, whether oral or written, including copies of all complaints or notes reflecting oral complaints, made to XRMCM and actions taken with respect thereto throughout the Term of this Agreement.

Prohibition of Surcharges. All appropriate auxiliary aids required by this Agreement shall be provided free of charge to the deaf or hard-of-hearing Patient and/or Companion.

Notice of Available Appropriate Auxiliary Aids to Individuals Who Do Not Request Such Aids. If a deaf or hard-of-hearing Patient and/or Companion does not request appropriate auxiliary aids, but XRMCM Personnel have reason to believe, after conducting the assessment described in Section E.2 of this Agreement, that such person would benefit from appropriate auxiliary aids for effective communication, XRMCM shall specifically inform the deaf or hard-of-hearing Patient and/or Companion that appropriate auxiliary aids are available free of charge.

Communication with Patients and Companions. XRMCM shall take appropriate steps to ensure that all XRMCM Personnel having contact with a deaf or hard-of-hearing Patient and/or Companion are made aware of such person's disability so that effective communication with such person will be achieved.

Data Collection; Monitoring of Performance; Feedback Forms. XRMCM shall collect data on the effectiveness of the appropriate auxiliary aid provided and the performance of a qualified interpreter provided. XRMCM shall also prepare a form, subject to the review and approval of OCR in accordance with Section H.2 of this Agreement, requesting feedback concerning the timeliness and effectiveness of interpreter services and other appropriate auxiliary aids. Such feedback form shall be provided to each deaf or hard-of-hearing Patient or Companion who was provided an interpreter or other appropriate auxiliary aid. XRMCM shall develop a convenient process to allow such Patients or Companions to complete and return the feedback forms; the Patient/Companion shall choose whether or not to avail himself or herself of that opportunity. For some Patients or Companions, limited written English proficiency may be a barrier to understanding or completing the form. XRMCM shall offer assistance, including additional interpreter services, where necessary for Patients or Companions to complete the form. Outpatients who receive services on an ongoing basis do not need to receive a feedback form after every visit. XRMCM shall use the feedback forms that it does receive for monitoring and evaluating the performance of each interpreter and the other appropriate auxiliary aids it provides to deaf or hard-of-hearing Patients and Companions. XRMCM shall maintain the completed feedback forms throughout the Term of this Agreement.

PROVISION OF SIGN LANGUAGE AND ORAL INTERPRETERS

Circumstances under which Interpreters shall be Provided. As necessary for effective communication, XPMC shall provide qualified sign language interpreters to deaf or hard-of-hearing Patients and Companions whose primary means of communication is sign language. As necessary for effective communication, XPMC shall also provide qualified oral interpreters to deaf or hard-of-hearing Patients and Companions who rely primarily on lip reading. The determination of when such interpreters shall be provided to such Patients and/or Companions shall be made as set forth in Section E.2 of this Agreement. The following are examples of circumstances when it may be necessary to provide interpreters:

- determination of a Patient's medical, psychiatric, psychosocial, nutritional, and functional history or description of condition;
- provision of a Patient's rights, informed consent, or permission for treatment, and current condition;
- determination and explanation of a Patient's diagnosis or prognosis, and current condition;
- explanation of procedures, tests, treatment, treatment options, or surgery;
- explanation of medications prescribed (such as dosage, instructions for how and when the medication is to be taken and side effects or food or drug interactions);
- explanation regarding follow-up treatments, therapies, test results, or recovery;
- blood donations or aphaeresis (removal of blood components);
- discharge planning and discharge instructions;
- provision of mental health evaluations, group and individual therapy, counseling, and other therapeutic activities, including but not limited to grief counseling and crisis intervention;
- explanation of complex billing or insurance issues that may arise;
- educational presentations, such as classes concerning birthing, nutrition, CPR, and weight management;
- religious services and spiritual counseling provided by XPMC;
- explanation of living wills or powers of attorney (or their availability); and
- any other circumstance in which a qualified sign interpreter is necessary to ensure a Patient's rights provided by law.

The foregoing list of circumstances is not exhaustive and does not imply that there are not other circumstances when it may be appropriate to provide interpreters for effective communication. This list also is not intended to imply that an interpreter must always be provided in these and/or other circumstances.

Provision of Qualified Interpreters Throughout a Hospitalization. During a hospitalization, it shall not be necessary for the deaf or hard-of-hearing Patient to renew the request for a qualified interpreter or other appropriate auxiliary aid. XPMC shall provide notice to all deaf or hard-of-hearing Patients and Companions of its policy to provide qualified interpreters and other appropriate auxiliary aids throughout a hospitalization without the need for continual separate requests for such aids. XPMC shall make qualified interpreters available during a hospitalization in the circumstances set forth in F.1 and F.2 of this Agreement.

Provision of Interpreters in a Timely Manner

Non-Scheduled Interpreter Requests. For any situation that is not a scheduled appointment, XPMC shall make an interpreter available as soon as possible, but in no case later than the time periods required by the State Department of Health ("SDOH") in its regulation at 10 C.R.R. § 405.7(a)(7)(ix)(a) ("[I]nterpreters and persons skilled in communicating with . . . hearing-

impaired individuals shall be available to patients in the inpatient and outpatient setting within 20 minutes and to patients in the emergency service within 10 minutes of a request to the hospital administration by the patient, the patient's family or representative or the provider of medical care. The Commissioner of Health may approve time limited alternatives . . . regarding interpreters and persons skilled in communicating with vision and/or hearing-impaired individuals for patients of rural hospitals"); provided, however, that if the Commissioner of SDOH has approved a time limited alternative for XRMC in accordance with 10 N.Y.C.R.R. § 405.7(a)(7)(ix)(a), then: (i) XRMC shall provide OCR with a copy of any documentation received from SDOH regarding the approval and terms of such time limited alternative; and (ii) XRMC shall comply with the terms of such time limited alternative during the time period specified by SDOH. Notwithstanding the foregoing, in the event that the Commissioner of SDOH approves a time limited alternative for XRMC which would permit XRMC to make an interpreter available within any time period that exceeds two (2) hours, XRMC nonetheless shall make an interpreter available within two (2) hours from the time of the Patient/Companion's request for an interpreter or XRMC's request for an interpreter, whichever is earlier.

Scheduled Interpreter Requests. For scheduled events, XRMC shall make a qualified interpreter available at the time of the scheduled appointment. If an interpreter fails to appear for the scheduled appointment, XRMC shall take whatever additional actions are necessary to make a qualified interpreter available to the deaf or hard-of-hearing Patient and/or Companion.

Notice to Deaf or Hard-of-Hearing Patients and Companions. As soon as XRMC Personnel have determined that a qualified interpreter is necessary for effective communication with a deaf or hard-of-hearing Patient or Companion, XRMC shall inform such a person (or a family member or friend, if such person is not available) of the current status of efforts being taken to secure a qualified interpreter on his or her behalf. XRMC shall provide additional updates to the Patient or Companion as necessary until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not lessen XRMC's obligation to provide qualified interpreters in a timely manner as required by Section F.3 this Agreement.

Other Means of Communication. XRMC agrees that between the time an interpreter is requested and the time an interpreter arrives at the XRMC to interpret, XRMC Personnel shall continue to try to communicate with the deaf or hard-of-hearing Patient or Companion for such purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication, including using sign language pictographs. This provision in no way lessens XRMC's obligation to provide qualified interpreters in a timely manner as required by Section F.3 of this Agreement.

Restricted Use of Certain Persons to Facilitate Communication. Due to confidentiality, potential emotional involvement, and other factors that may adversely affect the ability to facilitate communication, XRMC shall never require or coerce a family member, case manager, advocate, or friend of a deaf or hard-of-hearing Patient or Companion to interpret or facilitate communications between XRMC Personnel and such Patient or Companion, except that such person may provide such assistance if all four (4) of the following factors are present:

- such person wishes to provide such assistance;
- the Patient or Companion provides written agreement to the use of such person to interpret or facilitate communication;

- the Patient or Companion has been made aware of the full range of communication facilitating options available free of charge; and
- such use is necessary or appropriate under the circumstances, giving appropriate consideration to any privacy issues that may arise;
- provided; however, that in time-sensitive life-threatening situations, XRMC may rely upon communications through a Companion until a qualified interpreter is obtained.

Assessment of Interpreter Resources; Agreement. Within thirty (30) days after the Effective Date of this Agreement, XRMC shall assess the resources available to assist XRMC with meeting its obligations under this Agreement and:

enter into a contract with an individual or organization who will provide qualified sign language interpreter services to XRMC in the event that XRMC's current provider, (FIRM NAME), is not qualified to provide sign language interpreter services in a particular situation or is not available at the times needed by XRMC;

enter into a contract with an individual or organization who will provide qualified oral interpreter services to XRMC in the event that XRMC's current provider, (FIRM NAME), is not qualified to provide oral interpreter services in a particular situation or is not available at the times needed by XRMC; and

research providers of video interpreting services (VIS) to potentially serve as one of the resources available to XRMC to meet its obligations under this Agreement and Section 504. To this end, within thirty (30) days after of the Effective Date of this Agreement, XRMC shall conduct a cost-benefit analysis to determine whether it is advisable and feasible for XRMC to enter into a contractual arrangement with a VIS provider with the capability of providing VIS and technical assistance twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, with qualified sign language interpreters promptly available on this basis who are qualified to interpret in medical situations, and who are familiar with medical terminology.

NOTICE TO COMMUNITY

Policy Statement. Within sixty (60) days after the Effective Date of this Agreement, XRMC shall post and maintain at all XRMC admitting stations, emergency departments, and wherever a Patient's Bill of Rights is required by law to be posted signs of conspicuous size and print, which shall state to the following effect:

Free sign language and oral interpreters, TTYs/TDDs and other services are available to deaf or hard-of-hearing persons. Ask us for help or contact [XRMC Contact Information].

These signs shall include the international symbols for "interpreters" and "TTYs/TDDs."

Patient and Visitor Information Brochures. XRMC shall include in all future printings of its Patient and visitor information brochures and all similar publications a statement to the following effect:

If you are deaf or hard-of-hearing, please let us know. We provide many free services including:

- Sign language interpreters

- Oral interpreters
- TTYs/TDDs
- Telephone amplifiers
- Note takers
- Written materials
- Other services.

We also provide these free services to your family or to other people who may be deaf or hard-of-hearing, while they are with you in the XRMC.

Ask us for help or contact [XMRC Contact Information].

These brochures shall include the international symbols for “interpreters” and “TTYs”. XRMC shall also include in the handbook a description of XRMC’s complaint resolution mechanism.

Website. Within thirty (30) days after the Effective Date of this Agreement, XRMC shall include on any website it maintains the statement described in Section G.2 of this Agreement.

Format of Notices. Within ninety (90) days after the Effective Date of this Agreement, XRMC shall make the following written materials it provides to hearing patients available in American Sign Language (ASL) using videotape, DVD, or CD-ROM format:

- The Patients’ Bill of Rights;
-
- Health care directives pamphlet;
-
- Information regarding XRMC’s policies and procedures governing free sign language interpreter services and other appropriate auxiliary aids, including a summary of the rights provided by this Agreement;
-
- Grievance and complaint resolution procedures; and
-
- Notice of Privacy Practices.
-

Within thirty (30) days after receiving OCR approval in accordance with Section H.2 of this Agreement of the feedback form described in Section E.13 of this Agreement, XRMC shall make the content of the feedback form available to Patients and Companions in ASL using DVD or CD-ROM format.

DEVELOPMENT OF POLICIES AND PROCEDURES AND NOTICE TO XRMC PERSONNEL AND PHYSICIANS

1. Publication of Policies and Procedures. XRMC shall publish, in an appropriate form, written policies and procedures regarding XRMC’s policy for effective communication with persons who are deaf or hard-of-hearing. The policies and procedures shall include, but not be limited to, language to the following effect:

If you recognize or have any reason to believe that a patient, relative, or a close friend or companion of a patient is deaf or hard-of-hearing, you must advise the person that appropriate auxiliary aids such as sign language and oral interpreters, TTYs, note takers, written materials,

telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders, and open and closed captioning of most XRMC programs shall be provided free of charge. If you are the health care provider responsible for the patient's care, you must take reasonable and necessary steps to ensure that such aids and services are provided when appropriate. All other XRMC personnel should direct that person to [add XRMC contact information]. This offer and advice must likewise be made in response to any overt request for appropriate auxiliary aids.

2. **OCR Review and Approval.** XRMC shall send the new policies and procedures referenced in Sections E.2 and H.1 of this Agreement, as well as the patient grievance/complaint policy described in Section E.9, the feedback form described in Section E.13, and the auxiliary aid log described in Section E.7, to OCR within sixty (60) days after the Effective Date of this Agreement. Upon receipt, OCR shall review the new policies and procedures within thirty (30) days. The new policies and procedures shall not be implemented by XRMC without the approval of OCR.

3. **Distribution of Policies and Procedures.** Within thirty (30) days after receiving OCR approval in accordance with Section H.2 of this Agreement, XRMC shall distribute, by mail, email or other means, the new policies and procedures referenced in Sections E.2. and H.1 of this Agreement, as well as the patient grievance/complaint policy described in Section E.9, the feedback form described in Section E.13, and the auxiliary aid log described in Section E.7, to all XRMC Personnel and medical and allied health staff members. XRMC shall also distribute the polices and procedures, by mail, email or other means, to all new XRMC Personnel and medical and allied health staff members upon their employment or affiliation with XRMC. In addition, the policies and procedures shall also be distributed, by mail, email or other means, to all XRMC Personnel on an annual basis.

TRAINING

Training of 504 Coordinator. Within thirty (30) days after receiving OCR approval in accordance with Section H.2 of this Agreement, XRMC shall provide special mandatory training for the 504 Coordinator and any other XRMC personnel who are designated to assist the 504 Coordinator with his/her responsibilities under this Agreement. Such training shall be sufficient in duration and content to train the 504 Coordinator and such XRMC personnel in:

- the health care needs of the deaf or hard-of-hearing;
- the various degrees of hearing impairment, language, and cultural diversity in the deaf or hard-of-hearing community;
- identification of communication needs of persons who are deaf or hard-of-hearing;
- the unique needs and problems encountered by late-deafened individuals;
- the psychological implications of deafness and its relationship to interaction with hearing health care professionals;
- recommended and required charting procedures governing requests for appropriate auxiliary aids;
- types of appropriate auxiliary aids available in the community and XRMC;
- the proper use and role of qualified interpreters;
- making and receiving calls through TTYs;

XRMC's complaint resolution policy and process described in Section E.9 of this Agreement; and

any other applicable requirements of this Agreement.

Training of Other Key Personnel. Within thirty (30) days after receiving OCR approval in accordance with Section H.2 of this Agreement, XRMC shall provide training to XMRC employees who fall into the following categories: social workers, patient relations staff, care coordinators, nurse managers, charge nurses, billing office customer service representatives, clinical nurse specialists, telephone operators, patient registration staff and other employees as determined by XRMC. This training may be delivered by one or more in-service training methods. The training shall address the special needs of deaf or hard-of-hearing Patients and Companions and shall include the following objectives:

- the requirements of Section 504 to ensure effective communication with deaf or hard-of-hearing Patients and Companions;
- the terms of this Agreement;
- the importance of the use of qualified interpreters and other appropriate auxiliary aids in providing services to deaf or hard-of-hearing Patients and Companions;
- types of communication modes and types of appropriate auxiliary aids;
- the identity and role of the 504 Coordinator and any XRMC Personnel designated to assist the 504 Coordinator;
- XRMC's policy on and tips on assessing the communication needs of deaf or hard-of-hearing Patients and Companions;
- the use of the TTY/TDD devices and the New York State Relay Service; and
- XRMC's procedures implemented to comply with this Agreement and other procedures specific to the employee's employment category.

Annually thereafter, XRMC shall supplement this training so as to remind such employees of the requirements of the Agreement, reinforce their previous learning and to address any issues or problems that may be arising. XRMC shall provide the training specified above to new XRMC employees who fall into the categories identified in this Section I.2 within thirty (30) days after the commencement of their services for XRMC. A screening of a video of the original training shall suffice to meet this obligation.

Training of Substantially all Employees in the Identified Categories. XRMC shall use its best efforts to provide the training identified above in Sections I.1 and I.2 to substantially all of those employees within the identified time frame. The Parties recognize that certain employees may be on leave of absence or in similar categories which may prevent such employees from being trained within the identified time frame.

Training of Emergency Room Personnel. XRMC also shall provide annual in-service training to the non-physician employees in the XRMC emergency rooms on: (a) promptly assessing the communication needs of deaf or hard-of-hearing Patients; (b) securing the services of qualified interpreters as quickly as possible; and (c) the use of other aids to augment effective communication with deaf or hard-of-hearing Patients.

Training Attendance Sheets. XRMC shall maintain documentation of all training conducted pursuant to Section I of this Agreement, which shall include the names and respective job titles of the participants, as well as the date and location, if applicable, of the training session.

Training of Medical and Allied Health Staff. XRMC shall annually conduct one or more training sessions on the communication needs of persons who are deaf or hard-of-hearing and shall invite all medical and allied health staff to attend. XRMC shall provide training videotapes that contain substantially similar information to any affiliated physician upon request.

Written Materials. Within thirty (30) days after receiving OCR approval in accordance with Section H.2 of this Agreement, XRMC shall distribute, by mail, email or other means, a set of materials to all medical and allied health staff. These materials shall contain at least the following: (a) XRMC's new policies and procedures developed in accordance with Sections E.2. and H.1 of this Agreement, as well as the patient grievance/complaint policy described in Section E.9, the feedback form described in Section E.13, and the auxiliary aid log described in Section E.7; and (b) a request that physicians' staff members notify XRMC of those deaf or hard-of-hearing Patients and Companions as soon as they schedule admissions, tests, surgeries, or other health care services at XRMC.

REPORTING AND MONITORING

Compliance Reports. On the dates detailed in Section J.2 of this Agreement, XRMC shall provide a written report ("Compliance Report") to OCR regarding the status of its compliance with this Agreement. The Compliance Report shall include data relevant to the Agreement, including but not limited to:

- the number of requests for qualified interpreters received by XRMC at XMRCs by deaf or hard-of-hearing Patients and Companions;
- the number of times a qualified interpreter was provided by XRMC;
- the number of times XRMC denied a request for a qualified interpreter and the reason for the denial;
- the number of times XRMC requested a qualified interpreter but the interpreter failed to show and, for each such situation, the reasons for the failure;
- in the case of a "non-scheduled interpreter request" as defined in Section F.3(a), the date and the time a qualified interpreter is requested by a deaf or hard-of-hearing Patient or Companion and the date and time the interpreter actually began interpreting for such Patient or Companion;
- for "scheduled interpreter requests," as discussed in Section F.3(b), XRMC shall report the time and date of the appointment and the time the interpreter arrived.
- an explanation of the reasons for the delay in obtaining a qualified interpreter in those cases where: (1) in the case of a "non-scheduled interpreter request," the time the interpreter actually begins interpreting for a deaf or hard-of-hearing Patient or Companion exceeds the time period permitted under Section F.3(a) of this Agreement; or (2) in the case of a "scheduled interpreter request," the time the interpreter arrives at XRMC, is more than one (1) hour later than the time of the scheduled appointment; and
- the number of complaints received by XRMC by deaf or hard-of-hearing Patients and Companions regarding appropriate auxiliary aids and/or effective communication and a notation as to whether or not XRMC considers the matter(s) resolved.

