ROUGH DRAFT FORMAT
PACIFIC ADA CENTER
HEALTHCARE AND THE ADA WEBINAR
8/27/20
2:10-4:00 P.M. ET

>> LEWIS KRAUS: Welcome to the Healthcare And The ADA: Inclusion Of People With Disabilities Webinar Series. I'm Lewis Kraus from the Pacific ADA Center, your moderator for this series. This series of webinars is brought to you be by the Pacific ADA Center on behalf of the ADA National Network. The ADA National Network is made up of 10 regional centers that are federally funded to provide training, technical assistance and other information as needed on the Americans with Disabilities Act.

You can reach your regional ADA Center by dialing 1-800-949-4232.

Realtime captioning is provided for this webinar. The caption screen can be accessed by choosing the CC icon in the meeting control toolbar at the bottom of your screen. To toggle that meeting controls toolbar permanently on, press the alt key once and press it again a second time if needed. This presentation also has ASL interpreters on video. If you would like to adjust the video on your screen, go to the view options at the top of your screen and select the side-by-side view. To remove the non-video participants, right-click the participant video and select "hide non-video participants."

As always in our sessions, only the speakers will have audio. If you do not have sound capabilities on your computer or prefer to listen by phone, you can dial 1-669-900-9128. Or 1-646-558-8656. And use the webinar ID670-897-977. I also want to remind everybody that the session is being recorded and will be able to be accessed on the ADAPresentations.org website in the archived section of the healthcare area next week.

This Webinar Series is intended to share issues in promising practices in healthcare accessibility for people with disabilities. The series topics cover physical accessibility, effective communication and reasonable modification of policy and issues under the Americans with Disabilities Act of 1990, the ADA. Upcoming sessions are available at ADAPresentations.org under the schedule tab, then follow the healthcare. These monthly webinars occur on the fourth Thursday of the month at 2:30 Eastern, 1:30 central, 12:30 mountain and 11:30 a.m. Pacific time. By being here you are on the list to receive notices for future webinars in this series. Notices go out two weeks before the next webinar and open that webinar to registration. You can follow along on the webinar platform with slides. If you are not using the webinar platform, you can download a copy of today's PowerPoint presentation at the healthcare schedule page at ADAPresentations.org. At the conclusion of today's presentation, there will be an opportunity for everyone to ask questions. You may submit questions using the chat area within the webinar platform. Speakers and I will address them at the end of the session. Feel free to submit them as they come to your mind during the presentation.

To submit those questions as shown on the screen you can type in submit your questions in the chat area text box or if you're using keystrokes only, press alt-H and enter the text in that chat area. If you are listening by phone and not logged into the webinar you may ask your questions by emailing us at ADAtech@ADAPacific.org.

If you experience any technical difficulties during the webinar you can send a private chat message to the host in the chat window, just type your comment in the text box and enter. Again, if you're using keyboard, you can use alt-H to access that chat box via the keyboard keys. You can also email the technical issue to us at adatech@adapacific.org. Or you can call us at 510-285-5600.

Today's ADA National Network Learning Session is titled "U.S. Department of Health and Human Services Office for Civil Rights - Enforcing Disability Rights Authorities"

The Office for Civil Rights and the Department of Health and Human Services enforces federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age or session. This seminar will focus on OCR's role in enforcing those laws that protect the rights of those with disabilities to have an equal opportunity to participate in a program activity or to have equal access to healthcare services. The laws that will be addressed include Section 504 of the Rehabilitation Act of 1973, Section 1557 of the Patient Protection and Affordable Care Act and Title II of the Americans with Disabilities Act. Topics will include the scope of OCR's jurisdiction and enforcement role, when to consider filing a complaint with OCR, who are covered entities, OCR's complaint process and recent resolution agreements. Today's speaking are Alisha Welch. Alisha serves as the supervisory equal opportunity specialist at OCR. And Deborah Kolodner, an investigator at OCR. So Alisha and Deborah, I will turn it over to you. You may want to unmute.

>> DEBORAH KOLODNER: Thank you, Lewis. Good afternoon. I assume you can hear me.

