



DISABILITY ACCESSIBILITY IN HEALTH CARE, WHAT'S NEW?

U.S. Department of Health and Human Services
Office for Civil Rights

What Is the Office for Civil Rights (OCR)?

- Part of the U.S. Department of Health and Human Services.
- OCR enforces a number of civil rights laws as they relate to recipients of Federal financial assistance (FFA) from HHS, public entities, and programs & activities conducted by HHS.
- OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules.
- Headquarters in D.C. supported by regional offices.

Enforcement and Compliance Activities

- Complaint Investigations
- Compliance Reviews
- Voluntary Resolution Agreements
- Formal Enforcement
- Audits
- Outreach and Public Education
- Policy Development

Major Laws Enforced By OCR

- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Title II of the Americans with Disabilities Act of 1990
- The Age Discrimination Act of 1975
- Title IX of the Education Amendments Act of 1972
- Section 1557 of the Affordable Care Act
- HIPAA Privacy, Security, and Breach Notification Rules

Disability Rights Laws Enforced by OCR

- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability by recipients of Federal financial assistance and in Federally conducted programs.
- Title II of the Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability by State and local government entities.
- Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, disability, or age in certain health programs or activities.

The Olmstead Decision

- This 1999 Supreme Court decision provides a legal framework for Federal/State efforts to enable individuals to live in “the most integrated setting appropriate to their needs.”
- Challenges us to develop more opportunities for individuals with disabilities through more accessible systems of cost-effective community-based services.

Health Disparities & Civil Rights

Health Disparities: differences in health access, treatment or outcomes associated with:

- Certain racial and ethnic groups
- Limited English proficient persons
- People with disabilities
- The elderly
- People of the LGBTQIA+ community

Barriers to health care service access may violate Title VI, the ADA, Section 504 or other OCR legal authorities.

Health Disparities and Civil Rights

- Researchers have found that some populations are disproportionately affected by barriers which prevent or decrease access to healthcare services.
- There are also measurable differences in the use of healthcare services and the quality of healthcare services received among various population groups.

Discrimination that May Result in Health Disparities

- Unequal access to health care services
- Unequal access to clinical trials
- Institutionalized forms of discrimination
- Facially-neutral policies that result in an adverse impact on certain groups
- Differential treatment and bias

Establishing Civil Rights Jurisdiction

Jurisdiction over the Entity

- Depending on the statute at issue, OCR has Federal civil rights jurisdiction over:
 - Programs and activities that receive Federal financial assistance (FFA) from HHS,
 - Federally (HHS) conducted programs,
 - Public entities (state or local governments).

What is Federal Financial Assistance (FFA)?

- “Federal financial assistance” means assistance in the form of any grant, loan, or contract.
- See 42 U.S.C. § 2000d-1

Examples of FFA Recipients in the OCR Context

- Health care providers participating in CHIP and Medicaid programs
- Hospitals and nursing homes under Medicare Part A
- Medicare Advantage Plans (HMOs and PPOs) under Medicare Part C
- Prescription Drug Plan sponsors and Medicare Advantage Drug Plans under Medicare Part D
- Head Start Programs
- TANF Programs
- Adoption and Foster Care Agencies
- Scholarships, loans, and grants are also FFA

Filing Complaints

- Any person or organization may file a complaint with OCR by mail or electronically.
 - Only for possible violations occurring after compliance date of the law at issue.
 - Complaints should be filed within 180 days of when the complainant knew or should have known that the act or omission occurred.
- Individuals may also file complaints with Covered Entity.

Complaint Process

- Informal review may resolve issue fully without formal investigation
 - Many complaints will be resolved at this stage
- If not, begin investigation
- Voluntary resolution may be possible through
 - Education
 - Training
- Technical Assistance
- Some cases may require formal enforcement

Types of Discrimination

Disparate treatment (intentional)

- Intentional discrimination because of race, color, national origin, age, sex or disability.

Disparate impact (unintentional)

- Facially neutral policy or procedure that has the effect of discriminating against individuals of particular race, color, national origin, age, sex or disability.