Submission of Compliance Reports. XRMC shall submit the aforementioned Compliance Reports to OCR within thirty (30) days after the end of each of the following periods: (a) three (3) months after the Effective Date of this Agreement; (b) nine (9) months after the Effective

Date of this Agreement (covering the preceding six (6) month period); and (c) fifteen (15) months after the Effective Date of this Agreement (covering the preceding six (6) month period).

Maintenance of Records. XRMC shall maintain appropriate records to document the information contained in the Compliance Reports and shall make them available, upon request, to OCR and shall retain those records throughout the Term of this Agreement.

Additional Documentation. XRMC shall provide OCR with the following:

Within forty-five (45) days after receiving OCR approval in accordance with Section H.2 of this Agreement, copies of XRMC's new policies and procedures developed in accordance with Sections E.2. and H.1 of this Agreement, as well as the patient grievance/complaint policy described in Section E.9, the feedback form described in Section E.13, and the auxiliary aid log described in Section E.7;

Within forty-five (45) days after receiving OCR approval in accordance with Section H.2 of this Agreement, a letter certifying that the distribution of materials required by Section I.7 of this Agreement has occurred. The letter shall specify the date(s) that such distribution occurred, and the categories of persons to whom the materials were distributed;

Within forty-five (45) days after receiving OCR approval in accordance with Section H.2 of this Agreement, a letter certifying that the training described in Section I of this Agreement has been completed. The letter shall specify the date(s), time(s) and location(s) of the training, person(s) conducting the training, the content of the training and the names and titles of those participating in the training; and

Within forty-five (45) days after the Effective Date of this Agreement, a copy of the contracts entered into by XRMC in accordance with Section F.7 of this Agreement.

SIGNATURES

The individuals signing this document represent that they are authorized to bind the undersigned entities to this Agreement.

[Insert Name] Date
[Insert Title]
Regional Medical Center

(NAME) Date
Regional Manager
Office for Civil Rights
Region II

**APPENDIX TT: SAMPLE COVER LETTER FOR VOLUNTARY RESOLUTION
AGREEMENT**

[Return to: Voluntary Resolution Agreement \(VRA\)](#)

(NAME)
Attorney at Law
(FIRM)
(ADDRESS)

Re: Transaction No. XX-XXXX

Dear (NAME):

I am pleased to transmit to you a copy of the enclosed Voluntary Compliance Agreement between the U.S. Department of Health and Human Services Office for Civil Rights (OCR) and the (STATE) Department of Human Services (DHS).

On (DATE) the Office for Civil Rights received a complaint from (FIRM2) alleging that the DHS was in violation of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. 12131 et seq., its implementing regulations at 28 C.F.R. Part 35; and Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. 794, and its implementing regulations at 45 C.F.R. Part 84. Specifically, the complaint alleged that DHS had discriminated against eight (8) specific individuals on the basis of disability in the operation of its TANF program by failing to provide appropriate assessments, and modifications of work programs, sanctions and time limits to accommodate their disabilities. On (DATE) the (FIRM3) filed a disability discrimination complaint regarding three (3) additional TANF clients. On (DATE) OCR advised (FIRM1 AND FIRM3) that all the individual complaints had been closed and the issues combined into a compliance review of the DHS TANF program.

On (DATE), following many months of fact-finding and resolution discussions, DHS and OCR entered into the enclosed Voluntary Compliance Agreement. The Agreement demonstrates the commitment of DHS to afford individuals with disabilities an equal opportunity to participate in the DHS TANF program, and commits DHS to a process that is designed to effectively identify and respond to the needs of individuals with disabilities, ensuring equal opportunity to participate in all aspects of the TANF program and services. The terms of the agreement will be monitored for a period of two years from the date of execution.

If you have any questions about this Agreement, please call (name), the Equal Opportunity Specialist who is now handling this matter, or (name), Branch Chief, at the telephone numbers listed above.

Please note that the execution of this Voluntary Compliance Agreement does not affect the right of any aggrieved person to file a private civil action to remedy alleged discrimination by a covered entity. Also, no covered entity may intimidate, threaten, coerce or discriminate against an individual because he or she has made a complaint, testified, assisted or participated in any manner in an action to secure rights protected by the civil rights statutes enforced by OCR.

Under the Freedom of Information Act, it may be necessary for OCR to release this document and related correspondence and records upon request. In the event OCR received such a

request, we will seek to protect, to the extent provided by law, personal information which, if released, would constitute an unwarranted invasion of privacy.

We look forward to continuing the good relationship fostered through this process with DHS to ensure equal opportunity for individuals with disabilities.

Sincerely,

(NAME)
Acting Regional Manager
Office for Civil Rights
Region X

Enclosure: Copy of Voluntary Resolution Agreement

APPENDIX UU: SAMPLE VIOLATION FINDINGS LETTER

[Return to: Violation Findings Letter](#)

(DATE)

CERTIFIED MAIL

Our Reference: XX-XXXXX

(NAME), Director
(COUNTY) Department of Social Services
(ADDRESS)

COMPLAINANT

Dear (NAME):

This letter is to advise you that the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint, which was received in our office on (DATE). In the complaint, (the complainant) alleged that the (COUNTY) Department of Social Services (DSS or the recipient) discriminated against her on the basis of her race by delaying her applications for medical assistance and on the basis of her disability by refusing to allow her to have her therapy/service dog accompany her to appointments with DSS staff. For the reasons discussed below, we find that the recipient did not discriminate against the complainant on the basis of her race. However, we find that the recipient did discriminate against the complainant on the basis of disability by failing to appropriately respond to her request for a reasonable modification in the recipient's policy, practice or procedure, and that the recipient's policy discriminates against persons with disabilities.

Legal Authority

Our investigation was conducted under the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulation, 45 C.F.R. Part 80, which prohibit discrimination based on race, color, or national origin by recipients of Federal financial assistance through the Department of Health & Human Services (HHS); Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. § 794, and its implementing regulation, 45 C.F.R. Part 84, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance through HHS; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of HHS funds through the (STATE) Department of Social Services, DSS is obligated to comply with Title VI and Section 504 and their implementing regulations. As a public entity, DSS is obligated to comply with Title II and its implementing regulations.

Background

The complainant, who is Caucasian, alleges that the recipient discriminated against her on the basis of her race by effectively delaying her application for medical assistance for more than a

year. The complainant alleges that her caseworker, Ms. (NAME), who is African-American, refused to provide her with the information she requested, failed to return her phone calls, and avoided direct conversation with her when meeting in person. The complainant alleges that the caseworker's conduct caused the complainant to ask the Community Service Board (CSB) to intercede on her behalf, and to accompany her to meetings with her caseworker, who would then speak only with the CSB representatives. The complainant also alleges that the recipient discriminated against her based on her disability (she has been diagnosed with depression and a variety of other impairments, both mental and physical) when the caseworker initially refused to allow her therapy/service dog to accompany her to meetings at DSS and subsequently refused to meet with her in the dog's presence.

DSS denies that any member of its staff discriminated against the complainant on the basis of race or disability. DSS states that (NAME), the recipient's Eligibility Manager, reviewed the complainant's application in accordance with Federal and State requirements and determined the complainant to be ineligible because her income exceeded the limit allowed under the Medicaid program. (NAME) acknowledged that the complainant and her caseworker had a "contentious relationship," but denied that it was the result of racial discrimination or that it delayed the processing of the complainant's application for medical assistance benefits. With regard to the complainant's allegation that she was denied the accommodation of her therapy/service dog, DSS states that it permitted the complainant to bring her dog to appointments with her caseworker, but acknowledged that it conducted those meetings "in a large room that allowed separation between the caseworker and the dog."

Findings of Fact

DSS is an agency of the (STATE). Located in (CITY), DSS offers residents of County a variety of benefits and social services, including, but not limited to, child welfare services, eligibility determinations for medical assistance, food stamps, and Temporary Assistance for Needy Families (TANF).

The complainant is a 65-year-old Caucasian woman with (a number of physical and mental conditions). She first applied for medical assistance and food stamps in (DATE), at which time she was denied benefits because her income level was above the eligibility limit. Because she met all other eligibility requirements for medical assistance except income, the complainant was placed on a six month "spend down" program, at the completion of which she met the eligibility amount. She continued to receive benefits until (DATE).

On (DATE), DSS received a letter from the (STATE) Department of Medical Assistance (DMA) stating that (COMPLAINANT) had received a monetary settlement due to a casualty related accident. With the proceeds from that settlement, the complainant reimbursed Medicaid for some charges previously paid on her behalf. Between (DATE), and (DATE), the complainant continued to submit medical bills in order to qualify for the "spend down," but she was not approved for medical assistance because of lack of documentation. The complainant appealed the decision, but withdrew her appeal (DATE). According to the record, (NAME) met with the complainant and representatives of the CSB several times during this period in an effort to compile the documentation required for the complainant's "spend down."

Sometime in or around (DATE), the complainant visited DSS for a meeting regarding her eligibility for medical assistance. On that day, apparently for the first time, the complainant was

accompanied by a dog. (NAME), who had always met the complainant in the DSS offices but who admitted to being afraid of dogs, told the complainant that she could not bring the dog into the office. The complainant stated, and (NAME) did not deny, that the complainant informed (NAME) that (DOG) was a therapy/service dog and offered to provide her with a "certification" to prove it.' (NAME) still refused to permit the complainant to bring (DOG) into the office. The meeting was ultimately held at the CSB offices in a large room, with the complainant and the dog seated some distance from (NAME). DSS stated that it had no policy regarding service dogs, explaining that such a policy would have emanated from the state agency, the (STATE) Department of Social Services. DSS did provide OCR with a poster containing a caricature of a dog and the following statement: "No Animals Allowed Unless Certified Service Animal (Documentation must be provided)."

In (DATE), the complainant contacted DMA for a review of the eligibility determination and to lodge a discrimination complaint against the staff of DSS. DMA referred the complainant back to DSS. Following the complainant's contacts with DMA, (NAME2) met with the complainant several times between (DATE) and (DATE) and determined that the complainant did in fact meet the "spend down." The complainant withdrew her appeal on (DATE). She was given another Medicaid application on (DATE), and assured that (NAME2), not (NAME), would handle the reevaluation of the complainant's "spend down."

Issue I: Whether the recipient discriminated on the basis of race by delaying the complainant's application for medical assistance benefits

Legal Standard

The regulation implementing Title VI provides, in pertinent part, as follows:

(a) No person in the United States shall, on the basis of race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which this part applies.

(b)(1) A recipient...may not...on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program. 45 C.F.R. §§ 80.3(a) and (b)(l)(i).

In analyzing claims of intentional discrimination, OCR relies on principles established by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (*McDonnell Douglas*), and its progeny, including *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981) (*Burdine*), and *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993) (*St. Mary's*). Applying those principles, OCR must first determine whether there is sufficient evidence to support a *prima facie* case of race discrimination. To conclude that a *prima facie* case has been established, OCR must find that the evidence gives rise to an inference of discrimination, that is, evidence which if otherwise unexplained would lead a trier of fact to conclude that the challenged action was more likely than not the result of impermissible factors. See *Burdine*, 450 U.S. at 1094. The particular requirements for demonstrating a *prima facie* case may vary with "differing factual situations." *McDonnell Douglas*, 411 U.S. at 802, n. 13. To establish a *prima facie* case of discrimination based on race, OCR must find evidence that: (1) the complainant was eligible for the recipient's program in question; (2) she was subjected to some adverse action by the recipient; and (3) others, similarly situated, but not members of the complainant's racial group, were not subjected to the same adverse action or the evidence, if otherwise

unexplained, would lead a reasonable person to conclude that discrimination is more likely than not the reason for the alleged action.

If OCR concludes that the evidence establishes a *prima facie* case, OCR must then determine whether the recipient has either rebutted the complainant's allegations or offered a legitimate, non-discriminatory reason for its action(s). If OCR concludes that the recipient has offered a legitimate non-discriminatory reason for its action(s), OCR must then determine whether or not the reason or reasons the recipient offered are pretextual, *i.e.*, that the proffered reason is false "and that discrimination was the real reason." St. Mary's, 502 U.S. at 515 (emphasis in original).

Analysis

We conclude that there is no *prima facie* case of race discrimination in this case. The complainant was eligible to apply for medical assistance benefits (and subsequently received them) but was subjected to an adverse action when she did not receive benefits from (DATE) to (DATE). However, our investigation did not reveal any similarly situated individuals of a different race who received benefits. Our investigation also disclosed no evidence that would lead a reasonable person to conclude that race discrimination was more likely than not the reason for the delay in complainant's receipt of medical assistance benefits. A DSS manager provided evidence of a "contentious relationship" between the Caucasian complainant and her African American caseworker, described by the complainant herself as personal animosity toward her by the caseworker. However, that mere lack of civility or contentiousness in a relationship, assuming the complainant's allegations in this regard to be true, does not, by itself establish a *prima facie* case of race discrimination. The complainant has identified no specific behavior or statement on the part of any DSS staff member which, on its face, could be viewed as racially motivated, nor did our investigation reveal such evidence.

Even assuming that the evidence established a *prima facie* case of race discrimination, DSS has asserted that its determination of the complainant's eligibility was based on legitimate non-discriminatory reasons: the complainant did not meet the income requirement for medical assistance and was unable to produce the documentation required to meet the "spend down." The record as a whole supports the conclusion that this reason was the real reason that the complainant did not receive medical assistance benefits for the period in question. Therefore, we find that DSS did not discriminate against the complainant on the basis of race.

Issue 2: Whether the recipient discriminated on the basis of disability by failing to provide a reasonable modification to its program regarding the use of an animal by a person with a disability seeking or receiving services

Legal Standard

Regulatory Standard

The regulation implementing Section 504, at 45 C.F.R., §84.4 provides, in pertinent part, as follows:

- (a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- (b)(I) A recipient, in providing any aid, benefit, or service, may not...on the basis of handicap:

- (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others.
 - (iv) Provide different or separate aid, benefits, or services to handicapped persons...
- See also, 28 C.F.R. §§ 35.130(a), and (b)(1)(i)-(iv), respectively, for the comparable Title II regulatory provisions.

The U.S. Supreme Court has made clear that Section 504 requires recipients to make reasonable modifications to their programs in order to ensure meaningful access to qualified persons with disabilities. *Alexander v. Choate*. 469 U.S. 287, 301(1985). The Title II implementing regulations specifically address the issue of reasonable modifications as follows: A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity. 28 C.F.R. §35.130(b)(7) (reasonable modification).

The Department of Justice regulations implementing Title III of the ADA state that, in general, public accommodations must "modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability." 28 C.F.R. § 36.302(c)(1). The regulation defines "service animal" to include "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability." 28 C.F.R. § 36.104. Section 36.302 "reflects the general intent of Congress that public accommodations take the necessary steps to accommodate service animals and to ensure that individuals with disabilities are not separated from their service animals." 28 C.F.R. pt. 36, App. B, p. 701 (2005). That section "also acknowledges . . . that, in rare circumstances, accommodation of service animals may not be required because a fundamental alteration would result in the nature of the goods, services, facilities, privileges, or accommodations offered or provided, or the safe operation of the public operation would be jeopardized."

Department of Justice Guidelines

In April 2002, the Department of Justice published a document entitled "ADA Business Brief: Service Animals," which provides guidance to public accommodations, i.e., business and organizations that serve the public, regarding their obligations to persons with disabilities who use service animals (Attachment 1). Among other things, the document states as follows:

- Businesses may ask if an animal is a service animal or ask what tasks an animal has been trained to perform, but cannot require special ID cards for the animal or ask about the person's disability.
- People with disabilities who use service animals cannot be . . . isolated from other patrons, or treated less favorably than other patrons.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the animal is out of control and the animal's owner does not take effective action to control it . . . or (2) the animal poses a direct threat to the health or safety of others.

- Allergies and fear of animals are generally not valid reasons for denying access or refusing service to people with service animals. ADA Business Brief: Service Animals, April 2002 (emphasis in original).

The Department of Justice has published additional guidance regarding service animals, Commonly Asked Questions about Service Animals in Places of Business (Attachment 2). Among other things, this document states:

3. Q: How can I tell if an animal is really a service animal and not just a pet?

A: Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability. However, an individual who is going to a restaurant or theater is not likely to be carrying documentation of his or her medical condition or disability. Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, you may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.

4. Q: What must I do when an individual with a service animal comes to my business?

A: The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. An individual with a service animal may not be segregated from other customers. Although the above referenced Department of Justice regulations and guidance are specifically applicable to Title III of the ADA, which prohibits discrimination based on disability by public accommodations, the regulations and guidance are consistent with OCR's interpretation of Section 504 and with Title II of the ADA with respect to the obligations of public entities to make reasonable modifications so as to permit the use of a service animal by a person with a disability."

Analysis

When the complainant brought the dog to the meeting in question and identified her as a therapy/service animal, the complainant was essentially requesting that DSS make a reasonable modification for her disabilities. Our investigation revealed that DSS responded to the complainant by first refusing to meet with her at all, and subsequently by agreeing to meet with her only in non- DSS space. DSS reported to OCR that it did not have a policy on service animals (except insofar as the poster requiring documentation of certification constitutes a policy). OCR finds that the evidence is insufficient to establish that the dog met the legal standard to be considered a service animal. Specifically, the evidence does not establish that the dog was "individually trained to do work or perform tasks for the benefit of an individual with a disability." See 28 C.F.R. § 36.104. Therefore, OCR can not conclude that DSS discriminatorily denied the complainant a reasonable modification for a service animal.

However, even if the dog was not a service animal, when the complainant requested DSS to provide a reasonable modification for her disabilities, DSS had a duty under Section 504 and Title II to consider whether the complainant had a right to a reasonable modification and, if so, what modification was appropriate. This duty required DSS to engage in an interactive process

with the complaint to discuss her request and to determine an appropriate response, based on an individualized consideration of the complainant's disability, and taking into account the nature of DSS's program. DSS did not determine whether the complainant was able to demonstrate a need for a reasonable modification or what modification, if any, was appropriate. Rather, DSS responded by first refusing to provide service to the complainant and then by providing service to the complainant in a manner that was different from the service it provided other individuals.

OCR finds that DSS's failure to appropriately consider the complainant's request for reasonable modification discriminated against her on the basis of disability. This violated 45 C.F.R. § 84.4(a) and 28 C.F.R. § 35.130(a), respectively, the general Section 504 and ADA implementing regulatory prohibitions against discrimination based on disability. Further, OCR finds that the DSS requirement for documentation of certification for a service animal is inconsistent with applicable legal standards. The documented certification is an unnecessary requirement and results in DSS's unwarranted refusal to reasonably accommodate persons with disabilities. Accordingly, OCR finds that the requirement for documented certification constitutes a service animal policy that violates 45 C.F.R. § 84.4(a) and 28 C.F.R. §35.130(a). As noted above, DSS has stated that any service animal policy would have emanated from the (STATE) Department of Social Services (State DSS). OCR is separately addressing with the State DSS the responsibility to accommodate service animals as necessary to avoid discrimination on the basis of disability. However, DSS, as a recipient of federal financial assistance, has an independent obligation to comply with Section 504 and therefore cannot rely on the presence or lack of a state agency policy as a defense in this matter. DSS also has an independent obligation to comply with Title II.