Alisha Welch and I are pleased to present this webinar today to inform the Pacific ADA Center audience about the work for the Office of Civil Rights for the Department of Health and Human Services. There are five topics we will cover today. An introduction to OCR. Two, establishing civil rights jurisdiction. Three, OCR's disability rights authorities. Four, some compliance basics, and five... a discussion of recent complaint resolutions.

So what is the U.S. Department of Health and Human Services, HHS? Formerly it was the U.S. Department of Health, education, and welfare. Health and human services was created in 1980. HHS includes numerous sub-agencies, CMS, the center for Medicare and Medicaid services, which oversees enrollment of providers, quality of care and payment for services provided to Medicare and Medicaid beneficiaries. The FDA, Food and Drug Administration, NIH, National Institute of Health, the CDC, Center for

Disease Control and prevention, and IHS, Indian Health Service. What is the Office of Civil Rights? It is 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 and activities conducted by HHS. OCR also enforces the HIPAA privacy security and breach notification rules. OCR has a very broad mandate. In addition to the laws protecting disability rights, which again are Section 504 of the Rehabilitation Act of 1973 Title II of the ADA and Section 1557 of the Affordable Care Act, OCR also enforces, for example, Title VI of the Civil Rights Act of 1964, the age discrimination act of 1975 Title 9 of the Education Amendments Act of 1972, as these laws relate to recipients of federal financial assistance from HHS public entities and programs and activities conducted by HHS. OCR headquarters are in Washington, D.C. and ten regional offices across the country. Alisha and I, for example, work in region three, the mid-Atlantic region. Now, as HHS's law enforcement agency for civil rights conscious and religious freedom rights and health information privacy rights, OCR investigates complaints, enforces rights, promulgates regulations, develops policies and provides technical assistance and public education OCR has three main buckets of work, as I will call them. First, ensuring that recipients of HHS federal financial assistance comply with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, session and religion. The second main areas of our work is ensuring that federal agencies, state and local governments, healthcare providers, health plans and others comply with federal laws protecting conscience and the free exercise of religion and prohibiting coercion and discrimination in health and human services. Two of the laws that you may be familiar with that protect federal conscience and the free exercise of religion are the church amendments and the Weldon amendments. And the third bucket of our work is ensuring that healthcare providers, health plans and healthcare clearinghouses and all other business associates comply with the HIPAA privacy security and breach notification rules. I wanted to just add a comment here that participants today who are seasoned in the ADA concepts and maybe less so with Section 504 and Section 1557, rest assured that while the statutes and regulations have important differences in many respects, they establish similar rights and impose similar requirements and obligations. Also, as you may be aware, a new Section 1557 regulation was effective August 18th of this year, there is litigation surrounding the litigation and we encourage you to look at the OCR website to stay informed with what is happening with enforcement of that regulation.

Now, moving on. What does OCR as HHS law enforcement agency for what does OCR as HHS law enforcement agency? Enforcement and compliance activities include complaint investigations, compliance reviews, voluntary resolution agreements, formal enforcement action, audits outreach and public education, such as this presentation, and policy development. A major part of the work that OCR does is complaint driven. Any individual or organization may find a complaint with OCR by mail, email, or electronically. For violations after the compliance date of the particular law or regulation at issue, generally complaints should be filed within 180 days of when the complainant knew or should have known of the act or omission. OCR receives approximately

40,000 complaints per year. So that is where we focus a lot of our work, resolving the complaints.

Now, this slide is a screenshot of the complaint portal for civil rights complaints. And it is found at OCR portal.hhs.gov. Complaints are generally received in Washington, processed preliminarily and then sent out to the regions. There's an attempt made to send complaints that pertain to the particular region to that region. Sorry, my computer will not let me proceed. Thank you. The complaint process... next let's look at the complaint process. An informal review of the complaint may resolve it without an investigation.

We look to see if it was filed timely. A determination was made whether OCR has jurisdiction over the entity. Does the entity receive federal financial assistance from health and human services. Is the entity a public entity? Once that is determined, we look to see if there's statutory jurisdiction. Do the allegations constitute discrimination against a protected class.

If the complaint is not resolved informally, the investigator will notify the covered entity of the complaint and request a response to the allegations and certain relevant data. In many instances complaints are then resolved through cooperative efforts with the covered entity undertaking voluntary compliance or corrective action. Where appropriate, OCR provides technical assistance to the covered entity to support its compliance efforts.