Conduct Prohibited by FFA Recipients

Recipients shall not:

- ▶ Deny an individual a service, aid, or other benefit.
- ▶ Provide a benefit, etc. which is different or provided in a different manner.
- ▶ Subject an individual to segregation or separate treatment.
- ▶ Restrict an individual in the enjoyment of benefits, privileges, etc.
- ▶ Treat an individual differently in determining eligibility.
- ▶ Deny a person opportunity to participate on planning board.

Prohibition Against Retaliation

A covered entity shall not “intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [the law] or because he has made a complaint, testified, assisted or participated” in an OCR investigation, review or proceeding.

What Does OCR Investigator Look For?

- Non-Discrimination Policy
- Notice of Non-Discrimination Policy
 - Posted in Facilities
 - Posted on Covered Entity's Website
 - Included in conspicuous place in brochures
- Grievance Procedure

What Does OCR Investigator Look For? cont.

- Policies and Procedures to Provide Auxiliary Aids and Services
- Are facilities physically accessible
- No Retaliation Policy
- 504/ADA Coordinator
- Documentation of Civil Rights Training of Staff

**OCR RECENT GUIDANCE &
COMPLAINT RESOLUTIONS**

New Resources from OCR on “Long COVID” as a Disability

- HHS OCR and the Civil Rights Division of the Department of Justice joined together to provide guidance explaining that “long COVID” can be a disability under the ADA, Section 504, and Section 1557.
See: [jointly published guidance](#)
- People with long COVID have a range of new or ongoing symptoms that can last weeks or months after they are infected with COVID-19 and that can worsen with physical or mental activity.
(See CDC, Post-COVID Conditions, www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html)

New Resources from OCR on “Long COVID” as a Disability – con’t.

- Federal resources for people with symptoms of long COVID:
 - HHS OCR civil rights and COVID-19:
www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html
- DOJ Civil Rights Division COVID-19 and the ADA:
www.ada.gov/emerg_prep.html

New Resources from OCR on Access to COVID Vaccinations for People with Disabilities

- Guidance outlines legal standards prohibiting disability discrimination and provides concrete examples of the application of the standards in COVID vaccination programs. www.hhs.gov/sites/default/files/federal-legal-standards-prohibiting-disability-discrimination-covid-19-vaccination.pdf
- Fact Sheet sets out specific steps for covered entities to consider to promote compliance with the legal standards and equal access to the vaccine for people with disabilities.
www.hhs.gov/sites/default/files/disability-access-vaccine-distribution.pdf

New Resources from OCR on Access to COVID Vaccinations for People with Disabilities – con't.

- Disability Information and Access Line (DIAL) – connects people with disabilities to vaccine information and services.

[Disability Information and Access Line \(DIAL\)](#)

Resources from OCR on Support Persons for Patients with Disabilities during COVID-19 Pandemic

- **OCR Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)** - guidance to HHS funded programs and activities to ensure laws prohibiting disability discrimination remain in effect and are enforced during a public health emergency. (3/28/2020)
www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf
- **OCR Early Complaint Resolution with Connecticut** - reasonable access to needed support persons by people with disabilities receiving care in hospitals, outpatient clinics and surgical facilities during COVID-19 restricted visitation policies. (6/9/2020)
www.hhs.gov/about/news/2020/06/09/ocr-resolves-complaints-after-state-connecticut-private-hospital-safeguard-rights-persons.html

Resources from OCR on Support Persons for Patients with Disabilities during COVID-19 Pandemic – con't.

- OCR Early Complaint Resolution with MedStar Health – resolution of three disability discrimination complaints concerning access to support persons resulting in the revision of MedStar COVID-19 visitor restrictions policy. (2/25/2021)
www.hhs.gov/about/news/2021/02/25/ocr-resolves-three-discrimination-complaints-after-medstar-health-system.html

Resources from OCR on Crisis Standards of Care

- As a result of complaints filed with OCR at the beginning of the COVID-19 public health emergency, and requests for technical assistance, OCR worked with States and other entities to address non-discrimination in crisis standards of care plans and practices.
- Best practices were developed to operationalize the principles that:
 - Medical care should not be denied on the basis of stereotypes, assessments of quality of life, or judgments about a person's relative "worth" based on the presence or absence of disabilities or age.
 - Decisions whether an individual is a candidate for treatment should be based on an individualized assessment of the patient based on the best available objective medical evidence.