Corrective Action

In order to be found in compliance with the applicable regulatory provisions DSS is required to take the following corrective steps:

- 1) Revise and issue a policy to staff and clients regarding the use of service animals. The policy should reflect Department of Justice guidance, which states that public entities cannot require persons with disabilities to provide documentation regarding the service animal in question.
- 2) Conduct training for all staff in the following areas:
 - i) serving persons with disabilities, including those with mental disabilities
 - ii) providing reasonable modifications to persons with disabilities
 - iii) the agency's policy on the use of service animals.
- 3) Submit to OCR a written statement indicating how it plans to inform all new hires of its policy and practices on the use of service animals.
- 4) Post notices in key locations informing clients and the public of its policy and practices on the use of service animals.

DSS has 60 days to take the steps cited above in order to be found in compliance with Section 504 and Title II, and the applicable provisions of their respective implementing regulations. Failure to complete these steps within the designated time frame will result in OCR referring the case for enforcement action, which may subject the recipient to a loss of federal financial assistance.

We wish to advise you that this determination is not intended, nor should it be construed, to cover any other issues regarding civil rights compliance which may exist but were not specifically addressed during our investigation.

All persons filing a complaint with OCR and against whom OCR has rendered a determination partially or totally adverse (i.e., no violations) to the complainant may challenge that determination and request an administrative review of the investigation. The opportunity to challenge a determination is provided under OCR's administrative, discretionary authority and is not a statutory or regulatory requirement. This opportunity is granted solely for the purpose of ensuring that all of the evidence relevant to the investigation has been considered. The granting of an administrative review does not and should not be construed to mean that the original findings will be modified or reversed. OCR will notify the agency if OCR's findings might be affected by any information the complainant provides. The request for a review of the findings must be sent to OCR headquarters, at the following address, within 30 days from the date of this letter. Please note that extensions or changes of this time limit will not be considered without good reason. The complainant may challenge the findings of this investigation by submitting a written request to:

(NAME)
Deputy Director for Civil Rights
Office for Civil Rights
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The complainant's challenge must be limited to those issues raised in the complaint or during the course of our investigation. In addition, the complainant must identify the findings(s) of the regional office with which she disagrees; state specifically the reason for disagreement with the findings; and submit information the complainant believes the regional office overlooked in the investigation of the complaint. Merely stating that the complainant is unhappy or disagrees with the investigative findings will not constitute sufficient grounds to challenge the findings.. The HHS Deputy Director for Civil Rights will determine whether the complainant has provided a sufficient basis for a full review of our investigation. That HHS Deputy Director for Civil Rights will inform the recipient and the complainant of the final decision in writing.

The filing of an administrative complaint with OCR may not fully protect the complainant's personal rights or the rights of persons on whose behalf the complaint is filed. Under OCR procedures, the complainant is not a party to the investigation, or any subsequent enforcement proceedings. The complainant may have a right to file a civil action to remedy discrimination by a recipient of Federal financial assistance or other covered entity. The complainant may wish to consult an attorney about his/her right to pursue a private cause of action, any applicable statute of limitations, and other relevant considerations.

The complainant has the right not to be intimidated, threatened, or coerced by a recipient or other covered entity or other person because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint. We wish to advise you that under the Freedom of Information Act, it may be necessary to release this document and related correspondence in response to any

inquiry. In the event we receive such a request, we will make every effort to protect information which identifies individuals or that, if released, would constitute an unwarranted invasion of privacy.

We appreciate your cooperation regarding this matter.

Sincerely,

(NAME)
Regional Manager

Enclosures:

1. ADA Business Brief: Service Animals, U.S. Department of Justice, April 2002
2. Commonly Asked Questions about Service Animals in Places of Business, U.S. Department of Justice, August 2007

cc: (NAME), VADSS

(NAME), Civil Rights Program Administrator, VADSS

¹ In offering to provide "certification," the complainant was apparently referring to two statements of doctors. (T)he complainant's treating doctor, stated that the complainant suffers from recurring depression and that it is her "professional opinion that having a canine companion is as medically necessary for [the complainant] as medication." She asked that the dog be considered a "therapy dog" (DOCTOR2) of the (NAME) Medical Center, stated that the complainant has a "helper dog, given her medical diagnosis, and requires that she accompany her." DSS was apparently unaware of these two opinions on the date that (NAME) refused to allow the dog into DSS space.

² Because the requirements of Section 504 and the ADA are similar in many respects, courts generally apply the same analysis to both. See, e.g., *Davis v. University of North Carolina*, 263 F.3d 95, 99 n 4 (4th Cir. 2001). Indeed, relying on the legislative history of the ADA, one circuit court has applied the Title III regulatory provision governing service animals in a Title II case. *Crowder v. Kitigawa*, 81 F.3d 1480 (9th Cir. 1996), quoting William Simon's statement that "[a]s an auxiliary aid, the use of assistive animals is protected by the [ADA], in public accommodations as well as public services." 135 Cong. Rec. D956.

APPENDIX VV: SAMPLE SETTLEMENT AGREEMENT

[Return to: Settlement Agreement \(SA\)](#)

Also see other Settlement Agreements in [PIMS / Civil Rights Library / Investigational Resources / HQ Approved Regional Documents](#)

SETTLEMENT AGREEMENT

I. Introduction

This Settlement Agreement (hereinafter, "the Agreement") is entered into by the U.S. Department of Health and Human Services ("HHS"), Office for Civil Rights ("OCR"), and the (STATE) Department of Health and Social Services ("DHSS"), (FACILITY NAME) (FN), to resolve violations identified in the investigation of OCR Complaint No. XX-XXXXX, which was filed on September 5, 2003. DHSS owns and operates the (FACILITY NAMES), which include six assisted living facilities: the (NAMES OF FACILITIES). The complaint alleged that DHSS and FN discriminated against the Complainant's father on the basis of his disability, Alzheimer's disease, by denying him, and other FN residents with Alzheimer's disease, equal access to transportation services at its FN facility, in violation of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. In addition, the Complainant later amended her complaint to allege that, as a result of filing a discrimination complaint with OCR, DHSS and FN retaliated against her.

II. Parties to the Agreement

- A. United States Department of Health and Human Services, Office for Civil Rights; and
- B. State Department of Health and Social Services, the state agency responsible for the administration of health and social services throughout Alaska, including but not limited to the (FACILITY NAMES).

III. Jurisdiction

A. OCR is the HHS office charged with enforcing civil rights laws as they pertain to programs funded by HHS, and so has jurisdiction over this complaint under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84 (collectively, "Section 504"). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

B. OCR also has jurisdiction pursuant to Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35 (collectively, "the ADA"). The ADA prohibits discrimination on the basis of disability in State and local government programs and services.

IV. General Obligations

A. Pursuant to Section 504 and Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of DHSS, or be subject to discrimination by DHSS. DHSS shall

make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless DHSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, or would result in undue financial or administrative burdens.

B. DHSS shall not retaliate or discriminate against, or coerce, intimidate, threaten, or interfere with any person on the basis that he or she opposed any act or practice made unlawful by Section 504 or Title II of the ADA, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Section 504 or Title II of the ADA.

V. General Provisions

A. Non-Admission: DHSS expressly denies that FN's policies, procedures, and practices discriminate on the basis of disability or constitute any other wrongdoing. DHSS' willingness to enter into this Agreement shall not be construed as an admission of fact or evidence that the FN's policies, procedures, or practices are not in compliance with Section 504 or Title II of the ADA.

B. Compliance with the Agreement: In consideration of DHSS' full implementation of the provisions of this Agreement, OCR agrees not to initiate enforcement proceedings with respect to the violations identified in Complaint No. XX-XXXXX. In the event that DHSS fails to fully implement any provision of this Agreement, the parties will confer and attempt to reach agreement as to what steps may be necessary to resolve the compliance issues to both parties' satisfaction. If an agreement is not reached, OCR may terminate this Agreement within thirty (30) calendar days notice and take appropriate measures to effectuate DHSS' compliance with Section 504 and Title II of the ADA.

C. Compliance with Applicable Laws: Nothing in this Agreement is intended to relieve DHSS of its obligation to comply with other applicable Federal nondiscrimination statutes and their implementing regulations.

D. Scope: The terms of this Agreement do not prejudice any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be currently pending before OCR. Any unrelated compliance matters arising from subsequent reviews or investigations may be resolved separately. Nothing in this Agreement will be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to DHSS and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action under Federal laws by other Federal agencies, including any action or investigation under Section 504 or Title II of the ADA.

E. Non-Waiver: OCR's failure to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of OCR's right to enforce other deadlines and provisions of this Agreement.

F. Effective Date and Term of the Agreement: This Agreement will become effective on the date it is signed by all parties (the "Effective Date") and will remain in effect for eighteen (18) months from the Effective Date, at which point if OCR determines that DHSS has substantially complied

with this Agreement, then OCR's review and monitoring of this Agreement will terminate. Notwithstanding the Term of this Agreement, DHSS acknowledges that it will comply with Section 504, the ADA, and other applicable Federal nondiscrimination statutes and their implementing regulations, for so long as it remains a public entity or continues to receive Federal financial assistance.

G. Review of Compliance: OCR may review DHSS' compliance with this Agreement at any time while the Agreement is in effect. As part of such review, OCR may require written reports, access to witnesses, copies of DHSS and FN documents, and/or inspection of DHSS and FN buildings or facilities. DHSS agrees to retain the records required by OCR to assess DHSS' and FN's compliance with this Agreement throughout the Term of this Agreement. OCR will maintain the confidentiality of all documents, files and records received from DHSS; and will not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.

H. Technical Assistance: OCR agrees to provide appropriate technical assistance to DHSS regarding compliance with this Agreement, as requested and as reasonably necessary.

I. Modification of the Entire Agreement: This Agreement may only be modified by mutual agreement of the Parties in writing. This Agreement constitutes the entire agreement by the Parties and no other statement, promise or agreement, either written or oral, made by either Party or any agents of a Party, that is not contained in this written Agreement, including any attachments, shall be enforceable.

J. Publication or Release of Agreement: OCR places no restrictions on the publication of this Agreement or its terms. In addition, OCR may be required to release this Agreement and all related materials to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 552 and its implementing regulations, 45 C.F.R. Part 5.

VI. Specific Provisions

A. Designation of an ADA/Section 504 Coordinator: Within ten (10) calendar days of the Effective Date of this Agreement, DHSS will ensure that FN designates a senior staff person as the individual to coordinate its efforts to comply with and carry out its ADA and Section 504 responsibilities and compliance with this Agreement. The ADA/Section 504 Coordinator or his/her designee will be available to answer questions from FN applicants, residents, and their family members and/or guardians and provide appropriate information regarding an individual's rights and DHSS' obligations under the ADA and Section 504. DHSS will disseminate broadly the name, telephone number, functions, and office address of the ADA/Section 504 Coordinator at FN.

B. ADA/Section 504 Notice and Grievance Procedures: Within sixty (60) calendar days of the Effective Date of this Agreement, DHSS will ensure that FN notifies applicants, residents, and their family members and/or guardians, as well as commonly utilized health care providers, of their rights and FN's obligations under the ADA and Section 504.

1. FN will publish the ADA/Section 504 Notice (Attachment A) and the ADA/Section 504 Grievance Procedures (Attachment B) in its materials for applicants and residents, including but not limited to the "(FACILITY NAME) Services & Information" brochure.

2. FN will post copies of the ADA/Section 504 Notice and Grievance Procedures in conspicuous locations in its facility; and distribute the ADA/Section 504 Notice and Grievance Procedures to all FN residents and their family members and/or guardians, all FN employees and contractors, the FN Resident Council, the FN Family Council, the FN Foundation, and the FN Volunteer Program, as well as commonly utilized health care providers.

3. FN will update the ADA/Section 504 Coordinator information contained in the ADA/Section 504 Notice and Grievance Procedures, as necessary.

4. FN will provide copies of the ADA/Section 504 Notice and Grievance Procedures to any person upon request, including in alternative formats such as Braille, large print and audiotape.

5. The ADA/Section 504 Grievance Procedures must be consistent with 28 C.F.R. § 35.107 and 45 C.F.R. § 84.7.

6. The ADA/Section 504 Notice and the ADA/Section 504 Grievance Procedures shall be submitted to OCR within thirty (30) calendar days of the Effective Date of this Agreement. If OCR has concerns regarding these documents, OCR shall so notify DHSS.

C. Transportation Policy, Individualized Assessment, and Standard Operating Procedures:

Within ninety (90) calendar days of the Effective Date of this Agreement, DHSS shall require FN to publish the Transportation Policy (Attachment C) to ensure that FN residents with disabilities who are eligible to receive transportation services are afforded an equal opportunity to participate in, and benefit from, FN's transportation program.

1. As part of the revised Transportation Policy, FN will implement an Individualized Assessment Tool (IAT), and corresponding IAT Standard Operating Procedures, for measuring and documenting the "medical acuity" of FN residents with disabilities who are eligible to receive FN transportation services and choose to access such services.

2. FN agrees to utilize the IAT and IAT Standard Operating Procedures to assess each FN resident receiving Level II or Level III services on an individualized basis and note the results of the assessment in the FN records of each affected resident.

3. As part of the revised Transportation Policy, FN will consider, on a case-by-case basis, individual requests for reasonable modifications in its transportation service including, but not limited to, requests for an escort to access and benefit from FN transportation services. If, as a result of the IAT assessment, an FN resident, who is a qualified individual with a disability, is determined to need an escort to access and benefit from FN transportation services, FN will provide an escort at no cost.

4. FN will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids or program accessibility, that are necessary to provide nondiscriminatory treatment required by Section 504 of the Rehabilitation Act or Title II of the ADA.

5. The revised Transportation Policy, the IAT and the IAT Standard Operating Procedures shall be submitted to OCR within thirty (30) calendar days of the Effective Date of this Agreement for

review and approval, and these policies and procedures shall not be implemented absent such approval.

D. Transportation Log: Within ninety (90) calendar days of the Effective Date of this Agreement, DHSS will ensure that FN establishes a Transportation Log to memorialize the implementation of the revised Transportation Policy. The Transportation Log will include the following information:

1. the name of the relevant FN resident and the date and time of each instance where access to FN transportation services is sought;
2. whether or not the FN resident was granted access to FN transportation services;
3. whether or not the FN resident was granted an escort at no charge; and
4. if the FN resident was not granted access to FN transportation services, a statement regarding the reasons why access to FN transportation services was not granted (e.g., the resident's medical condition warranted transportation by ambulance).

VII. Training

A. Training of the ADA/Section 504 Coordinator: Within ninety (90) calendar days of the Effective Date of this Agreement and annually thereafter, DHSS will ensure that FN's ADA/Section 504 Coordinator and his/her designees receive training on their responsibilities under this Agreement and the requirements of the ADA and Section 504, including, but not limited to, the ADA's and Section 504's prohibitions on retaliation and requirements regarding reasonable modification.

B. Training of the FN Nursing Staff: Within ninety (90) calendar days of the Effective Date of this Agreement and annually thereafter, DHSS will ensure that FN provides training on the policies and procedures, identified in Section VI., to each member of the FN nursing staff involved in assessing the "medical acuity" of residents seeking access to FN transportation services.

C. Training of the FN General Staff, Contractors and Volunteers: Within one hundred twenty (120) calendar days of the Effective Date of this Agreement and annually thereafter, DHSS will ensure that all FN employees, volunteers and contractors receive training on their responsibilities under this Agreement and the requirements of the ADA and Section 504, including, but not limited to, the ADA's and Section 504's prohibitions on retaliation and requirements regarding reasonable modification.

VIII. Reporting Requirements

DHSS agrees to provide OCR with the following:

A. Within thirty (30) calendar days of the Effective Date of this Agreement, the name, telephone number, functions, and office address of the FN's ADA/Section 504 coordinator and his/her designees.

B. Within thirty (30) calendar days of the Effective Date of this Agreement, copies of the:

1. ADA/Section 504 Notice;
2. ADA/Section 504 Grievance Procedure; and the
3. Revised "(FACILITY) Home Services & Information" brochure.

C. Within thirty (30) calendar days of the Effective Date of this Agreement, copies of the:

1. Revised Transportation Policy;
2. Individualized Assessment Tool; and
3. Individualized Assessment Tool Standard Operating Procedures.

Within thirty (30) calendar days of receiving the revised Transportation Policy, Individualized Assessment Tool, and Individualized Assessment Tool Standard Operating Procedures, OCR will review them. After these policies are approved by OCR and no later than ninety (90) calendar days after the Effective Date of this Agreement, DHSS will ensure that FN implements the policies, referenced in Items C.1 – C.3, above.

D. Within ninety (90) calendar days of the Effective Date of this Agreement, a written statement indicating the actions DHSS and FN have taken to disseminate Items B.1 – B.3 and Item C.1, above.

E. At six (6) months and seventeen (17) months after the Effective Date of this Agreement, documentation of the training, referenced above in Section VII, including the training agenda, any instructional materials, and a list of attendees by name and title.

F. At six (6) months, twelve (12) months, and seventeen (17) months after the Effective Date of this Agreement, copies of the Transportation Log.

G. At six (6) months, twelve (12) months, and seventeen (17) months after the Effective Date of this Agreement, letters describing the number and type of grievances and/or complaints filed against DHSS and/or FN by individuals with disabilities or their families and/or guardians, which include the status and/or outcome of each grievance and/or complaint.

IX. Signatures

The individuals signing represent that they are authorized to execute this Agreement and legally bind the parties to this Agreement.

/s/ (DATE)

(NAME)
Commissioner
(STATE) Department of Health and Social Services

/s/ (DATE)

(NAME)
Regional Manager
Office for Civil Rights, Region X
U.S. Department of Health and Human Services

Attachment A

**NOTICE UNDER THE
AMERICANS WITH DISABILITIES ACT OF 1990
AND SECTION 504 OF THE REHABILITATION ACT OF 1973**

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, the (FACILITY NAME) (FN) does not discriminate on the basis of disability in admission to, participation in, or receipt of services and benefits under any FN program or activity. FN does not retaliate or discriminate against, or coerce, intimidate or threaten any individual who (1) opposes any act or practice made unlawful by Section 504 or Title II of the ADA; or (2) files a grievance and/or complaint, testifies, assists, or participates in any investigation, proceeding, or hearing under Section 504 or Title II of the ADA.

Reasonable Modifications in Policies, Practices, or Procedures: FN will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with nondiscriminatory treatment required by Section 504 or Title II of the ADA.

FN will make all reasonable modifications (including the provision of escorts when necessary for a qualified person with a disability to access FN transportation services) to policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless FN can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, or would result in undue financial or administrative burdens.

Effective Communication: FN will generally, upon request, provide appropriate auxiliary aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in FN services, programs or activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Anyone who requires an auxiliary aid or service for effective communication, or reasonable modifications to policies, practices, or procedures to participate in an FN service, program or activity, should contact the office of ***[Name and contact info for ADA/Section 504 Coordinator]*** as soon as possible but no later than 48 hours before the scheduled event.