Next slide, please. I think we have discussed the statutes. If we can move to the next slide, please. Which is establishing civil rights jurisdiction. Next slide, please. How is jurisdiction over the entity established? Which entities does OCR have jurisdiction over? Depending on the statute at issue, OCR has federal civil rights jurisdiction over programs and activities that receive federal financial assistance from HHS, federally conducted programs, that would be the HHS federally conducted programs, and public entities, state or local governments.

Next slide, please. What is federal financial assistance? Federal financial assistance is defined by statute. You will note the statute on the slide. And federal financial assistance is any assistance in the form of any grant, loan or contract. Next slide. Now, this slide provides some examples of entities that are considered to be FFA recipients in the OCR context. We have healthcare providers that may participate in the children's health insurance program and Medicaid programs, hospitals and nursing homes under Medicare Part A. Medicare advantage plans under Medicare Part C. Prescription drug plan sponsors and Medicare advantage drug plans under Medicare Part D. Head start programs, you may find that one a little bit surprising, but head start programs are administered by the administration for children and families of HHS. So that would give OCR jurisdiction over those programs. TANF. Temporary Assistance for Needy Families. That would give jurisdiction over that program. Adoption and foster care agencies and certain scholarships, loans and grants are also FFA. I will now turn the program over to Alisha, who will discuss OCR disability rights authority in more detail.

>> ALISHA WELCH: I'm going to talk about the laws we enforce and the cases we see under those laws.

So with regard to specifically disability rights, the laws that we enforce are Section 504 of the Rehabilitation Act of 1973, Section 1557 of the Affordable Care Act, and title II of the Americans with Disabilities Act. As was said, these statutes and regulations have important differences, but for the most part they're going to impose the same requirements. And when we talk about a requirement under Section 504, you know, it's likely also required under Title II or Section 1557 and all the laws reference each other in the regulations. So, Section 504 applies -- prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance and federally conducted programs. So Section 504 would require that HHS entities such as CMS or NIH or the CDC do not discriminate against individuals with disabilities on top of other recipients of FFA such as hospitals and state welfare agencies.

So an individual with a disability is a person who has an impairment that substantially limits one or more major life activity who has a record of having an impairment or who is regarded as having an impairment.

A qualified individual what disability is an individual who with or without reasonable modifications meets the essential eligibility requirements for the services, programs that she seeks. This analysis requires an individualized assessment of the complainant's qualifications and abilities to participate in the program. So some Section 504 concepts conclude that a person shall not be denied an aid, benefit or service and that entities shall not limit the enjoyment of any right, privilege or opportunity. It also requires equal and effective services. They're not required to achieve the same result for individuals with disabilities, but they must afford individuals with disabilities opportunity to obtain the same results as individuals without disabilities.

So it also requires accommodations or program modifications. These include reasonable accommodations and auxiliary aids and services. We'll talk a lot more about auxiliary aids and services and the need to provide effective communication. It also requires physical accessibility and program access. This does not necessarily mean barrier-free access, and there is distinctions between new and existing facilities. And when we look at programs, we are looking at their programs in their entirety. So, for example, we had a case where a dentist office was not wheelchair accessible, but they had a second office that was only two blocks away that was wheelchair accessible and offered the same services and programs. So when viewing that program in its entirety, it was not in violation of Section 504. So, you know, when we have two different legal concepts, we're looking at discrimination, first is disparate treatment, where there's intentional discrimination because of race, color, national origin or disability or disparate impact, where there's a facially neutral policy or procedure, but it has the effect of discriminating against individuals of a particular race, color, national origin or disability.

So 504 prohibits recipients of federal financial assistance from denying an individual with a disability a service, aid or benefit, providing a benefit that is provided in a different manner. Subjecting an individual to segregation or separate treatment. Restricting an individual in enjoyment of benefits and privileges. Treat an individual differently in determining eligibility. Or denying a person the opportunity to participate on a planning board.