Resources from OCR on Crisis Standards of Care – con't.

- OCR provided technical assistance concerning Crisis Standards of Care in the following locations: Arizona, North Texas, Southwest Texas, Indian Health Services, North Carolina, Utah, Tennessee, Pennsylvania and Alabama. For copies of the revised CSC guidelines see: www.hhs.gov/ocr/newsroom/index.html
- For more information and guidance on Crisis Standards of Care see: www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html

New Video Series on Civil Rights Protections for Individuals in Recovery from Opioid Use

- HHS partnered with the National Center on Substance Abuse and Child Welfare (NCSACW) to produce a five-part video series on the application of federal disability rights laws to child welfare programs and activities as they apply to some individuals in recovery from opioid use disorder. To view the series:
www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/index.html
- The video series includes:
 - Two civil rights webinars
 - A motion graphic on medication-assisted treatment (MAT) addressing common misconceptions
 - Two animated videos depicting discussions regarding MAT and laws protecting individuals

Voluntary Resolution Agreement with Michigan Bariatric Practice regarding HIV Discrimination

- HHS OCR and the U.S. Attorney's Office for the Eastern District of Michigan entered into a Voluntary Resolution Agreement (VRA) with Great Lakes Surgical Associates ("GLSA") to protect patients from discrimination on the basis of HIV status.
- GLSA allegedly refused to fully evaluate an African American man, and a Medicare beneficiary, for bariatric surgery or to provide him with the surgery due to his HIV status.
- OCR initiated a compliance review to determine GLSA's compliance with Section 504 and Section 1557; DOJ investigated the ADA Title III claim.

Voluntary Resolution Agreement with Michigan Bariatric Practice regarding HIV Discrimination - con't.

- A VRA was reached requiring GLSA to take corrective actions and compensate the patient in the amount of \$37,000.
- For more information and a copy of the VRA see:
www.hhs.gov/about/news/2021/03/04/hhs-ocr-and-the-us-attorneys-office-for-the-eastern-district-of-mi-enter-vra-with-mi-bariatric-practice.html

OCR Addresses Discrimination Against Parents with Disabilities in Two States

- OCR and DOJ reached a landmark settlement agreement with the Massachusetts Department of Children and Families (DCF) resolving findings that DCF discriminated against a parent with a developmental disability in violation of the ADA and Section 504.
 - Investigation found for more than two years after the removal of a two-day old infant, DCF denied the mother appropriate supports and services and requests for disability-based accommodations to allow her to learn the required parenting skills.
 - For more information and a copy of the settlement agreement see:
www.hhs.gov/about/news/2020/11/19/hhs-office-civil-rights-reaches-landmark-agreement-massachusetts-department-children-and-families.html

OCR Addresses Discrimination Against Parents with Disabilities in Two States – con't.

- OCR provided technical assistance to ensure the New Jersey DCF provides modified supports and services necessary for parents with disabilities to have effective and meaningful opportunities to reunite with their children.
 - For more information see:
www.hhs.gov/about/news/2020/11/13/hhs-ocr-provides-technical-assistance-ensure-new-jersey-department-children-families-protect-parents-disabilities-from-discrimination.html

Questions & Resources

Resources

- Effective Communication (DOJ): www.ada.gov/effective-comm.htm and ada.gov
- Communicating with People Who are Deaf and Hard of Hearing in Hospital Settings (DOJ): www.ada.gov/hospcombr.htm
- Effective Communication in Hospitals (OCR): www.hhs.gov/ocr/civilrights/resources/specialtopics/hospitalcommunication
- Centers for Disease Control: www.cdc.gov
- NIH National Institute on Deafness and Other Communication Disorders: www.nidcd.nih.gov/health

Resources – con't.

- HHS Office for Civil Rights: www.hhs.gov/ocr
- Access To Medical Care For Individuals With Mobility Disabilities: www.ada.gov/medicare_mobility_ta/medicare_ta.htm
- Government Publishing Office: www.ecfr.gov
- National Council and Disability: www.ncd.gov
- ADA National Network: <https://adata.org>

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