Grievances alleging that FN discriminates against persons with disabilities should be directed to ***[Name and contact information for ADA/Section 504 Coordinator]***. Filing a grievance with the ADA/Section 504 Coordinator does not prevent the applicant, resident and/or his family member or guardian from filing a complaint with the:

Office for Civil Rights (ADDRESS AND TEL.#)

Attachment B

GRIEVANCE PROCEDURES UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990 AND SECTION 504 OF THE REHABILITATION ACT OF 1973

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, the (FACILITY NAME) (FN) does not discriminate on the basis of disability in admission to, participation in, or receipt of services and benefits under any FN program or activity. FN does not retaliate or discriminate against, or coerce, intimidate or threaten any individual who (1) opposes any act or practice made unlawful by Section 504 or Title II of the ADA; or (2) files a grievance and/or complaint, testifies, assists, or participates in any investigation, proceeding, or hearing under Section 504 or Title II of the ADA.

FN has adopted an internal grievance procedure providing for the prompt and equitable resolution of grievances alleging any action prohibited by the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Federal regulations implementing these laws. The applicable Federal laws and regulations may be examined in the office of [Name and contact info for ADA/Section 504 Coordinator], who has been designated to coordinate the efforts of FN to comply with the ADA and Section 504.

Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for FN to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

Procedure:

- Grievances must be submitted to the ADA/Section 504 Coordinator as soon as possible but no later than sixty (60) calendar days after the date the person filing the grievance becomes aware of the alleged discriminatory action.
- A grievance must be in writing, containing the name and address of the person filing it. The grievance must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- The ADA/Section 504 Coordinator (or his/her designee) will conduct an investigation of the grievance. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the grievance. The ADA/Section 504 Coordinator will maintain the files and records of FN relating to such grievances.
- The ADA/Section 504 Coordinator will issue a written decision on the grievance no later than thirty (30) calendar days after its filing.
- The person filing the grievance may appeal the decision of the ADA/Section 504 Coordinator by writing to the **[Administrator/Chief Executive Officer/Board of Directors/etc.]** within fifteen (15) calendar days of receiving the ADA/Section 504 Coordinator's decision.

- **[Administrator/Chief Executive Officer/Board of Directors/etc.]** will issue a written decision on the appeal no later than thirty (30) calendar days after its filing.
- Filing a grievance with the ADA/Section 504 Coordinator does not prevent the applicant, resident and/or his family member or guardian from filing a complaint with the:
Office for Civil Rights

The ADA/Section 504 Coordinator will make appropriate arrangements to ensure that individuals with disabilities are provided other reasonable modifications if needed to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings.

Attachment C
**(FACILITY) HOME
TRANSPORTATION POLICY**

PURPOSE

To provide guidelines for the transportation of residents to medical appointments. To assure residents maintain the highest level of independence by participation in the transportation process, promoting family involvement, and supporting the development and maintenance of resident skills.

POLICY

Residents and/or family members are primarily responsible for scheduling and providing transportation for medical appointments. (FACILITY NAME) (FN) transportation may be available for residents in Levels II and III of care. Availability is dependent on multiple factors including but not limited to, bus schedule, weather, medical acuity, and equipment.

Residents are not charged when FN vehicles are used for transportation. When a resident on payment assistance requires the use of commercial transportation for medical services, etc., they are responsible for paying this expense. Residents who are unable to pay may apply for grant assistance, which is considered on a case-by-case, basis.

FN will consider, on a case-by-case basis, individual requests for reasonable modifications in its transportation service.

PROCEDURE

1. Procedure for Payment of Resident Transportation Expenses Charged to an FN Account

When an invoice from an outside commercial transportation provider is received, Business Office personnel verify whether the resident or their responsible party has designated transportation expenses as an authorized automatic deduction from their Resident Trust Fund Account.

If transportation expenses have been authorized, accounting personnel deduct the amount from the resident's account.

A copy of the invoice and the transaction receipt is either put in the resident's inside mailbox and given to the resident with their regular mail, or sent to their responsible party with the following month's Resident Trust Fund Account statement.

If the resident does not have a Resident Trust Fund Account or transportation expenses have not been authorized, and the resident handles their own finances, the invoice is put in the resident's inside mailbox and given to the resident with their regular mail.

If the resident does not handle their own finances, the invoice is put in the resident's inside mailbox and sent to their responsible party with the resident's mail in the following month's mailing.

2. Appointments/Scheduling

Transportation for medical appointments for residents in Levels II and III will be scheduled through the medical records/scheduler in the Business Office. Nursing staff will notify the medical records/scheduler which residents in Levels II and III require an escort on the FN vehicle. Staff will also indicate whether the resident will need an escort to be provided by FN or the resident will be accompanied by a family member/guardian.

Transportation will be provided during posted hours of operations.

Residents in Level I will schedule their own appointments and transportation.

Transportation for scheduled activities will be coordinated through the Activity Department.

3. Safety

Nursing staff will individually assess the resident's need for an escort by using the Individualized Assessment Tool (IAT), and following the IAT Standard Operating Procedures, to measure and document the medical acuity of the resident. If nursing staff determines that a resident, who is a qualified individual with a disability, needs an escort to ride on the FN vehicle, then staff will also determine if FN needs to provide an escort.

Wheelchairs must be properly equipped, i.e. footrests, oxygen bottles, etc.

Residents going to the emergency room or hospital in an FN wheelchair must be transferred out of the FN chair and the wheelchair returned to FN.

No resident will be left on the bus unattended.

Nursing staff is responsible for reviewing the readiness and preparation of residents prior to sending them to be transported to appointments.

Transportation driver has the final authority to decide whether residents will be transported.

4. Preparation of Residents for Appointments

Staff is responsible for preparing the residents to leave for appointments on time.

Residents need to be taken to the restroom and/or have clean incontinence products available to go with the resident.

Nursing staff will ensure residents have all of their Personal Adaptive Equipment (PAE), such as hearing aids, glasses, and dentures.

Nursing staff is to ensure that the resident is clean and properly groomed.

Coats must be on or next to the resident.

Paperwork should be given to the resident, the driver, or escort after the resident has been checked and is ready for departure.

Failure to properly prepare the resident for their appointment will prohibit the driver from taking the resident to their appointment. This will result in the need to reschedule the appointment by the appropriate person in charge.

5. Residents Needing an Escort

Family members/guardians are encouraged to serve as escorts on the FN vehicle. If it has been determined through the IAT assessment that a resident, who is a qualified individual with a disability, needs an escort, FN will provide an escort on the FN vehicle at no cost. If FN provides an escort on the FN vehicle, and a family member/guardian does not arrive at the destination, or the family member/guardian has not made an acceptable alternative arrangement with the receiving facility, the driver will return the resident to FN.

Family members/guardians are responsible for pre-registering residents prior to test, x-rays and certain procedures.

Family members/guardians are responsible for ensuring new patient registration forms are filled out prior to a "first" appointment with the new physician or caretaker.

Family members/guardians serving as escorts must contact the driver, on the day of the appointment, prior to the resident being loaded into the FN vehicle.

APPENDIX WW: SAMPLE NO VIOLATION LETTER

[Return to: No Violation Findings Letter](#)

[Recipient or other covered entity's name and address]

[Complainant's Name and address]

Re: Docket No.

Dear [Complainant] and [Recipient/Entity]

The Office for Civil Rights (OCR) has completed its investigation of the complaint filed against [the recipient] Hospital. The Office for Civil Rights is responsible for determining the compliance status of recipients of Federal financial assistance from the Department of Health and Human Services with Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. The Hospital is a recipient of financial assistance from the Department of Health and Human Services or is otherwise covered by law or regulation and has agreed to comply with the above requirements.

ISSUE PRESENTED

The complainant alleged that on (DATE) the Hospital failed to admit him to the facility to receive needed services and treated him differently because of his DISABILITY.

BACKGROUND

The complainant is HIV positive and was diagnosed as such in (DATE). The complainant's physician referred him to the Hospital's emergency Room so that the complainant could be evaluated for suspected pancreatitis and possible emergency surgery.

When the complainant arrived at the Hospital, the Hospital evaluated him and diagnosed him as having pancreatitis. However, the physician on-call determined that the complainant required Internal Medicine Services, not Emergency Services.

The Hospital's policy is to admit all eligible persons regardless of their handicapping condition as long as a physician recommends admission and as long as the patient satisfies the Hospital's financial requirements. Financial requirement(s) includes membership in an HMO/PPO group that contracts with the Hospital.

Although the complainant is a member of an HMO, he is not a member of an HMO that has a current contract with the Hospital. Moreover, the complainant signed an "Informed Consent to Transfer" form that authorized the Hospital to transfer him to another hospital.

The complainant also alleged that: he received medical attention after a nine-hour wait during his Emergency Center visit; he was discharged and charged a fee for the wrong level of care and; the Hospital has a reputation as being insensitive to people with AIDS.

The Hospital utilized Triage Protocol when the complainant presented to the Emergency Center on the date in question. The Protocol utilizes a three category system: 1) most urgent; 2) less urgent; and 3) non-urgent. It classified the complainant as non-urgent.

According to the Hospital's Emergency Center Records the complainant spent eight (8) hours and two (2) minutes in the Emergency Center. The records reveal that the time range for other Emergency Center visits are zero (0) minutes to seven (7) hours and forty-eight (48) minutes.

The records also reveal that another HIV positive patient was at the Emergency Center no longer than three (3) hours and thirty-five (35) minutes).

The Hospital provided level 3 care but acknowledges that it charged the complainant for level 1 care - a difference of \$____. Subsequent to the start of this investigation, the hospital credited the complainant's account for the excess charges and sent a letter of apology.

During the period of (DATE) through (DATE), the Hospital admitted #__ patients who had been diagnosed as HIV positive through its Emergency Center.

DISCUSSION AND ANALYSIS

Under the applicable regulations (45 C.F.R. § 84.4(a)), no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

Issue 1 - Whether the Hospital denied admission to the complainant on the basis of handicap-HIV positive when he presented to the Emergency Center on (DATE).

The regulation at 45 C.F.R. §84.3(j) (iii) provides that the definition of a handicapped person includes "any person who has a physical or mental impairment that substantially limits one or more major life activities, (ii) has a record of . . . or (iii) is regarded as having an impairment." Based on the medical record showing that you have had a history of HIV, you meet the definition of a handicapped person within the meaning of 45 C.F.R. §80 3(j)(iii).

Inasmuch as the Hospital provides diagnostic services that the complainant needed according to physician records, the complainant is a "qualified handicapped individual within the meaning of 45 C.F.R. §84.3(k)(4). Thus, the question becomes whether the Hospital failed to admit the complainant for inpatient services because he was HIV positive. While the complainant met the essential eligibility criteria, the Hospital transferred the complainant to another facility.

The Hospital explained that it admits all patients whose physician recommends admission if the applicant for admission is a member of an HMO or Private Payor Organization that contracts with the Hospital. It contends that it decided not to admit the complainant when it discovered that he did not belong to an HMO that contracts with the Hospital. It further provided evidence that the complainant signed a transfer authorization form thereby permitting the Hospital to transfer the complainant to another hospital.

OCR examined the records of all ER patients from the period of ____ to ____ and it determined that in all instances where a non-member HMO was the provider, the Hospital transferred the patient.

The records also show that whenever the Hospital transferred these patients, i.e., handicapped as well as non-handicapped, the patient signed a consent to transfer form.

Issue 2 - Whether the Hospital treated the complainant differently when it made him wait nine (9) hours to be treated; charged him an inappropriate amount for the level of care provided; and did continue its reputation for insensitive treatment to those who are HIV positive.

OCR examined the lengths of time for similar conditions on the day in question, (DATE). The records show that the time for similar diagnosis of level three (3) care was _____. The corresponding times for other ER patients by level of care were _____ hrs for level 2, and hrs _____ for level 1. Accordingly, the relative time for the complainant's stay in the ER is commensurate with other similar patients. In addition, the record shows that the time for HIV positive individuals was less in more than _____% of the visits to the ER.

The Hospital acknowledged that it charged the complainant an excess of \$___ because it had inappropriately recorded level 1 care instead of level 3 care. We reviewed the level of care determination for all HIV positive individuals for the period _____ to _____. We determined, based on a review of similar records of HIV positive and non-HIV patients, that HIV patients' diagnoses were consistent with the diagnoses for those who were not HIV positive.

Further review of the ER log and diagnoses revealed that the Hospital admitted HIV positive individuals at a rate commensurate to its admittance of all other patients. In addition, we determined through interviews with community organizations that the Hospital does not generally have a reputation or documented history of insensitivity to persons who are HIV positive.

As to all of these allegations, OCR concludes that the record failed to show that you, as a qualified handicapped person, were treated differently than a similarly situated non-handicapped patient in the Emergency Center. Consequently, OCR finds that the Hospital did not provide differential or separate treatment, when you presented yourself in the Emergency Center, on the basis of your handicapping condition (HIV positive).

RECONSIDERATION REQUESTS

OCR is committed to ensuring that every complaint is appropriately resolved. Complainants who receive findings from an OCR regional office that are not in their favor may request reconsideration by OCR Headquarters. The complainant's request for reconsideration must be limited to those issues raised in the complaint or during the course of our investigation. Reconsideration requests must identify errors in OCR's consideration of the facts or law that would change the outcome of the case. The request must:

- Identify the specific finding(s) with which you disagree, and explain why the findings are unsupported by the evidence in the record or the applicable legal standards;
- Identify evidence in the record that you believe was overlooked or misstated in the investigation that would change the outcome of the investigation;

- Provide names and contact information of any important witnesses you identified during the investigation who were not interviewed by OCR whose information would change the outcome of the investigation; and
- Identify any specific provisions of laws or regulations that you believe were not considered or were misinterpreted by OCR.

Merely stating that you are unhappy or disagree with the investigative findings will not be sufficient. The failure to provide the above information will result in the **denial** of the request for reconsideration without a review by OCR Headquarters. The reconsideration request must be submitted to OCR Headquarters **within thirty calendar days of the date of this letter** at the following address:

Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509-F
Washington, D.C. 20201
Attention: Deputy Director, Civil Rights Division

You also may send your reconsideration request to OCR Headquarters by e-mail at OCRmail@HHS.gov. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION

General Notice

The complainant may have the right to file a civil action to remedy discrimination by a recipient of Federal financial assistance or other covered entity.

The complainant may wish to consult an attorney about his/her right to pursue a private cause of action, any applicable statute of limitations, and other relevant considerations.

PROHIBITION AGAINST RETALIATION

The complainant has the right not to be intimidated, threatened, coerced by a recipient/covered entity or other person because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

DISCLOSURE OF RECORDS

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will seek to protect, to the extent provided by law, personal information which, if released, would constitute an unwarranted invasion of privacy.

Sincerely,

Regional Manager
Office for Civil Rights

APPENDIX XX: WITHDRAWAL OF COMPLAINT CLOSURE LETTER (TEMPLATE)

[Return to: The complainant decides to withdraw his or her complaint](#)

Date

Name

Address

City State Zip

Transaction Number:

Dear Name:

On DATE, the Office for Civil Rights (OCR), Department of Health and Human Services (HHS), received your complaint against ENTITY. You allege BRIEFLY STATE ALLEGATIONS. OCR has determined that it will not proceed with processing your complaint. The basis for this determination is set forth below.

As indicated to us via telephone on [DATE], you requested your complaint to be withdrawn. You reported that you did not wish this office to continue processing your complaint because [STATE REASON]. Therefore, we are closing this matter and will take no further action.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will seek to protect, to the extent provided by law, personal information which, if released, would constitute an unwarranted invasion of privacy.

If you have any questions, please contact [Name], [TITLE] at [TELEPHONE NUMBER].

Sincerely,

NAME
TITLE

**APPENDIX YY: CLOSURE LETTER - COMPLAINANT'S ALLEGATIONS RESOLVED
OR NO LONGER APPROPRIATE FOR INVESTIGATION (TEMPLATE)**

[Return to: Allegations raised by the complaint have been resolved.](#)

Date
Name
Address
City State Zip

Transaction Number:

Dear Name:

On DATE, the Office for Civil Rights (OCR), Department of Health and Human Services (HHS), received your complaint against ENTITY. You allege BRIEFLY STATE ALLEGATIONS. OCR has determined that it will not proceed with case resolution activities with respect to your allegation(s).

OCR has determined that your allegation is inappropriate for complaint resolution activities because **[whatever has rendered the complaint as moot [Allegation overtaken by event- e.g. complainant's/affected party's death, entity no longer in existence, etc...].**

Accordingly, consistent with our case processing procedures, we will take no further action regarding your allegation(s) and have closed the above-referenced case as of the date of this letter.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will seek to protect, to the extent provided by law, personal information which, if released, would constitute an unwarranted invasion of privacy.

We regret we cannot be of further assistance to you in this matter. If you have any questions, please contact [Name], [TITLE] at [TELEPHONE NUMBER].

Sincerely,

NAME

TITLE

APPENDIX ZZ: SAMPLE MONITORING CLOSURE LETTER

[Return to: MONITORING](#)

(NAME)
Commissioner
(NAME)County Department of Social Services
Children Services
(ADDRESS)

Re: Transaction Number: XX-XXXXX

Dear (NAME):

On (DATE), the United States Department of Health and Human Services (HHS), Office for Civil Rights (OCR) commenced an investigation of a complaint filed by (the complainant) against (NAME)County Department of Social Services/(NAME) County Children’s Services (CCS) for the purpose of accessing CCS’s compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 45 C.F.R. Part 84 and Title II of the ADA and their implementing regulations. The investigation was based on an allegation that the complainant was denied a sign language interpreter.

As a result of the investigation OCR conducted, CCS entered into an Agreement by letter dated (DATE). This Agreement included implementation of corrective actions, reporting requirements to OCR by CCS and monitoring activities to be performed by OCR over a period of time.

After a careful review of the matter, OCR has determined that CCS has been satisfactorily meeting its reporting requirement obligations and our monitoring activities have shown that the CCS is in compliance with its Title II and Section 504 obligations with respect to the issues identified in the investigation. As a result, OCR has determined that no further reporting by CCS to OCR regarding this matter is required.

We appreciate the cooperation of your staff in this matter and remain available to provide technical assistance or guidance. If you have any questions, please contact me or the Investigator assigned to this case, (NAME) at (TEL. #).

Sincerely,

(NAME)
Regional Manager
Office for Civil Rights

APPENDIX AAA: Advisements

[Return to: Letter Confirming Voluntary Action Taken or to be Taken by a Covered Entity](#)

[Return to: Violation Findings Letter](#)

[Return to: Insufficient Evidence of a Violation Letter](#)

[Return to: Voluntary Resolution Agreement](#)

[Return to No Violation Findings Letter](#)

Advisements

The complainant may have the right to file a civil lawsuit to remedy unlawful discrimination. The complainant may wish to consult an attorney about his or her right to pursue a private lawsuit, any applicable statute of limitations that sets the deadline or maximum period of time within which a lawsuit may be filed, and other relevant considerations.

No federally funded recipient or public entity or person may intimidate, threaten, coerce, discriminate or retaliate against anyone because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint under the statutes or regulations enforced by OCR. The Complainant or any other individual who believes that he or she is being subjected to such discriminatory or retaliatory conduct because of filing a complaint with OCR or participating in the resolution of a complaint, may file a complaint with OCR concerning such conduct, which shall be handled under OCR's investigative procedures.