It also prohibits retaliation. This is a Title VI regulation that is incorporated by reference into other regulations. It says a covered entity shall not intimidate, threaten, coerce or discriminate against individuals for the purpose of interfering with any right or privilege secured by the law or because he has made a complaint, testified, or assisted or participated in an OCR investigation review or proceeding. So we encourage individuals who had concerns about discrimination not to file a complaint with us because we will take measures to protect them against retaliation and we will further investigate any concerns about retaliation. So Section 1557 of the Patient Protection and Affordable Care Act provides that an individual shall not be excluded from participation denied the benefits or be subjected to discrimination on the grounds prohibited under Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975 or Section 504 of the Rehabilitation Act of 1973. So it prohibits health programs or activities that receive federal financial assistance from discriminating against on the basis of race, color, national origin, session, age, or disability.

So we have enforcement authority under Section 1557. Against programs or activities that receive federal financial assistance. Programs or activities administered by HHS under Title I of the Affordable Care Act. That would include the healthcare marketplaces where people can buy qualified health plans. They would have to provide alternative formats or effective communication to people who are looking for a qualified health program on their marketplace, and also applies to the insurance plans bought on those marketplaces, and Section 57 also applies to program activities administered by HHS under Title I of the Affordable Care Act. So, section 1557 regulations incorporate Title II regulations and standards by reference. And as dB noted, our final rule -- as Deb noted, our final rule was updated this week -- or last week. It became effective on August 18th. So some of the citations had recently changed, if you are familiar with them, make sure that you're using the most recent citations as the numbers have changed. These are the most recent numbers. Finally the Americans with Disabilities Act was passed in 1990. It applies the Section 504 prohibitions to the private sector as well as state and local governments. OCR is charged only with enforcing Title II of the Americans with Disabilities Act as they apply to state and local governments. Title III which applies to public accommodations is enforced by the Department of Justice. And Title I as applies to employment is enforced by the Equal Employment Opportunity Commission.

So Title II employs the same concepts as used in Section 504, namely integration, equal and effective services, accommodations and program accessibility. We do not need to have FFA to assert jurisdiction under Title II. If a state or local government

does not receive any federal financial assistance from HHS, if they operate within the health and human services realm, then we have jurisdiction over them. So, as you all likely know, in 2008, Congress passed the ADA amendments act to restore broad coverage as was intended by Congress when the Americans with Disabilities Act was passed. And wanted to put the focus on whether unlawful discrimination occurred, not on whether the individual is covered by the law. And it also amended the definition of disability to broaden that definition. The 2010 amendments adapted the 2010 standards for accessible design and enhanced protections for individuals using service animals. We see a lot of service animals cases and happy to talk about those. Enhanced effective communication protections, including those for companions with disabilities. I think effective communication is the number-one area that we get complaints in when it comes to disabilities.

Providing distinctions between wheelchairs and other power-driven mobility devices and adds standards for video remote interpreting to make sure that when it's used as an auxiliary aid, it's effective.

So auxiliary aids and services, both the ADA, 1557 and 504 requires that covered entities provide auxiliary aids services to individuals with disabilities free of charge and in a timely manner when necessary to ensure an equal opportunity to participate and benefit from the health entities programs for activities. A covered entity must give primary consideration to the request of the individual for the type of auxiliary aids and services. If an individual who is Deaf or hard of hearing requires an in-person interpreter as opposed to VRI, the covered entity must give primary consideration to that. It does not mean they always have to grant it, but they must give it primary consideration.

I seem to be having trouble with the slides. There we go. So auxiliary aids and services include but not limited to qualified sign language interpreters, large print materials, text telephones, captioning, screen reader software and video interpreting services. A covered entity may not require individual to provide his or her own interpreter. They may not rely on minor child to interpret except in a life threatening emergency where there is not qualified interpreter immediately available. They can rely on interpreters that an individual prefers, including family members or friends. Only if there are no concerns with regards to confidentiality or other concerns. We always tell covered entities that when a person requests to use a family or friend as an interpreter, they should consider whether there are concerns about domestic abuse, if it's an emergency healthcare situation, whether a family member or friend is too emotional over their loved ones condition to effectively communicate, and those are all entities -- issues that the covered entity is required to consider. They cannot require -- rely on unqualified staff interpreters, you know, a nurse who is able to sign the alphabet is not an appropriate person to use as an interpreter. And they can also not use low quality video remote interpreting services. The DOJ has set out standards with regards top, you know, the speed and effectiveness of video remote interpreting services. Those need to be met when... sorry, lost my train of thought. The screen isn't freezing or the sound and audio are not meeting up. I appear to have trouble moving the slides if