Under the Freedom of Information Act, OCR may be required to release this letter and other information about this case upon request by the public. In the event that OCR receives such a request, OCR will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have questions regarding this matter, please write us or contact **##Staff Name##** at **##Staff Telephone##** (Voice), **##TDD Number##** (TDD), or by e-mail at *[Insert e-mail address]*. Please be advised that communication by unencrypted e-mail presents a risk of disclosure of the transmitted information to, or interception by, unintended third parties. Please keep this in mind when communicating with us by e-mail. When contacting this office, please remember to include the reference number that we have given your file. That number is located in the upper left-hand corner of this letter.

APPENDIX BBB: RECONSIDERATION LANGUAGE FOR NO VIOLATION LOFS

[Return to: Letter Confirming Voluntary Action Taken or to be Taken by a Covered Entity](#)

[Return to: Insufficient Evidence of a Violation Letter](#)

[Return to: No Violation Findings Letter](#)

[Return to: REQUESTS FOR RECONSIDERATION](#)

Reconsideration Requests

OCR is committed to ensuring that every complaint is appropriately resolved. Complainants who are dissatisfied with an OCR regional office's resolution of their case may request reconsideration by OCR Headquarters. The complainant's request for reconsideration must be limited to those issues raised in the complaint or during the course of our investigation. Reconsideration requests must identify errors in OCR's consideration of the facts or law that would change the outcome of the case. The request must:

- Identify the factual information with which you disagree, and explain why you believe that the facts are incorrect;
- Identify evidence in the record that you believe was overlooked or misstated in the investigation that would change the outcome of the investigation;
- Provide names and contact information of any important witnesses you identified during the investigation who were not interviewed by OCR whose information would change the outcome of the investigation; and
- Identify any specific provisions of laws or regulations that you believe were not considered or were misinterpreted by OCR.

Merely stating that you are unhappy or disagree with the resolution of your case will not be sufficient. The failure to provide the above information will result in the **denial** of the request for reconsideration without a review by OCR Headquarters. The reconsideration request must be submitted to OCR Headquarters **within thirty calendar days of the date of this letter** at the following address:

**APPENDIX CCC: HHS DELEGATION OF HILL-BURTON ENFORCEMENT
AUTHORITY**

[Return to: Hill-Burton Complaints](#)



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

DEC 8 1980

MEMORANDUM TO : Director
Office for Civil Rights

SUBJECT: Delegation of Hill-Burton Community
Service Enforcement Authority

Under the authority vested in me by Section 6 of Reorganization Plan No. 1 of 1953 and Section 2 of Reorganization Plan No. 3 of 1966, I hereby rescind from the Assistant Secretary for Health and delegate to the Director, Office for Civil Rights, the authority to enforce those provisions of Title XVI of the Public Health Service Act, as amended, that pertain to the community service assurance. This authority may not be redelegated.

Instructions for exercising the community service enforcement responsibility are contained at 42 CFR Part 124, Subpart G.

This rescission and delegation is effective upon date of signature.

A handwritten signature in cursive script that reads "Patricia Roberts Harris".

Patricia Roberts Harris

APPENDIX DDD: Section 504, 45 C.F.R. Part 84
[Return to: Determine Subject Matter Jurisdiction](#)

TITLE 45--PUBLIC WELFARE

AND HUMAN SERVICES

PART 84_NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES
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Authority: 20 U.S.C. 1405; 29 U.S.C. 794; 42 U.S.C. 290dd-2; 21
U.S.C. 1174.

Source: 42 FR 22677, May 4, 1977, unless otherwise noted.

Subpart A_General Provisions

Sec. 84.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Sec. 84.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Health and Human Services and to the program or activity that receives such assistance.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.3 Definitions.

As used in this part, the term:

(a) The Act means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) Section 504 means section 504 of the Act.

(c) Education of the Handicapped Act means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) Department means the Department of Health and Human Services.

(e) Director means the Director of the Office for Civil Rights of the Department.

(f) Recipient means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) Handicapped person. (1) Handicapped persons means any person who

(i) has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or

(iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic

and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) Program or activity means all of the operations of--

- (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (ii) The entity of such State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or
- (ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
- (3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--
 - (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.
- (l) Qualified handicapped person means:
 - (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;
 - (2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and
 - (3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;
 - (4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.
- (m) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

(29 U.S.C. 794(b))

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.4 Discrimination prohibited.

- (a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.
- (b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
 - (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
 - (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aids, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aids, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Aids, benefits, or services limited by Federal law. The exclusion of nonhandicapped persons from aids, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aids, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Director, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a

covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Director may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation. (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) A list of the interested persons consulted (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

Sec. 84.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 84.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.9 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with Sec. 84.7 and 84.8, in whole or in part, when the Director finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

Sec. 84.10 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B_Employment Practices

Sec. 84.11 Discrimination prohibited.

(a) General. (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Sec. 84.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Sec. 84.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Sec. 84.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, Provided, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Sec. Sec. 84.15-84.20 [Reserved]

Subpart C_Accessibility

Sec. 84.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

Sec. 84.22 Existing facilities.

(a) Accessibility. A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph 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) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of Sec. 84.23, or any other methods that result 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 available 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 health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan 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 paragraph (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.

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.23 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFSA) (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 substantial 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.

[42 FR 22677, May 4, 1977, as amended at 55 FR 52138, 52142, Dec. 19, 1990]

Sec. Sec. 84.24-84.30 [Reserved]

Subpart D_Preschool, Elementary, and Secondary Education

Sec. 84.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Sec. Sec. 84.34, 84.35, and 84.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aids, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education--(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aids, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aids, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person or refers such person for aids, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aids, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aids, benefits, or services operated by the recipient.

(3) Residential placement. If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and Sec. 84.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Sec. 84.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, 24320, May 9, 2005]

Sec. 84.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped

to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 84.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Sec. 84.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Sec. 84.34.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

Sec. 84.37 Nonacademic services.

(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics. (1) In providing physical education courses and athletics and similar aids, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Sec. 84.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.38 Preschool and adult education.

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aids, benefits, or services to be provided.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.39 Private education.

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in Sec. 84.33(b)(1), within that recipient's program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of Sec. Sec. 84.35 and 84.36. Each recipient to which this section applies is subject to the provisions of Sec. Sec. 84.34, 84.37, and 84.38.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.40 [Reserved]

Subpart E_Postsecondary Education

Sec. 84.41 Application of this subpart.

Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.42 Admissions and recruitment.

(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions. In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Sec. 84.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Sec. 84.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

Sec. 84.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aids, benefits, or services to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.44 Academic adjustments.

(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids. (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise

subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.45 Housing.

(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

Sec. 84.46 Financial and employment assistance to students.

(a) Provision of financial assistance. (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates Subpart B.

Sec. 84.47 Nonacademic services.

(a) Physical education and athletics. (1) In providing physical education courses and athletics and similar aids, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of Sec.

84.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. Sec. 84.48-84.50 [Reserved]

Subpart F_Health, Welfare, and Social Services

Sec. 84.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.52 Health, welfare, and other social services.

(a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

- (1) Deny a qualified handicapped person these benefits or services;
- (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in Sec. 84.4(b)) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids. (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Director may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

Sec. 84.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

Sec. 84.54 Education of institutionalized persons.

A recipient to which this subpart applies and that provides aids, benefits, or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in Sec. 84.3(l)(2), in its program or activity is provided an appropriate education, as defined in Sec. 84.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24320, May 9, 2005]

Sec. 84.55 Procedures relating to health care for handicapped infants.

(a) Infant Care Review Committees. The Department encourages each recipient health care provider that provides health care services to infants in programs or activities receiving Federal financial assistance to establish an Infant Care Review Committee (ICRC) to assist the provider in delivering healthcare and related services to infants and in complying with this part. The purpose of the committee is to assist the health care provider in the development of standards, policies and procedures for providing treatment to handicapped infants and in making decisions concerning medically beneficial treatment in specific cases. While the Department recognizes the value of ICRC's in assuring appropriate medical care to infants, such committees are not required by this section. An ICRC should be composed of individuals representing a broad range of perspectives, and should include a practicing physician, a representative of a disability organization, a practicing nurse, and other individuals. A suggested model ICRC is set forth in paragraph (f) of this section.

(b) Posting of informational notice. (1) Each recipient health care provider that provides health care services to infants in programs or activities receiving Federal financial assistance shall post and keep posted in appropriate places an informational notice.

(2) The notice must be posted at location(s) where nurses and other medical professionals who are engaged in providing health care and related services to infants will see it. To the extent it does not impair accomplishment of the requirement that copies of the notice be posted where such personnel will see it, the notice need not be posted in area(s) where parents of infant patients will see it.

(3) Each health care provider for which the content of the following notice (identified as Notice A) is truthful may use Notice A. For the content of the notice to be truthful: (i) The provider must have a policy consistent with that stated in the notice; (ii) the provider must have a procedure for review of treatment deliberations and decisions to which the notice applies, such as (but not limited to) an Infant Care Review Committee; and (iii) the statements concerning the identity of callers and retaliation are truthful.

Notice A:

PRINCIPLES OF TREATMENT OF DISABLED INFANTS

It is the policy of this hospital, consistent with Federal law, that, nourishment and medically beneficial treatment (as determined with respect for reasonable medical judgments) should not be withheld from handicapped infants solely on the basis of their present or anticipated mental or physical impairments. This Federal law, section 504 of the Rehabilitation Act of 1973, prohibits discrimination on the basis of handicap in programs or activities receiving Federal financial assistance. For further information, or to report suspected noncompliance, call:

[Identify designated hospital contact point and telephone number] or

[Identify appropriate child protective services agency and telephone number] or

U.S. Department of Health and Human Services (HHS): 800-368-1019 (Toll-free; available 24 hours a day; TDD capability).

The identity of callers will be held confidential. Retaliation by this hospital against any person for providing information about possible noncompliance is prohibited by this hospital and Federal regulations.

(4) Health care providers other than those described in paragraph (b)(3) of this section must post the following notice (identified as Notice B):

Notice B:

PRINCIPLES OF TREATMENT OF DISABLED INFANTS

Federal law prohibits discrimination on the basis of handicap. Under this law, nourishment and medically beneficial treatment (as determined with respect for reasonable medical judgments) should not be withheld from handicapped infants solely on the basis of their present or anticipated mental or physical impairments. This Federal law, section 504 of the Rehabilitation Act of 1973, applies to programs or activities receiving Federal financial assistance. For further information, or to report suspected noncompliance, call:

[Identify appropriate child protective services agency and telephone number] or

U.S. Department of Health and Human Services (HHS): 800-368-1019
(Toll-free; available 24 hours a day; TDD capability)

The identity of callers will be held confidential. Federal regulations prohibit retaliation by this hospital against any person who provides information about possible violations.

(5) The notice may be no smaller than 5 by 7 inches, and the type size no smaller than that generally used for similar internal communications to staff. The recipient must insert the specified information on the notice it selects. Recipient hospitals in Washington, DC, must list 863-0100 as the telephone number for HHS. No other alterations may be made to the notice. Copies of the notices may be obtained from the Department of Health and Human Services upon request, or the recipient may produce its own notices in conformance with the specified wording.

(c) Responsibilities of recipient state child protective services agencies. (1) Within 60 days of the effective date of this section, each recipient state child protective services agency shall establish and maintain in written form methods of administration and procedures to assure that the agency utilizes its full authority pursuant to state law to prevent instances of unlawful medical neglect of handicapped infants. These methods of administration and procedures shall include:

(i) A requirement that health care providers report on a timely basis to the state agency circumstances which they determine to constitute known or suspected instances of unlawful medical neglect of handicapped infants;

(ii) A method by which the state agency can receive reports of suspected unlawful medical neglect of handicapped infants from health care providers, other individuals, and the Department on a timely basis;

(iii) Immediate review of reports of suspected unlawful medical neglect of handicapped infants and, where appropriate, on-site investigation of such reports;

(iv) Provision of child protective services to such medically neglected handicapped infants, including, where appropriate, seeking a timely court order to compel the provision of necessary nourishment and medical treatment; and

(v) Timely notification to the responsible Department official of each report of suspected unlawful medical neglect involving the withholding, solely on the basis of present or anticipated physical or mental impairments, of treatment or nourishment from a handicapped infant who, in spite of such impairments, will medically benefit from the treatment or nourishment, the steps taken by the state agency to investigate such report, and the state agency's final disposition of such report.

(2) Whenever a hospital at which an infant who is the subject of a report of suspected unlawful medical neglect is being treated has an Infant Care Review Committee (ICRC) the Department encourages the state child protective services agency to consult with the ICRC in carrying out the state agency's authorities under its state law and methods of administration. In developing its methods of administration and procedures, the Department encourages child protective services agencies to adopt guidelines for investigations similar to those of the Department regarding the involvement of ICRC's.

(d) Expedited access to records. Access to pertinent records and facilities of a recipient pursuant to 45 CFR 80.6(c) (made applicable to this part by 45 CFR 84.61) shall not be limited to normal business hours when, in the judgment of the responsible Department official, immediate access is necessary to protect the life or health of a handicapped individual.

(e) Expedited action to effect compliance. The requirement of 45 CFR 80.8(d)(3) pertaining to notice to recipients prior to the initiation of action to effect compliance (made applicable to this part by 45 CFR 84.61) shall not apply when, in the judgment of the responsible Department official, immediate action to effect compliance is necessary to protect the life or health of a handicapped individual. In such cases the recipient will, as soon as practicable, be given oral or written notice of its failure to comply, of the action to be taken to effect compliance, and its continuing opportunity to comply voluntarily.

(f) Model Infant Care Review Committee. Recipient health care providers wishing to establish Infant Care Review Committees should consider adoption of the following model. This model is advisory. Recipient health care providers are not required to establish a review committee or, if one is established, to adhere to this model. In seeking to determine compliance with this part, as it relates to health care for handicapped infants, by health care providers that have an ICRC established and operated substantially in accordance with this model, the Department will, to the extent possible, consult with the ICRC.

(1) Establishment and purpose. (i) The hospital establishes an Infant Care Review Committee (ICRC) or joins with one or more other hospitals to create a joint ICRC. The establishing document will state that the ICRC is for the purpose of facilitating the development and implementation of standards, policies and procedures designed to assure that, while respecting reasonable medical judgments, treatment and nourishment not be withheld, solely on the basis of present or anticipated physical or mental impairments, from handicapped infants who, in spite of such impairments, will benefit medically from the treatment or nourishment.

(ii) The activities of the ICRC will be guided by the following principles:

(A) The interpretative guidelines of the Department relating to the applicability of this part to health care for handicapped infants.

(B) As stated in the "Principles of Treatment of Disabled Infants" of the coalition of major medical and disability organizations, including the American Academy of Pediatrics, National Association of Children's Hospitals and Related Institutions, Association for Retarded Citizens, Down's Syndrome Congress, Spina Bifida Association, and others:

When medical care is clearly beneficial, it should always be provided. When appropriate medical care is not available, arrangements should be made to transfer the infant to an appropriate medical facility. Consideration such as anticipated or actual limited potential of an individual and present or future lack of available community resources are irrelevant and must not determine the decisions concerning medical care. The individual's medical condition should be the sole focus of the decision. These are very strict standards. It is ethically and legally justified to withhold medical or surgical procedures which are clearly futile and will only prolong the act of dying. However, supportive care should be provided, including sustenance as medically indicated and relief of pain and suffering. The needs of the dying person should be respected. The family also should be supported in its grieving. In cases where it is uncertain whether

medical treatment will be beneficial, a person's disability must not be the basis for a decision to withhold treatment. At all times during the process when decisions are being made about the benefit or futility of medical treatment, the person should be cared for in the medically most appropriate ways. When doubt exists at any time about whether to treat, a presumption always should be in favor of treatment.

(C) As stated by the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research:

This [standard for providing medically beneficial treatment] is a very strict standard in that it excludes consideration of the negative effects of an impaired child's life on other persons, including parents, siblings, and society. Although abiding by this standard may be difficult in specific cases, it is all too easy to undervalue the lives of handicapped infants; the Commission finds it imperative to counteract this by treating them no less vigorously than their healthy peers or than older children with similar handicaps would be treated.

(iii) The ICRC will carry out its purposes by:

(A) Recommending institutional policies concerning the withholding or withdrawal of medical or surgical treatments to infants, including guidelines for ICRC action for specific categories of life-threatening conditions affecting infants;

(B) Providing advice in specific cases when decisions are being considered to withhold or withdraw from infant life-sustaining medical or surgical treatment; and

(C) Reviewing retrospectively on a regular basis infant medical records in situations in which life-sustaining medical or surgical treatment has been withheld or withdrawn.

(2) Organization and staffing. The ICRC will consist of at least 7 members and include the following:

(i) A practicing physician (e.g., a pediatrician, a neonatologist, or a pediatric surgeon),

(ii) A practicing nurse,

(iii) A hospital administrator,

(iv) A representative of the legal profession,

(v) A representative of a disability group, or a developmental disability expert,

(vi) A lay community member, and

(vii) A member of a facility's organized medical staff, who shall serve as chairperson.

In connection with review of specific cases, one member of the ICRC shall be designated to act as "special advocate" for the infant, as provided in paragraph (f)(3)(ii)(E) of the section. The hospital will provide staff support for the ICRC, including legal counsel. The ICRC will meet on a regular basis, or as required below in connection with review of specific cases. It shall adopt or recommend to the appropriate hospital official or body such administrative policies as terms of office and quorum requirements. The ICRC will recommend procedures to ensure that both hospital personnel and patient families are fully informed of the existence and functions of the ICRC and its availability on a 24-hour basis.

(3) Operation of ICRC--(i) Prospective policy development. (A) The ICRC will develop and recommend for adoption by the hospital institutional policies concerning the withholding or withdrawal of medical treatment for infants with life-threatening conditions. These will include guidelines for management of specific types of cases or diagnoses, for example, Down's syndrome and spina bifida, and procedures to be followed in such recurring circumstances as, for example, brain death and parental refusal to consent to life-saving treatment. The hospital, upon recommendation of the ICRC, may require attending physicians to notify the ICRC of the presence in the facility of an infant with a diagnosis specified by the ICRC, e.g., Down's syndrome and spina bifida.

(B) In recommending these policies and guidelines, the ICRC will consult with medical and other authorities on issues involving disabled individuals, e.g., neonatologists, pediatric surgeons, county and city agencies which provide services for the disabled, and disability advocacy organizations. It will also consult with appropriate committees of the medical staff, to ensure that the ICRC policies and guidelines build on existing staff by-laws, rules and regulations concerning consultations and staff membership requirements. The ICRC will also inform and educate hospital staff on the policies and guidelines it develops.

(ii) Review of specific cases. In addition to regularly scheduled meetings, interim ICRC meetings will take place under specified circumstances to permit review of individual cases. The hospital will, to the extent possible, require in each case that life-sustaining treatment be continued, until the ICRC can review the case and provide advice.

(A) Interim ICRC meetings will be convened within 24 hours (or less if indicated) when there is disagreement between the family of an infant and the infant's physician as to the withholding or withdrawal of treatment, when a preliminary decision to withhold or withdraw life-sustaining treatment has been made in certain categories of cases identified by the ICRC, when there is disagreement between members of the hospital's medical and/or nursing staffs, or when otherwise appropriate.

(B) Such interim ICRC meetings will take place upon the request of any member of the ICRC or hospital staff or parent or guardian of the infant. The ICRC will have procedures to preserve the confidentiality of the identity of persons making such requests, and such persons shall be protected from reprisal. When appropriate, the ICRC or a designated member will inform the requesting individual of the ICRC's recommendation.

(C) The ICRC may provide for telephone and other forms of review when the timing and nature of the case, as identified in policies developed by the ICRC, make the convening of an interim meeting impracticable.

(D) Interim meetings will be open to the affected parties. The ICRC will ensure that the interests of the parents, the physician, and the child are fully considered; that family members have been fully informed of the patient's condition and prognosis; that they have been provided with a listing which describes the services furnished by parent support groups and public and private agencies in the geographic vicinity to infants with conditions such as that before the ICRC; and that the ICRC will facilitate their access to such services and groups.

(E) To ensure a comprehensive evaluation of all options and factors pertinent to the committee's deliberations, the chairperson will designate one member of the ICRC to act, in connection with that specific case, as special advocate for the infant. The special advocate will seek to ensure that all considerations in favor of the provision of life-sustaining treatment are fully evaluated and considered by the ICRC.

(F) In cases in which there is disagreement on treatment between a physician and an infant's family, and the family wishes to continue life-sustaining treatment, the family's wishes will be carried out, for as long as the family wishes, unless such treatment is medically contraindicated. When there is physician/family disagreement and the family refuses consent to life-sustaining treatment, and the ICRC, after due deliberation, agrees with the family, the ICRC will recommend that the treatment be withheld. When there is physician/family disagreement and the family refuses consent, but the ICRC disagrees with the family, the ICRC will recommend to the hospital board or appropriate official that the case be referred immediately to an appropriate court or child protective agency, and every effort shall be made to continue treatment, preserve the status quo, and prevent worsening of the infant's condition until such time as the court or agency renders a decision or takes other appropriate action. The ICRC will also follow this procedure in cases in which the family and physician agree that life-sustaining treatment should be withheld or withdrawn, but the ICRC disagrees.

(iii) Retrospective record review. The ICRC, at its regularly-scheduled meeting, will review all records involving withholding or termination of medical or surgical treatment to infants consistent with hospital policies developed by the ICRC, unless the case was previously before the ICRC pursuant to paragraph (f)(3)(ii) of this section. If the ICRC finds that a deviation was made from the institutional policies in a given case, it shall conduct a review and report the findings to appropriate hospital personnel for appropriate action.

(4) Records. The ICRC will maintain records of all of its deliberations and summary descriptions of specific cases considered and the disposition of those cases. Such records will be kept in accordance with institutional policies on confidentiality of medical information. They will be made available to appropriate government agencies, or upon court order, or as otherwise required by law.

Note: The mandatory provisions set forth in paragraphs (b)--(e) inclusive of this section are subject to an injunction prohibiting their enforcement. In *Bowen v. American Hospital Association*, ----- U.S. ----

--, 106 S. Ct. 2101 (1986), the Supreme Court upheld the action of a United States District Court, 585 F. Supp. 541 (S.D.N.Y. 1984), declaring invalid and enjoining enforcement of provisions under this section, promulgated January 12, 1984.

(Information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 0990-0114)

[49 FR 1651, Jan. 12, 1984, as amended at 52 FR 3012, Jan. 30, 1987; 70 FR 24320, May 9, 2005]

Sec. Sec. 84.56-84.60 [Reserved]

Subpart G_Procedures

SEC. 84.61 PROCEDURES.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in Sec. Sec. 80.6 through 80.10 and Part 81 of this Title.

[42 FR 22677, May 4, 1977; 42 FR 22888, May 5, 1977]

[49 FR 1653, Jan. 12, 1984]

APPENDIX EEE: 45 C.F.R. PART 85
[Return to: Determine Subject Matter Jurisdiction](#)

TITLE 45--PUBLIC WELFARE
AND HUMAN SERVICES

PART 85_ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES--Table of Contents

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Authority: 29 U.S.C. 794.

Source: 53 FR 25603, July 8, 1988, unless otherwise noted.

Editorial Note: At the request of the Department of Health and Human Services, the "Section-by-Section Analysis" portion of the preamble of the document published at 53 FR 25595, July 8, 1988, as corrected at 53 FR 26559, July 13, 1988, appears at the end of Part 85.

Sec. 85.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Sec. 85.2 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Sec. 85.3 Definitions.

For purposes of this part, the term--Agency means the Department of Health and Human Services or any component part of the Department of Health and Human Services that conducts a program or activity covered by this part. Component agency means such component part.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's) interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Individual with Handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) Physical or mental impairment includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) Has a record of such impairment means has a history of, or is misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation.

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

OCR means the Office for Civil Rights of the Department of Health and Human Services.

OCR Director/Special Assistant means the Director of the Office for Civil Rights, who serves concurrently as the Special Assistant to the Secretary for Civil Rights, or a designee of the Director/Special Assistant.

Qualified individual with handicaps means:

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive educational services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a particular level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; and

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) Qualified handicapped person as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by Sec. 85.31.

Secretary means the Secretary of the Department of Health and Human Services or his/her designee.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99-566, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Sec. Sec. 85.4-85.10 [Reserved]

Sec. 85.11 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications. Any new operating or staff divisions established within the agency shall have one year from the date of their establishment to carry out this evaluation.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation by submitting comments (both oral and written). (c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection and copying--

- (1) A description of areas examined and any problems identified; and
- (2) A description of any modifications made.

Sec. 85.12 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such a manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

Sec. Sec. 85.13-85.20 [Reserved]

Sec. 85.21 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap--

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with handicaps or to any class or individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aids, benefits or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would--

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would--

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

Sec. Sec. 85.22-85.30 [Reserved]

Sec. 85.31 Employment.

No qualified individuals with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (9 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 9 CFR part 1613, shall apply to employment in federally conducted programs and activities.

Sec. Sec. 85.32-85.40 [Reserved]

Sec. 85.41 Program accessibility: Discrimination prohibited.

Except as otherwise provided in Sec. 85.42, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by such persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

Sec. 85.42 Program accessibility: Existing facilities.

(a) General. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not--

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency 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 agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with Sec. 85.42(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity in question, and must be accompanied by a written statement of reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) Methods. (1) The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it.

(2) In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) Time period for compliance. The agency shall comply with the obligations established under this section within 60 days of the effective date of this part except where structural changes in facilities are undertaken; such changes shall be made within three years of the effective date of this part, but, in any event, as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities must be undertaken to achieve program accessibility, and it is not expected that such changes can be completed within six months, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum--

- (1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;
- (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 compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (4) Indicate the official responsible for the implementation of the plan.

Sec. 85.43 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, or on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157) as established in 41 CFR 101-19.600 to 101-19.607 apply to buildings covered by this section.

Sec. Sec. 85.44-85.50 [Reserved]

Sec. 85.51 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency 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 agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with Sec. 85.51 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding

and operation of the conducted program or activity in question and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

Sec. Sec. 85.52-85.60 [Reserved]

Sec. 85.61 Compliance procedures.

(a) Except as provided in paragraph (c) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) Responsibility for the implementation and operation of this section shall be vested in the CCR Director/Special Assistant.

(c) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and HHS Instruction 1613-3. Part 1613 requires complainants to obtain pre-complaint counseling within 30 days of the alleged discriminatory act, and to file complaints within 15 days of the close of counseling. Responsibility for the acceptance, investigation, and the rendering of decisions with respect to employment complaints is vested in the Assistant Secretary for Personnel Administration.

(d) OCR shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. OCR may extend this time for good cause.

(e) If OCR receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Federal government entity.

(f) OCR shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, OCR shall notify the complainant of the results of the investigations in a letter containing--

- (1) Findings of fact and conclusions of law;
- (2) A description of a remedy for each violation found; and
- (3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 60 days of receipt from the agency of the letter required by Sec. 85.61(g). OCR may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the OCR Director/Special Assistant. Decisions on such appeals shall not be heard by the person who made the initial decision.

(j) OCR shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If OCR determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to a component agency or other Federal agencies, except that the authority for making the final determination may not be delegated.

[53 FR 25603, July 8, 1988; 53 FR 26559, July 13, 1988]

Sec. 85.62 Coordination and compliance responsibilities.

(a) Each component agency shall be primarily responsible for compliance with this part in connection with the programs and activities it conducts.

(b) The OCR Director/Special Assistant shall have the overall responsibility to coordinate implementation of this part. The OCR Director/Special Assistant shall have authority to conduct investigations, to conduct compliance reviews, and to initiate such other actions as may be necessary to facilitate and ensure effective implementation of and compliance with, this part.

(c) If as a result of an investigation or in connection with any other compliance or implementation activity, the OCR Director/Special Assistant determines that a component agency appears to be in noncompliance with its responsibilities under this part, OCR will undertake appropriate action with the component agency to assure compliance. In the event that OCR and the component agency are unable to agree on a resolution of any particular matter, the matter shall be submitted to the Secretary for resolution.

APPENDIX FFF: 45 C.F.R. PART 91

[Return to: Determine Subject Matter Jurisdiction](#)

TITLE 45--PUBLIC WELFARE

AND HUMAN SERVICES

PART 91_NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM HHS--Table of Contents

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Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq. (45 CFR part 90).

Source: 47 FR 57858, Dec. 28, 1982, unless otherwise noted.

Subpart A_General

Sec. 91.1 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs or activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.2 What is the purpose of HHS' age discrimination regulations?

The purpose of these regulations is to set out HHS' policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR part 90.11. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs or activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

11 Published at 44 FR 33768, June 12, 1979.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.3 To what programs or activities do these regulations apply?

(a) The Act and these regulations apply to each HHS recipient and to each program or activity operated by the recipient which receives Federal financial assistance provided by HHS.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity

receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act (CETA), (29 U.S.C. 801 et seq.)

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.4 Definition of terms used in these regulations.

As used in these regulations, the term:

Act means the Age Discrimination Act of 1975, as amended, (Title III of Pub. L. 94-135).

Action means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

Age means how old a person is, or the number of years from the date of a person's birth.

Age distinction means any action using age or an age-related term.

Age-related term means a word or words which necessarily imply a particular age or range of ages (for example, children, adult, older persons, but not student).

Agency means a Federal department or agency that is empowered to extend financial assistance.

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds; or

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

HHS means the United States Department of Health and Human Services. Program or activity means all of the operations of--

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(2) The entity of such State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other postsecondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity which is established by two or more of the entities described in paragraph (a), (b), or (c) of this definition; any part of which is extended Federal financial assistance.

Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

Secretary means the Secretary of Health and Human Services, or his or her designee.

Subrecipient means any of the entities in the definition of recipient to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

United States means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

(Authority: 42 U.S.C. 6107)

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Subpart B_Standards for Determining Age Discrimination

Sec. 91.11 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in Sec. Sec. 91.13 and 91.14 of these regulations.

(a) General rule: No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) Specific rules: A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

Sec. 91.12 Definitions of normal operation and statutory objective.

For purposes of Sec. Sec. 91.13 and 91.14, the terms normal operation and statutory objective shall have the following meaning:

(a) Normal operation means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) Statutory objective means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

Sec. 91.13 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by Sec. 91.11, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if: (a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

Sec. 91.14 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by Sec. 91.11 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

Sec. 91.15 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in Sec. Sec. 91.13 and 91.14 is on the recipient of Federal financial assistance.

Sec. 91.16 Affirmative action by recipient.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

Sec. 91.17 Special benefits for children and the elderly.

If a recipient operating a program or activity provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of Sec. 91.13.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.18 Age distinctions contained in HHS regulations.

Any age distinctions contained in a rule or regulation issued by HHS shall be presumed to be necessary to the achievement of a statutory objective of the program or activity to which the rule or regulation applies, notwithstanding the provisions of Sec. 91.13.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Subpart C_Duties of HHS Recipients

Sec. 91.31 General responsibilities.

Each HHS recipient has primary responsibility to ensure that its programs or activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford HHS access to its records to the extent HHS finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.32 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on Federal financial assistance from HHS to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its beneficiaries in order to inform them about the protections against discrimination provided by the Act and these regulations.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.33 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HHS shall sign a written assurance as specified by HHS that it will comply with the Act and these regulations.

(b) Recipient assessment of age distinctions. (1) As part of a compliance review under Sec. 91.41 or complaint investigation under Sec. 91.44, HHS may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified

by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from HHS to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the HHS regulations, the recipient shall take corrective action.

Sec. 91.34 Information requirements.

Each recipient shall:

(a) Keep records in a form and containing information which HHS determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to HHS, upon request, information and reports which HHS determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by HHS to the books, records, accounts, and other recipient facilities and sources of information to the extent
HHS DETERMINES IS NECESSARY TO ASCERTAIN WHETHER THE RECIPIENT IS
complying with the Act and these regulations.

Subpart D_ Investigation, Conciliation, and Enforcement Procedures

Sec. 91.41 Compliance reviews.

(a) HHS may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. HHS may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, HHS will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, HHS will arrange for enforcement as described in Sec. 91.46.

Sec. 91.42 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with HHS, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, HHS may extend this time limit.

(b) HHS will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) HHS will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact HHS for information and assistance regarding the complaint resolution process.

(d) HHS will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

Sec. 91.43 Mediation.

(a) HHS will promptly refer to a mediation agency designated by the Secretary all sufficient complaints that:

(1) FALL WITHIN THE JURISDICTION OF THE ACT AND THESE REGULATIONS, unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to HHS. HHS will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with HHS. Mediation ends if:

(1) 60 days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

This 60-day period may be extended by the mediator, with the concurrence of HHS, for not more than 30 days if the mediator determines that agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to HHS.

Sec. 91.44 Investigation.

(a) Informal investigation. (1) HHS will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation HHS will use informal fact finding methods, including joint or separate discussions with the complainant and recipient, to establish the fact and, if

possible, settle the complaint on terms that are mutually agreeable to the parties. HHS may seek the assistance of any involved State agency.

(3) HHS will put any agreement in writing and have it signed by the parties and an authorized official at HHS.

(4) The settlement shall not affect the operation of any other enforcement effort of HHS, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) Formal investigation. If HHS cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations HHS will attempt to obtain voluntary compliance. If HHS cannot obtain voluntary compliance it will begin enforcement as described in Sec. 91.46.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.45 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

- (a) Attempts to assert a right protected by the Act or these regulations; or
- (b) Cooperates in any mediation, investigation, hearing, or other part of HHS' investigation, conciliation, and enforcement process.

Sec. 91.46 Compliance procedure.

(a) HHS may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from HHS under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) HHS will limit any termination under Sec. 91.46(a)(1) to the particular recipient and particular program or activity or part of such program or activity HHS finds in violation of these regulations. HHS will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from HHS.

(c) HHS will take no action under paragraph (a) until:

(1) The Secretary has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a).

(d) HHS also may defer granting new Federal financial assistance from HHS to a recipient when a hearing under Sec. 91.46(a)(1) is initiated.

(1) New Federal financial assistance from HHS includes all assistance for which HHS requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from HHS does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under Sec. 91.46(a)(1).

(2) HHS will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under Sec. 91.46(a)(1). HHS will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. HHS will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) HHS will limit any deferral to the particular recipient and particular program or activity or part of such program or activity HHS finds in violation of these regulations. HHS will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not, and would not in connection with the new funds, receive Federal financial assistance from HHS.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.47 Hearings, decisions, post-termination proceedings.

Certain HHS procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to HHS enforcement of these regulations. They are found at 45 CFR 80.9 through 80.11 and 45 CFR Part 81.

Sec. 91.48 Remedial action by recipient.

Where HHS finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that HHS may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, HHS may require both recipients to take remedial action.

Sec. 91.49 Alternate funds disbursement procedure.

(a) When HHS withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient: any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

Sec. 91.50 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and HHS has made no finding with regard to the complaint; or

(2) HHS issues any finding in favor of the recipient. (b) If HHS fails to make a finding within 180 days or issues a finding in favor of the recipient, HHS shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

APPENDIX GGG: 42 C.F.R. PART 124, SUBPART G

[Return to: Determine Subject Matter Jurisdiction](#)

TITLE 42--PUBLIC HEALTH

CHAPTER I--PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 124_MEDICAL FACILITY CONSTRUCTION AND MODERNIZATION--Table of Contents

Subpart G_Community Service

Authority: Secs. 215, 1525, 1602(6), Public Health Service Act as amended; 58 Stat 690, 88 Stat. 2249, 2259; 42 U.S.C. 216, 300m-4, 300o-1(6).

Source: 44 FR 29379, May 18, 1979, unless otherwise noted.

Sec. 124.601 Applicability.

The provisions of this subpart apply to any recipient of Federal assistance under title VI or XVI of the Public Health Service Act that has given an assurance that it would make the facility or portion thereof assisted available to all persons residing (and, in the case of title XVI assisted applicants, employed), in the territorial area it serves. This assurance is referred to in this subpart as the "community service assurance."

Sec. 124.602 Definitions.

As used in this subpart:

Act means the Public Health Service Act, as amended.

Facility means the an entity that received assistance under title VI or title XVI of the Act and provided a community service assurance.

Fiscal year means facility's fiscal year.

Secretary means the Secretary of Health and Human Services or his delegatee.

Service area means the geographic area designated as the area served by the facility in the most recent State plan approved by the Secretary under title VI, except that, at the request of the facility, the Secretary may designate a different area proposed by the facility when he determines that a different area is appropriate based on the criteria in 42 CFR 53.1(d).

State agency means the agency of a state fully or conditionally designated by the Secretary as the State health planning and development AGENCY OF THE STATE UNDER SECTION 1521 OF THE ACT.

Sec. 124.603 Provision of services.

(a) General. (1) In order to comply with its community service assurance, a facility shall make the services provided in the facility or portion thereof constructed, modernized, or converted with Federal assistance under title VI or XVI of the Act available to all persons residing (and, in the case of facilities assisted under title XVI of the Act, employed) in the facility's service area without discrimination on the ground of race, color, national origin, creed, or any other ground unrelated to an individual's need for the service or the availability of the needed service in the facility. Subject to paragraph (b) (concerning emergency services) a facility may deny services to persons who are unable to pay for them unless those persons are required to be provided uncompensated services under the provisions of Subpart F.

(2) A person is residing in the facility's service area for purposes of this section if the person:

(i) Is living in the service area with the intention to remain there permanently or for an indefinite period;

(ii) Is living in the service area for purposes of employment; or

(iii) Is living with a family member who resides in the service area.

(b) Emergency services. (1) A facility may not deny emergency services to any person who resides (or, in the case of facilities assisted under title XVI of the Act, is employed) in the facility's service area on the ground that the person is unable to pay for those services.

(2) A facility may discharge a person that has received emergency services, or may transfer the person to another facility able to provide necessary services, when the appropriate medical personnel determine that discharge or transfer will not subject the person to a substantial risk of deterioration in medical condition.

(c) Third party payor programs. (1) The facility shall make arrangements, if eligible to do so, for reimbursement for services with:

(i) Those principal State and local governmental third-party payors that provide reimbursement for services that is not less than the actual costs, as determined in accordance with accepted cost accounting principles; and

(ii) Federal governmental third-party programs, such as medicare and medicaid.

(2) The facility shall take any necessary steps to insure that admission

to and services of the facility are available to beneficiaries of the governmental programs specified in paragraph (c)(1) of this section without discrimination or preference because they are beneficiaries of those programs.