someone could take that over. So, the ADA also requires that services be provided in the most integrated setting. This is really a concept that is unique to the ADA and is harder to articulate under Section 504 or Section 1557. Title II requires public entities to administer services, programs and activities in the most integrated setting appropriate to the needs of the qualified individuals with disabilities. The most integrated setting is the setting that enables people with disabilities to interact with people without disabilities to the fullest extent possible.

Next slide, please. So this all came to head in 1999 in the Olmstead decision where the Supreme Court decided -- provided a legal framework for federal and state efforts to enable individuals to live in the most integrated setting appropriate to their needs. This challenges us to develop more opportunities for individuals with disabilities through more accessible systems of cost effective community-based services. Next slide, please. The Supreme Court held that the unjustified segregation of people with disabilities constitutes discrimination in violation of Title II of the data. The court held that public entities must provide community-based services to people with disabilities when such services are appropriate, when affected persons do not oppose community-based treatment, and when community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity. Next slide, please. We also look at health disparities at OCR. Health disparities are differences in health access treatment or outcomes associated with race or ethnicity, or disability that affects health status of minorities and that may violate Title VI or some of the disability-related statutes.

Next slide, please. Researchers have found that some populations, including people with disabilities and the elderly are disproportionally affected by barriers which prevent or decrease access to healthcare. There are measurable differences in the use of healthcare services and the quality of healthcare services received among various population groups. Next slide, please. So, discrimination that may result in health disparities include unequal access to healthcare services, unequal access to clinical trials, institutionalized forms of discrimination, facially neutral policies that result in adverse impact on certain groups and differential treatment and bias. Next slide, please. So, Deb is going to talk about compliance basics.

>> DEBORAH KOLODNER: Thank you, Alisha. Now we'll talk about what OCR looks for when we receive a complaint or when we're doing part of a compliance review. We expect entities to have non-discrimination policies. There should be a notice of the nondiscrimination policy that we expect to see posted in the facility or an office, posted on the covered entity's website, and included in a conspicuous place in brochures. Covered entities are also required to have a written grievance procedure under Section 504 and Section 1557. The procedures must include due process. Covered entities are to publish or post a notice of the grievance procedure. We also lack to see policies and procedures to provide auxiliary aids and services to ensure effective communication.

We look to see whether facilities are physically accessible. Does the covered entity have a no retaliation policy? We also expect that the covered entity designates a responsible employee to coordinate compliance with Section 504. That person also investigates complaints of discrimination. Covered entities are required to publish the identity of the designated employee and to provide contact information for that person. The investigator also asked to see that the covered entity staff is trained in civil rights obligation, the entity's policies and procedures, and that the staff knows how to use and find needed equipment. So, for example, if an entity is using video remote interpreting, where is the equipment stored? How is it operated? How is the VRI company contacted? It's important and we provide technical assistance encouraging covered entities to assure that their staff is trained. OCR does have sample policies and notices available on our website or you can reach out to Alisha or me. And finally we move on to using complaint resolution. I'll turn the presentation back over to Alisha who will discuss the recent complaint against the West Virginia Department of Health and Human Services that was investigated by the Mid-Atlantic region.

>> ALISHA WELCH: Next slide, please. So this case is not within the healthcare realm, but we thought it was important to include because of the opioid epidemic and is our first case with voluntary resolution agreement that addressed Opioid Use Disorder as the disability. So in May 2018 a complaint was filed with our office against the West Virginia Department of Health and Human Services by a husband and wife, paternal aunt and uncle of two small children in Child Protective Services custody. DHHR, through its bureau for children and families, is responsible for insuring the safety of vulnerable children in Virginia.

Next slide, please. The complaint alleged that the Child Protective Services discriminated against the complainants based on the husband's disability, specifically Opioid Use Disorder, when it denied their request for placement of their niece with them because there was a favorable home study and the complainant and wife were successfully raising their own children but Child Protective Services agency denied the request solely based on his use of suboxone.

Next slide, please. So we had jurisdiction over DHHR because they're a recipient of HHS funds, from the Administration of Children and Families, so they're required by Section 504 and also required to comply with Title II of the Americans with Disabilities Act because they're a public entity. Next slide, please. So we investigated potential violations of Section 504 and Title II of the ADA. This identified systemic deficiencies in their policies, procedures, and practices in the child welfare system, not just with regards to individuals with opioid use dependency, but with regards to their policies to ensure that individuals with other disabilities are not discriminated against in their programs.

Next slide, please. Pursuant to Section 504 and Title II, agencies are required to ensure that individuals with disabilities are afforded equal opportunity to participate and benefit from all child welfare programs and activities. This may require modifications to agencies services or programs, provision of auxiliary aids and services and prohibiting

criteria or methods of administration that may have the effect of discriminating on the basis of disability. Next slide, please.

So we entered into a voluntary resolution agreement in April 2020. I just want to explain a little further and hear about how we resolve these complaints. The complaints you see today are mostly voluntary resolution agreements or ultimate authority for enforcement is to remove entity's ability to receive federal financial assistance. Obviously talking about hospitals, not being able to build Medicaid or states not being able to get Medicaid funding, that's going to hurt individuals, especially individuals with disabilities more than the states itself. So our goal is always voluntary compliance and we are very successful in reaching that goal. We only have had to move to the step of FFA once in the past couple of decades. So that's why we talk about voluntary resolution agreements. Because once we are concerned by a violation, entities are willing to cooperate with us to come into compliance. Next slide, please.

So the general agreement terms of this voluntary resolution agreement included insuring that individuals with disabilities are afforded an opportunity to preserve and reunite with their families, that it's equal to the opportunity that the agency offers to participants without disabilities and to ensure those with disabilities are afforded the same opportunities of legal guardians, foster parents.

And safety requirements are based on actual risks that pertain to the participant with the general disability and not on mere speculation or generalizations there was a generalization here that people with suboxone use posed a safety risk, and that was inappropriate conclusion. Not based on individual assessment.

Next slide, please. So nothing prohibits the agency for removing a child parent with a disability or denying placement of a child if the agency determines that the participant represents a direct threat to the safety of the child but that decision must be based on -- must not be based on stereotypes or generalizations and must not be based on a participant's diagnosis for intelligence measures and must not be based on a participant's history of Opioid Use Disorder or participation in medication or treatment, assisted treatment alone. Next slide, please.

Again, this reiterates that decisions are to be based on individualized assessments based on regional judgment that relies on current medical knowledge or on the best available object Title II evidence that the probability -- that the potential injury to the child will actually occur and whether they need to consider whether reasonable modifications of policies, practices or procedures or provision of auxiliary aids or services will mitigate the risk. Next slide, please. And other obligations under the VRA include developing nondiscrimination policies, posting those policies, revising grievance procedures and pointing coordinators and training staff, and we will monitor their compliance with these entities, with these requirements for a period of two years. So, again, this is not really directly relevant to healthcare but just a reminder that individuals with Opioid Use Disorder are protected under the Americans with disability act as well as other disability discrimination laws as long as they are successfully completing their

treatment or are participating in their treatment, even if they are participating in medication-assisted treatment. Next slide, please. And we also ask the agency to file the VRI with the court to assist the court in making its decision about the best interest of the children involved. Next slide, please. And this is a link to some more guidance that we have about the opioid crisis, and that's useful for looking at the standards with regards to when individuals with Opioid Use Disorder are protected by the disability discrimination laws. Next slide, please.

I'm going to turn it over to Deb to talk about next case.