(d) Exclusionary admissions policies. A facility is out of compliance with its community service assurance if it uses an admission policy that has the effect of excluding persons on a ground other than those permitted under paragraph (a) of this section. Illustrative applications of this requirement are described in the following paragraphs:

(1) A facility has a policy or practice of admitting only those patients who are referred by physicians with staff privileges at the facility. If this policy or practice has the effect of excluding persons who reside (or for title XVI facilities, are employed) in the community from the facility because they do not have a private family doctor with

staff privileges at the facility, the facility would not be in compliance with its assurance. The facility is not required to abolish its staff physician admissions policy as a usual method for admission. However, to be in compliance with its community service assurance it must make alternative arrangements to assist area residents who would otherwise be unable to gain admission to obtain services available in the facility. Examples of alternative arrangements a facility might use include:

- (i) Authorizing the individual's physician, if licensed and otherwise qualified, to treat the patient at the facility even though the physician does not have staff privileges at the facility;
- (ii) For those patients who have no physician, obtaining the voluntary agreement of physicians with staff privileges at the facility to accept referrals of such patients, perhaps on a rotating basis;
- (iii) If an insufficient number of physicians with staff privileges agree to participate in a referral arrangement, requiring acceptance of referrals as a condition to obtaining or renewing staff privileges;
- (iv) Establishing a hospital-based primary care clinic through which patients needing hospitalization may be admitted; or
- (v) Hiring or contracting with qualified physicians to treat patients who do not have private physicians.

(2) A facility, as required, is a qualified provider under the title XIX medicaid program, but few or none of the physicians with staff privileges at the facility or in a particular department or sub-department of the facility will treat medicaid patients. If the effect is that some medicaid patients are excluded from the facility or from any service provided in the facility, the facility is not in compliance with its community service assurance. To be in compliance a facility does not have to require all of its staff physicians to accept medicaid. However, it must take steps to ensure that medicaid beneficiaries have full access to all of its available services. Examples of steps that may be taken include:

- (i) Obtaining the voluntary agreement of a reasonable number of physicians with staff privileges at the facility and in each department or sub-department to accept referral of medicaid patients, perhaps on a rotating basis;
- (ii) If an insufficient number of physicians with staff privileges agree to participate in a referral arrangement, requiring acceptance of referrals as a condition to obtaining or renewing staff privileges;
- (iii) Establishing a clinic through which medicaid beneficiaries needing hospitalization may be admitted; or
- (iv) Hiring or contracting with physicians to treat medicaid patients.

(3) A facility requires advance deposits (pre-admission or pre-service deposits) before admitting or serving patients. If the effect of this practice is that some persons are denied admission or service or face substantial delays in gaining admission or service solely because they do not have the necessary cash on hand, this would constitute a violation of the community service assurance. While the facility is not required to forego the use of a deposit policy in all situations, it is required to make alternative arrangements to ensure that persons who probably can pay for the services are not denied them simply because they do not have the available cash at the time services are requested. For example, many employed persons and persons with other

collateral do not have savings, but can pay hospital bills on an installment basis, or can pay a small deposit. Such persons may not be excluded from admission or denied services because of their inability to pay a deposit.

Sec. 124.604 Posted notice.

(a) The facility shall post notices, which the Secretary supplies in English and Spanish, in appropriate areas of the facility, including but not limited to the admissions area, the business office and the emergency room.

(b) If in the service area of the facility the "usual language of households" of ten percent or more of the population, according to the most recent figures published by the Bureau of the Census, is other than English or Spanish, the facility shall translate the notice into that language and post the translated notice on signs substantially similar in size and legibility to, and posted with, those supplied under paragraph (a) of this section.

(c) The facility shall make reasonable efforts to communicate the contents of the posted notice to persons who it has reason to believe cannot read the notice.

Sec. 124.605 Reporting and record maintenance requirements.

(a) Reporting requirements--(1) Timing of reports.(i) A facility shall submit to the Secretary a report to assist the Secretary in determining compliance with this subpart once every three fiscal years, on a schedule to be prescribed by the Secretary. The report required by this section shall be submitted not later than 90 days after the end of the fiscal year, unless a longer period is approved by the Secretary for good cause shown.

(ii) A facility shall also submit the required report whenever the Secretary determines, and so notifies the facility in writing, that a report is needed for proper administration of the program. In this situation the facility shall submit the report specified in this section for the filing of reports, within 90 days after receiving notice from the Secretary, or within 90 days after the close of the fiscal year, whichever is later.

(2) Content of report. The report must be submitted on a form prescribed by the Secretary and must include information that the Secretary prescribes to permit a determination of whether a facility has met its obligations under this subpart.

(3) The facility shall provide a copy of any report to the HSA for the area when submitting it to the Secretary.

(4) Institution of suit. Not later than 10 days after being served with a summons or complaint, the applicant shall notify the Regional Health Administrator for the Region of HHS in which it is located of any legal action brought against it alleging that it has failed to comply with the requirements of this subpart. \1\

\1\ The addresses of the Regional Office of HHS are set out in 45

(b) Record maintenance requirements. (1) A facility shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance requirements of this subpart in any fiscal year, including documents from which information required to be reported under paragraph (a) of this section was obtained. A facility shall maintain these records until 180 days following the close of the Secretary's investigation under Sec. 124.606(a).

Sec. 124.606 Investigation and enforcement.

(a) Investigations. (1) The Secretary periodically investigates the compliance of facilities with the requirements of this subpart, and investigates complaints.

(2)(i) A complaint is filed with the Secretary on the date on which the following information is received in the Office of the Regional Health Administrator for the Region of HHS in which the facility is located:

(A) The name and address of the person making the complaint or on whose behalf the complaint is made;

(B) The name and location of the facility;

(C) The date or approximate date on which the event complained of occurred, and

(D) A statement of what actions the complainant considers to violate the requirements of this subpart.

(ii) The Secretary promptly provides a copy of the complaint to each facility named in the complaint.

(3) When the Secretary investigates a facility, the facility shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

(4) The Act provides that if the Secretary dismisses a complaint or the Attorney General has not brought an action for compliance within six months from the date on which the complaint is filed, the person filing it may bring a private action to effectuate compliance with the assurance. If the Secretary determines that he will be unable to issue a decision on a complaint or otherwise take appropriate action within the six month period, he may, based on priorities for the disposition of complaints that are established to promote the most effective use of enforcement resources, or on the request of the complainant, dismiss the complaint without a finding as to compliance prior to the end of the six month period, but no earlier than 45 days after the complaint is filed.

(b) Enforcement. (1) If the Secretary finds, based on his investigation under paragraph (a) of this section, that a facility did not comply with the requirements of this subpart, he may take any action authorized by law to secure compliance, including but not limited to voluntary agreement or a request to the Attorney General to bring an action against the facility for specific performance.

(2) If the Secretary finds, based on his investigation under paragraph (a) of this section, that a facility has limited the

availability of its services in a manner proscribed by this subpart, he may, in addition to any other action that he is authorized to take in accordance with the Act, require the facility to establish an effective affirmative action plan that in his judgment is designed to insure that its services are made available in accordance with the requirements of this subpart.

Sec. 124.607 Agreements with State agencies.

(a) Where the Secretary finds that it will promote the purposes of this subpart, and the State agency is able and willing to do so, he may enter into an agreement with the State agency for the State agency to assist him in administering this subpart in the State.

(b) Under an agreement, the State agency will provide the Secretary with any assistance he requests in any one or more of the following areas, as set out in the agreement:

- (1) Investigation of complaints of noncompliance;
- (2) Monitoring the compliance of facilities with the requirements of this subpart;
- (3) Review of affirmative action plans submitted under Sec. 124.606(b);
- (4) Review of reports submitted under Sec. 124.605;
- (5) Making initial decisions for the Secretary with respect to compliance, subject to appeal by any party to the Secretary or review by the Secretary on his own initiative; and
- (6) Application of any sanctions available to it under State law (such as license revocation or termination of State assistance) against facilities determined to be out of compliance with the requirements of this subpart.

(c) A State agency may use funds received under section 1525 of the Act to pay for expenses incurred in the course of carrying out this agreement.

(d) Nothing in this subpart precludes any State from taking any action authorized by State law regarding the provision of services by any facility in the State as long as the action taken does not prevent the Secretary from enforcing the requirements of this subpart.

Appendix to Subpart G of Part 124--Interim Procedures and Criteria for Review by Health Systems Agencies of Applications Under Section 1625 of the Public Health Service Act

In performing reviews under section 1513 (e) of the Public Health Service Act (42 U.S.C. 3001-2(c)) of applications for grants under section 1625 of the Act, health systems agencies shall use the procedures and criteria stated below. A health systems agency

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may not conduct such reviews until the procedures and criteria to be used in conducting the reviews have been adopted by the agency and published in newspapers of general circulation within the health service area or other public information channels.

procedures

The procedures adopted and utilized by a health systems agency for conducting reviews of applications for grants under section 1625 of the Act shall include at least the following: 1. Except as provided below, notification of the beginning of a review within seven days of the receipt by the health systems agency of the application. Where the application was received by the health systems agency prior to publication of this subpart in the Federal Register, notification must be made within seven days of the date on which the health systems agency adopts its procedures and criteria. The notification shall include the proposed schedule for the review, the period within which a public hearing during the course of the review may be requested (which must be a reasonable period from the transmittal of the written notification required above), and the manner in which notification will be provided of the time and place of any hearings so requested. Written notification to members of the public may be provided through newspapers of general circulation in the area and public information channels. Notification to the applicant whose application is being reviewed and all other applicants for assistance under section 1625 of the Act providing health service in the health service area shall be by mail (which may be as part of a newsletter). The health systems agency must simultaneously notify the Federal funding agency of the beginning of the review.

2. Schedules for reviews which provide that such reviews shall not exceed 60 days from the date of notification made in accordance with paragraph 1 of this section to the date of the written findings made in accordance with paragraph 4 of this section. This does not preclude a health systems agency from conducting its review in less than 60 days.

3. Provision for applicants to submit to the health systems agency (in such form and manner as the agency shall require) such information as the agency deems necessary in order to conduct its review.

4. Written findings which state the basis for the approval or disapproval of the application by the health systems agency. Such findings shall be sent to the applicant, the State health planning and development agency (or agencies), and the Secretary, and shall be available to other upon request.

5. Access by the general public to all such applications reviewed by the health systems agency and to all other written materials pertinent to the agency review.

6. Public hearings in the course of agency review, if requested by one or more persons directly affected by the review. For purposes of this paragraph, a "person directly affected by the review" is as DEFINED IN 42 CFR 122.306 (A)(7).

criteria

The specific criteria adopted and utilized by a health systems of this agency to conduct reviews of applications for grants under section 1625 of the Act shall include at least the following:

1. The relationship of the health services of the facility to the applicable health systems plan and annual implementation plan.
2. The relationship of the health services of the facility to the long-range development plan (if any) of the applicant.
3. The need that the population served or to be served by the

facility has for the health services of such facility.

4. The availability of alternative, less costly, or more effective methods of providing the health services which the facility provides.

5. The relationship of the health services provided by the facility to the existing health care system of the area.

6. The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of services by the facility and the availability of alternative uses of such resources for the provision of other health services.

7. The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service area in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics, and other specialty centers.

8. The special needs and circumstances of health maintenance organizations for which assistance may be provided under title XIII.

9. The costs and methods of the proposed construction or modernization, including the costs and methods of energy provision.

10. The probable impact of the project reviewed on the applicant's costs of providing health services.

APPENDIX HHH: 45CFR 84.53

[Return to: Determine Subject Matter Jurisdiction](#)

TITLE 45--PUBLIC WELFARE

AND HUMAN SERVICES

PART 84_NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR
ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE--Table of Contents

Subpart F_Health, Welfare, and Social Services

Sec. 84.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

APPENDIX JJJ - 45 C.F.R. PART 86
[Return to: Determine Subject Matter Jurisdiction](#)

TITLE 45--PUBLIC WELFARE
AND HUMAN SERVICES

PART 86_NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR
ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE--Table of Contents

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Appendix A to Part 86--Guidelines For Eliminating Discrimination and
Denial of Services on the Basis of Race, Color, National
Origin, Sex, and Handicap in Vocational Education Programs
[Note]

Source: 40 FR 24137, June 4, 1975, unless otherwise noted.

Subpart A_Introduction

- Sec. 86.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93-568, 88 Stat. 1855, and sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93-380)

Sec. 86.2 Definitions.

As used in this part, the term--

(a) Title IX means title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) Department means the Department of Health and Human Services.

(c) Secretary means the Secretary of Health and Human Services.

(d) Director means the Director of the Office for Civil Rights of the Department.

(e) Reviewing Authority means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) Administrative law judge means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) Federal financial assistance means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) Program or activity and program means all of the operations of--

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such a State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(i) Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

(j) Applicant means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(k) Educational institution means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (l), (m), (n), or (o) of this section.

(l) Institution of graduate higher education means an institution

which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(m) Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(n) Institution of professional education means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(o) Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(p) Administratively separate unit means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(q) Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(r) Student means a person who has gained admission.

(s) Transition plan means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, 908, Education Amendments of 1972, 20 U.S.C. 1681,

1682, 1687)

[40 FR 24137, June 4, 1975, as amended at 70 FR 24320, May 9, 2005]

Sec. 86.3 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) Self-evaluation. Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) Availability of self-evaluation and related materials. Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made pursuant to paragraph (c) (2) of this section and of any remedial steps taken pursuant to paragraph (c) (3) of this section.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24128, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

Sec. 86.4 Assurance required.

(a) General. Every application for Federal financial assistance for any education program or activity shall as condition of its approval

contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Director, that the education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Director if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with Sec. 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Director of such assurance.

(b) Duration of obligation. (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) Form. The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24137, June 4, 1975, as amended at 70 FR 24321, May 9, 2005]

Sec. 86.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.6 Effect of other requirements.

(a) Effect of other Federal provisions. The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h-9 and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) Effect of State or local law or other requirements. The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) Effect of rules or regulations of private organizations. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24137, June 4, 1975, as amended at 70 FR 24321, May 9, 2005]

Sec. 86.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.8 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be

prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.9 Dissemination of policy.

(a) Notification of policy. (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Director finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to Sec. 86.8, or to the Director.

(2) Each recipient shall make the initial notification required by paragraph (a) (1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

- (i) Local newspapers;
- (ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and
- (iii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) Publications. (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the

type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) Distribution. Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart B_Coverage

Sec. 86.11 Application.

Except as provided in this subpart, this Part 86 applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24137, June 4, 1975, as amended at 70 FR 24321, May 9, 2005]

Sec. 86.12 Educational institutions controlled by religious organizations.

(a) Application. This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) Exemption. An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Director a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the

United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.14 Membership practices of certain organizations.

(a) Social fraternities and sororities. This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls. This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) Voluntary youth service organizations. This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; sec. 3(a) of Pub. L. 93-568, 88 Stat. 1862 amending sec. 901)

Sec. 86.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) Administratively separate units. For the purposes only of this section, Sec. 86.16 and 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) Application of Subpart C. Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) Public institutions of undergraduate higher education. Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has

had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24128, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

Sec. 86.16 Educational institutions eligible to submit transition plans.

(a) Application. This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) Provision for transition plans. An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in Sec. 86.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.17 Transition plans.

(a) Submission of plans. An institution to which Sec. 86.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) Content of plans. In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting

students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) Nondiscrimination. No policy or practice of a recipient to which Sec. 86.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) Effects of past exclusion. To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which Sec. 86.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24128, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

Sec. Sec. 86.18-86.20 [Reserved]

Subpart C_Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

Sec. 86.21 Admission.

(a) General. No person shall, on the basis of sex, be denied admission, or be

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subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in Sec. Sec. 86.16 and 86.17.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex,

by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.23 Recruitment.

(a) Nondiscriminatory recruitment. A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to Sec. 86.3(a), and may choose to undertake such efforts as affirmative action pursuant to Sec. 86.3(b).

(b) Recruitment at certain institutions. A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. Sec. 86.24-86.30 [Reserved]

Subpart D_Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

Sec. 86.31 Education programs or activities.

(a) General. Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) Assistance administered by a recipient educational institution to study at a foreign institution. A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; Provided, a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) Aid, benefits, or services not provided by recipient. (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24137, June 4, 1975, as amended at 70 FR 24321, May 9, 2005]

Sec. 86.32 Housing.

(a) Generally. A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) Housing provided by recipient. (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to

that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) Other housing. (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

Sec. 86.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

Sec. 86.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education

courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.36 Counseling and use of appraisal and counseling materials.

(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.37 Financial assistance.

(a) General. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments. (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which

requires that awards be made to members of a particular sex specified therein; Provided, That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and Sec. 86.41.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

[40 FR 24128, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

Sec. 86.38 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a manner which violates Subpart E of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20

U.S.C. 1681, 1682)

Sec. 86.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.40 Marital or parental status.

(a) Status generally. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) Pregnancy and related conditions. (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave

policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24137, June 4, 1975, as amended at 70 FR 24321, May 9, 2005]

Sec. 86.41 Athletics.

(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) Adjustment period. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

[40 FR 24128, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

Sec. 86.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. Sec. 86.43-86.50 [Reserved]

Subpart E_Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

Sec. 86.51 Employment.

(a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefore, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) Application. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including those that are social or recreational; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24137, June 4, 1975, as amended at 70 FR 24321, May 9, 2005]

Sec. 86.52 Employment criteria.

A recipient shall not administer or operate any test or other

criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.53 Recruitment.

(a) Nondiscriminatory recruitment and hiring. A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) Recruitment patterns. A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.55 Job classification and structure.

A recipient shall not:

- (a) Classify a job as being for males or for females;
- (b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or
- (c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in Sec. 86.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 24128, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

Sec. 86.56 Fringe benefits.

(a) Fringe benefits defined. For purposes of this part, fringe benefits means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of Sec. 86.54.

(b) Prohibitions. A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.57 Marital or parental status.

(a) General. A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such

employee's or applicant's family unit.

(b) Pregnancy. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) Pregnancy as a temporary disability. A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) Pregnancy leave. In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.58 Effect of State or local law or other requirements.

(a) Prohibitory requirements. The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) Benefits. A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.59 Advertising.

A recipient shall not in any advertising related to employment

indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona-fide occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.60 Pre-employment inquiries.

(a) Marital status. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) Sex. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. Sec. 86.62-86.70 [Reserved]

Subpart F_Procedures [Interim]

Sec. 86.71 Interim procedures.

For the purposes of implementing this part during the period between

its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80-6 through 80-11 and 45 CFR Part 81.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Appendix A to Part 86--Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs [Note]

Note: For the text of these guidelines, see 45 CFR Part 80, Appendix B.

[44 FR 17168, Mar. 21, 1979]

APPENDIX LLL: SAMPLE CR-RFA

[Return to: Preparing the Civil Rights Recommendation for Action \(CR-RFA\)](#)

Civil Rights - Recommendation for Action

Date: (DATE)

Investigator: (NAME)

Complainant: (NAME)

Covered Entity: (NAME)

Trans No.: XX-XXXXX

Date(s) of Alleged Discrimination: (DATE)

Allegations to Accept for Investigation: Complainant alleges that XXX Hospital refused to provide Haitian-Creole interpreting services for him in the Emergency Room, and he left without being treated when he refused to sign a consent form for a medical procedure that he did not understand.

Allegations to Decline for Investigation: Complainant alleges that the Emergency Room was unsanitary.

Funding Source: Medicare

Statute(s) and Citation(s): Title VI, 45 CFR § 80.3(b) (2) (utilization of criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of program objectives for individuals of a particular national origin)

Legal Issue(s) for Investigation: Did the covered entity discriminate against the complainant on the basis of his national origin by denying him interpreter services?

Recommended Case Classification and rationale: Potential Violation. Complainant attached a release against medical advice (AMA) form in English that he was required to sign when he left the hospital emergency room.

Special Handling Requirements: Send for professional translation documents attached to complaint (possibly witness statements) that are in a foreign language.

Date Complaint Filed with OCR: (DATE)

Date Complaint Assigned to Investigator: (DATE)

Date of Last Contact with Complainant: (DATE)

APPENDIX MMM: GUIDANCE REGARDING CASE RESOLUTION BASED ON INSUFFICIENT EVIDENCE OF A VIOLATION

[Return to: Insufficient Evidence of a Violation Letter](#)

What is the purpose of this guidance?

To set forth principles to assist investigators in determining whether a case under investigation should be considered resolved based on insufficient evidence to support a violation, pursuant to the 2009 Revised Case Resolution Manual, IV (viii).

What is a resolution based on Insufficient Evidence of a Violation?

In evaluating the evidence, OCR has the “burden of proof,” or the burden to establish, by a “preponderance of the evidence,” the facts necessary to satisfy each element of a violation. This simply means that the evidence on one side outweighs the evidence on the other side, *i.e.*, the greater weight of the evidence.

Investigators should evaluate each case to determine if there is sufficient factual evidence to find a violation. If there is not such evidence, OCR must conclude that there is “insufficient evidence to support a finding of a violation.” In either case, the combined and cumulative weight of all evidence must support OCR’s conclusion. Prior to making this determination, the investigator should review the status of the investigation and evaluate whether additional investigation is necessary or whether additional sources of information exist which could affect OCR’s conclusion.

What steps can be taken to evaluate the sufficiency of evidence? Can OCR conclude that investigation will not result in a violation finding?

1. Review the complaint, identify the issue, and examine the applicable regulatory provision to ascertain what issues and elements need to be proved.
2. Has the evidence been applied to the correct legal theory of the case?
3. Is sufficient weight given to the evidence that has been collected?
4. Are there facts that are beyond dispute? Does the evidence corroborate or support the complainant’s allegations or support the recipient’s response?
5. If there are issues still in question, what additional evidence is necessary to prove the allegations? Is there additional documentary evidence that would be probative, *e.g.*, medical records, application and case files, written communication, recipient’s policies, procedures or practices?
6. Is there a witness that may have direct knowledge regarding the allegations or information that is material to the allegations raised? Did the complainant relate the events to anyone else?
7. Attempt to resolve any discrepancies or factual disputes where there are two competing versions (*e.g.*, he said/she said). Is there other evidence that could

corroborate or lend credibility to one version? For example, are there contemporaneous notes, etc.?

8. Resolve credibility issues. Is the information internally consistent? Is the information consistent with other documentation? Is it possible to re-interview the witness and give the opportunity to comment on information gathered during the investigation that tended to undermine credibility? Is there information that would indicate that the recipient engaged in similar practices that would give credibility to the allegations?
9. Is there another source of information that could support a finding of noncompliance or is there additional information that could change the result of the investigation?

At what point is it appropriate to consider a case resolved based on Insufficient Evidence of a Violation?

OCR should request or otherwise obtain all information necessary to make an informed professional judgment about the compliance status of the recipient in light of the issues raised by the complaint and the investigation. Several factors affect the sufficiency and appropriateness of evidence:

- Persuasiveness of evidence
- Source and reliability of evidence
- Understanding of the recipient and its environment
- Thoroughness and comprehensiveness of the search for evidence
- Objective evaluation of the evidence

Where evidence is unavailable after OCR has exhausted its efforts to obtain relevant evidence, OCR may resolve the complaint. A complaint may be considered resolved based on insufficient evidence of a violation when OCR has sufficient information from which to conclude that further investigation will not result in a finding of a violation.

APPENDIX PG: PRE GRANTS RESOURCES

- [Signed National Agreements in PIMS](#) See PIMS /Civil Rights Library /Investigational Resources /HQ Approved Program Area Resources /Pre-Grants
- [Pre-Grant Flow-Chart](#) See PIMS /Civil Rights Library /Investigational Resources /HQ Approved Program Area Resources /Pre-Grants

APPENDIX PG – 1: PRE-GRANTS MANUAL

[Return to: Medicare Applicant Civil Rights Clearance \(Pre-grant\) Reviews](#)

“Manual” for PRE-GRANT REVIEW PROCESS (Follows the Flow Chart)

Step 1 After receiving the CMS Query in folder and PIMS, conduct a search in PIMS to determine if there are open complaints against the recipient, and determine if you have received data with the query.

- Go to PIMS Enterprise Page and click on Transaction Data Search.
- Scroll down to Contacts.
- Enter the name of the recipient.
- Click Search for a list of all transaction types, which will appear to the right of the screen.
- The list will show if there are open complaints against the recipient.
- Repeat the process with previous names of the recipient, if applicable, to broaden the search.
- If you find an open complaint on the recipient, consult with your Section Chief before proceeding with the pre-grant review. If not, proceed with your pre-grant review.
- If you received civil rights data with the query sheet, proceed to Step 6. If you did not receive data, go to Step 2.

Step 2 Call recipient to verify name and address.

- Make sure the recipient name, address, telephone number, e-mail, and administrator name are correct.
- Discuss with administrator or contact person the preferred method for sending the initial data request letter and pre-grant package (regular mail or e-mail).

Step 3 Send initial data request letter and pre-grant package.

- Prepare return receipt card and envelope.
- Prepare the initial data request letter, using the PIMS template.
- Mail out initial letter along with the pre-grant package (and green return receipt card on the outside). The pre-grant package contains the data request, sample policies, and technical assistance (T.A.), to help the recipient understand its nondiscrimination obligations as a recipient of HHS funds. The recipient will be asked to provide

data/information to demonstrate its compliance.

Step 4 Call recipient to check receipt of package and provide T.A.

- After seven days, call the recipient to make sure they received the pre-grant package.
- Answer any questions they have and provide technical assistance.
-

Step 5 Receive information within 20 days or consider granting extension.

- If you do not hear from the recipient within 20 days, call the administrator or contact person.
- You can negotiate a new deadline for submission of the civil rights information. Keep track of the new deadline!

Step 6 Review data (use Checklist).

- Use the attached two-page Checklist. It provides you with a list of the required policies and procedures as well as the information that is required in those policies.
- If you find the information correct, make a check at the appropriate place on the Checklist.
- If some information is missing or demonstrates noncompliance, make a note on the Checklist.

Step 7 Request additional data and provide T.A.

- Decide with your recipient's contact person whether to use phone, fax, e-mail, and/or regular mail.

Step 8 Send 10-day warning letter if necessary.

- If you are having a difficult time getting the necessary materials from the recipient, send a 10-day warning letter.
- The 10-day warning letter tells the recipient that you will deny clearance if you do not hear from them within 10 days.
- Use the template letter in PIMS.

Step 9 Conduct additional review and T.A.

- You will continue to do this until you find the recipient in compliance for purposes of pre-grant reviews.

Step 10 Prepare closure letter and scan data into PIMS.

- To close the case, the recipient must have submitted the following complete and appropriate data:
 1. signed and dated Assurance of Compliance Form (HHS 690);
 2. Nondiscrimination Policies;
 3. description of dissemination of those policies;
 4. policy to ensure effective communication with limited English proficient (LEP) persons (including interpreter services, at no extra charge);
 5. policy to provide auxiliary aids and services to persons with disabilities;
 6. demonstration of program accessibility to persons with disabilities;
 7. age distinctions in program eligibility; and,
 8. for recipients with 15 or more employees, a Section 504 Grievance Procedure and the name and number of the Section 504 Coordinator.
- Use the template closure letter in PIMS.

- Select one of three closure letters, as appropriate for your case: no violation, corrective action, or denial.
- Sign and date the closure letter.
- Sign and date Query Sheet, with your statement of approval or denial.
- Scan into PIMS: the signed closure letter, the signed Query Sheet, the Assurance of Compliance, the Checklist, and all the data that is relevant to demonstrate compliance (or noncompliance).

Step 11 Submit case to Section Leader for review and approval.

- Submit your case only through PIMS.

Step 12 Section Leader conducts review.

- If your case is approved, it will be returned to you in PIMS to close.
- If your case requires additions or revisions, it will be returned to you in PIMS for revisions. You will also receive an e-mail describing what needs to be revised.
- Your reviewer will use the Checklist (to the greatest extent possible) to judge the completeness of the case.
- If your case is approved, proceed to Step 15. If your case is returned, proceed to Step 13.

Step 13 Gather additional data and scan into PIMS.

- Repeat your process of contacting the facility, requesting the necessary data, and providing technical assistance.
- Scan new data into PIMS.

Step 14 Resubmit case for approval.

- Repeat steps 11 and 12 above.

Step 15 Close the case, mail closure letter and put signed query into box.

- Close the case in PIMS.
- Send the original copy of the closure letter to the recipient.
- Staple a copy of the closure letter to the original signed query sheet and submit them to the administrative assistant, to be sent to the appropriate CMS regional office.
- Prepare the hard copy folder as follows:
 - o Checklist,
 - o a copy of the signed query sheet,
 - o the Assurance of Compliance,
 - o the data (clipped together), and
 - o a copy of the signed closure letter.
- Place the completed folder in the designated drawer for filing.

APPENDIX PG – 2: CIVIL RIGHTS MEDICARE PREGRANT CHECKLIST

[Return to: Medicare Applicant Civil Rights Clearance \(Pre-grant\) Reviews](#)

GENERAL INFORMATION

OCR Transaction Number: _____

CCN Number: _____

Name of Facility: _____

CONDUCT SEARCH OF COVERED ENTITY IN PIMS

- a) Conduct a search in PIMS to determine if there are open complaints against the facility.
- b) Date of Search: _____
- c) Open Complaint Investigation: Yes _____ No _____
(If yes, consult with your Section Chief before proceeding.)

DATA THAT MUST BE SUBMITTED

1. Assurance of Compliance (signed and dated)

2. Nondiscrimination Policy

- a) bases of race, color, national origin, disability and age
- b) reference to all three regulations
- c) contact person with telephone number
- d) correct policy title to clarify that this is a nondiscrimination policy

3. Dissemination of Nondiscrimination Policy

- a) separate submission
- b) post the long version (with the reference to the regulations) in facility and/or include it in admission or information packages

4. Admission Policy

- a) does the policy include exclusion of a protected class: Yes _____ No _____
- b) If yes, Explain: _____

5. Communication with LEP Persons

- a) free of charge (at no extra cost to the person being served)
- b) method of providing language assistance (for oral communication)
- c) the correct citation Title VI (a citation is not necessary, but if one is there, it must be correct)
- d) the person or position (and telephone number) responsible to obtain interpreters
- e) name(s) and telephone numbers of interpreters/interpreter services

- f) limits on use of family and friends as interpreters (optional)

6. Auxiliary Aids and Services for Persons with Disabilities

- a) free of charge (at no extra cost to the person being served)
- b) limits on use of family and friends as interpreters (optional)
- c) list of auxiliary aids and services
- d) the person or position (and telephone number) responsible to obtain interpreters
- e) name(s) and telephone numbers of sign language interpreters/interpreter services
- f) method of communicating with hard of hearing/deaf persons, blind/low vision persons, and persons who have a speech impairment
- g) training for staff on auxiliary aids
- h) the correct citation Section 504 (a citation is not necessary, but if there is one, it must be correct)

7. Notice of Program Accessibility

8. Section 504 Coordinator (name, and telephone)

9. Section 504 Grievance Procedures

- a) reference Section 504
- b) due process (written decision and timeline to respond to complainant)
- c) other remedies including filing complaint with OCR in HHS

10. Restrictions Based on Age

Staff Person: _____

Type of Closure: _____

Closure Date: _____

APPENDIX PG – 4: PRE-GRANT DATA REQUEST LETTER (TEMPLATE)

[Return to: Medicare Applicant Civil Rights Clearance \(Pre-grant\) Reviews](#)

##Date##

##Title## ##POC First Name## ##POC Last Name##

##POC Official Title##

##Covered Entity##

##Covered Entity Address##

##Covered Entity City##, ##Covered Entity State## ##Covered Entity Zip Code##

Our Transaction number: ##Transaction Number##

Medicare Provider Number: ##Covered Entity CMS Provider Number##

Dear ##Title## ##POC Last Name##:

The Centers for Medicare and Medicaid Services (CMS) has advised our office that your facility is seeking initial Medicare certification, or recertification due to a change of ownership.

To be eligible to participate in the Medicare program, your facility must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The Office for Civil Rights (OCR) in the Department of Health and Human Services is responsible for determining your compliance with the Regulations implementing these three Statutes.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in terms of access to and receipt of services provided by a facility or agency. Section 504 prohibits discrimination on the basis of disability in the delivery of services provided by a facility or agency. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. These Regulations can be found on the OCR web-site at <http://www.hhs.gov/ocr/crclearance.html>.

In order for our office to determine your compliance with these Regulations, we have enclosed a "Medicare Certification Civil Rights Information Request Form," indicating the information which you should submit. Please submit this information to our office **WITHIN 20 DAYS** of your receipt of this letter. Should you need additional time to submit the information, please inform our office prior to the expiration of the 20 days.

The request for this information has been approved under the clearance requirements of the Paperwork Reduction Act of 1980, P. L. 96-511 (44 U.S.C. 3501 et. seq.).

Please send all information and correspondence to:

##Staff Name##

U.S. Department of Health and Human Services
Office for Civil Rights

##RO Address##
##RO City##, ##RO State## ##RO Zip Code##

If you have any questions, or need our materials in alternate format (large print, Braille, audio, etc.) you may call ##Staff Name## at ##Staff Telephone## and TDD ##TDD Number##. You may also contact him/her by E-mail address ##Staff Email##. Our 24-hour Web-site resource is available to assist a facility to respond to our request. This address is <http://www.hhs.gov/ocr/crclearance.html>.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

PLEASE INCLUDE OUR TRANSACTION NUMBER ##Transaction Number##, ON ALL CORRESPONDENCE.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

Enclosure

APPENDIX PG – 5: PRE-GRANT DENIAL LETTER (TEMPLATE)

[Return to: Medicare Applicant Civil Rights Clearance \(Pre-grant\) Reviews](#)

##Title## ##POC First Name## ##POC Last Name##
##POC Official Title##
##Covered Entity##
##Covered Entity Address##
##Covered Entity City##, ##Covered Entity State## ##Covered Entity Zip Code##

Our Reference number: ##Transaction Number##
Medicare Provider Number: ##Covered Entity CMS Provider Number##

Dear ##Title## ##POC Last Name##:

This letter is to advise you that your request for civil rights clearance for participation in the Medicare Program has been denied.

We have made attempts by letters and telephone calls to obtain the additional data needed from your facility to determine its compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and the implementing regulations. To date, your facility has not provided the necessary data to enable us to issue a civil rights clearance.

We are notifying the Centers for Medicare and Medicaid Services (CMS) that we are unable to provide a civil rights compliance determination for your facility at this time. We are closing our file on your application as of the date of this letter. You may reapply for a civil rights clearance through CMS or your State health agency.

If you have questions or require any technical assistance, please contact ##Staff Name## of my staff by e-mail at ##Staff Email## or by telephone at ##Staff Telephone##.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

cc: CMS

APPENDIX PG – 6: PRE-GRANT MONITORING CLOSURE LETTER (TEMPLATE)
[Return to: Medicare Applicant Civil Rights Clearance \(Pre-grant\) Reviews](#)

##Title## ##POC First Name## ##POC Last Name##
##POC Official Title##
##Covered Entity##
##Covered Entity Address##
##Covered Entity City##, ##Covered Entity State## ##Covered Entity Zip Code##

Our Reference number: ##Transaction Number##
Medicare Provider Number: ##Covered Entity CMS Provider Number##

Dear ##Title## ##POC Last Name##:

Thank you for providing the additional Title VI, Section 504, and Age Discrimination Act compliance information required for Medicare certification.

Based on a review of the information, we are notifying the Centers for Medicare and Medicaid Services (CMS) that your facility is now in compliance with the above regulations and has been granted a civil rights clearance for the purpose of participating in the Medicare program. Any other compliance matter arising from subsequent compliance reviews or complaint investigations shall be dealt with and resolved separately, in accordance with the procedures and standards in the Departmental regulations applicable to such matters.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have questions or require any technical assistance, please contact ##Staff Name## of my staff by e-mail at ##Staff Email## or by telephone at ##Staff Telephone##.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

APPENDIX PG – 7: PRE-GRANT MONITORING LETTER (TEMPLATE)

[Return to: Medicare Applicant Civil Rights Clearance \(Pre-grant\) Reviews](#)

##Title## ##POC First Name## ##POC Last Name##
##POC Official Title##
##Covered Entity##
##Covered Entity Address##
##Covered Entity City##, ##Covered Entity State## ##Covered Entity Zip Code##

Our Reference number: ##Transaction Number##
Medicare Provider Number: ##Covered Entity CMS Provider Number##

Dear ##Title## ##POC Last Name##:

Thank you for the Title VI, Section 504, and Age Discrimination Act compliance information that you provided to us. Although additional information is needed to complete our review, we are granting your facility a clearance contingent upon your agreement to submit to OCR, by ##Due Date## your **[Insert items being monitored]**.

Please send all information and correspondence to:

##RO Address##
##RO City##, ##RO State## ##RO Zip Code##

If you have questions or require any technical assistance, please contact ##Staff Name## of my staff by e-mail at ##Staff Email## or by telephone at ##Staff Telephone##. Your cooperation is very much appreciated.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

APPENDIX PG – 8: PRE-GRANT NO VIOLATION-CORRECTIVE ACTION CLOSURE LETTER (TEMPLATE)

[Return to: Medicare Applicant Civil Rights Clearance \(Pre-grant\) Reviews](#)

##Title## ##POC First Name## ##POC Last Name##
##POC Official Title##
##Covered Entity##
##Covered Entity Address##
##Covered Entity City##, ##Covered Entity State## ##Covered Entity Zip Code##

Our Transaction Number: ##Transaction Number##
Medicare Provider Number: ##Covered Entity CMS Provider Number##

Dear ##Title## ##POC Last Name##:

Thank you for providing the Title VI, Section 504, and Age Discrimination Act compliance information required for Medicare certification.

Based on a review of the information, we are notifying the Centers for Medicare and Medicaid Services (CMS) that your facility is now in compliance with the above regulations and has been granted a civil rights clearance for the purpose of participating in the Medicare program. Any other compliance matter arising from subsequent compliance reviews or complaint investigations shall be dealt with and resolved separately, in accordance with the procedures and standards in the Departmental regulations applicable to such matters.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Thank you for your cooperation. If you have questions or require any technical assistance, please contact ##Staff Name## of my staff by e-mail at ##Staff Email## or by telephone at ##Staff Telephone##.

Sincerely,

##Regional Manager Name##
##Regional Manager Title##