>> DEBORAH KOLODNER: Thank you. This slide introduces an example of an effective communication complaint. As Alisha mentioned, we receive many complaints concerning effective communication. This was resolved as a voluntary resolution agreement as well. The entity involved here is CHRISTUS Trinity, Mother Francis, a hospital system located out of the Dallas Fort Worth, Texas, area. CHRISTUS TMF receives FFA assistance through participation in Medicare and Medicaid programs and therefore is subject to the requirements of Section 504 and Section 1557. OCR here initiated a compliance review after it received a complaint on behalf of one CHRISTUS patient that it had -- the patient made numerous requests for adequate timely interpreter services. And then received complaints from other patients as well. So these multiple allegations led OCR to conduct a broad review of CHRISTUS's policies and procedures regarding its obligations under Section 504 and Section 1557. In January 2020, as a result of the investigation, CHRISTUS and OCR entered into a voluntary resolution agreement in which CHRISTUS agreed to perform communication assessments at patient intake and reassess communication effectiveness regularly, improve and upgrade its review, assessment and provision of qualified interpreters, including in-person and video remote interpreting. Provide annual staff training on effective communication. Submit reports to OCR regarding CHRISTUS's ongoing compliance activities, and conduct outreach to local disability groups on the available auxiliary aids and services that CHRISTUS provides. Moving to another complaint, this one involves a patient with HIV AIDS status, and this complaint was resolved through what I would call a more informal process, and the entity undertook voluntary corrective action. This complaint was filed in February 2017 against an orthopedic surgeon who allegedly made an offensive comment related to the patient's HIV status and refused to perform the scheduled surgery for the patient, which prompted him/her to file a complaint with OCR. After the orthopedic practice was informed of the allegations and before OCR reached any conclusion, Florida orthopedic prohibited the patient from receiving further care at the practice, and cited the patient's complaint with HHS as the basis. Going back a step, Florida orthopedic is an orthopedic practice employing 40 physicians working in 10 offices and 20 hospitals in the Tampa area. The orthopedic practice receives federal financial assistance through its participation in Medicaid and Medicare Part C and hence is subject to the requirements of Section 504. And as we discussed, Section 504 prohibits discrimination on the basis of disability, which includes HIV/AIDS and health programs or activities that receive funding.

The patient informed OCR of the retaliatory dismissal from the practice. And on this ground OCR secured several corrective actions from Florida orthopedic, including amending its nondiscrimination policies and revising its procedures for dismissing any patient from the practice. Florida orthopedic provided staff with multiple trainings on HIV, federal nondiscrimination laws, grievance procedures, and the requirement to refrain from retaliatory actions.

I also wanted to bring to your attention while we're on the subject of HIV that there was a recent decision in the New York Southern District, actually a Title III roam ADA case, U.S. v. Dr. Asair where the Court found that the doctor discriminated against three patients who were either HIV positive or who the doctor believed were HIV positive. The doctor refused to perform surgery when he learned of the patient's HIV status. This decision is in accord with OCR's enforcement efforts and particularly where the court states a requirement of an individualized assessment in each given situation. And this slide has the location on our website of additional information regarding OCR's work on HIV/AIDS issues. Alisha will now discuss another effective communication case.

>> ALISHA WELCH: We received this complaint in February 2017 against Mid-Maryland Musculoskeletal Institute, a large orthopedic practice in Maryland. It was filed by a mother on behalf of herself and her minor son, both who were deaf, and it was in regards to a sign language interpreter that was provided to the minor son at his physical therapy appointment, but one that was not qualified to provide sign language interpreter. This raised concerns of violation of Section 504 and Section 1557. Just a little bit of background on this complaint. This was a little boy who had broken his leg. He was attending physical therapy sessions at the entity. He spoke American Sign Language. The covered entity did not have really an understanding of Deaf culture and they just thought a sign language interpreter was a sign language interpreter. They assigned him a sign language interpreter who spoke only signed English, so he didn't understand what was being said to him. She also was not particularly focused on her job. While the little boy was on a bike, she stood behind him so he had to look over his shoulder to see what was being said. She also was distracted by her phone during the appointment. So we found the sign language interpreter was not qualified. Additionally when the mother raised concerns about this after the appointment and emailed the entity to request that she be able to review the qualifications of further sign language interpreters to ensure that he would get appropriate communication at later appointments, they denied the request and so she ended up working with the therapists. She was texting the therapist during the appointment and signing to her son and it was not really an effective way for him to pursue his physical therapy.

So the terms of the voluntary resolution agreement were that the entity designate a 504 and 1557 coordinator, adopt a nondiscrimination policy, and display that policy, adopt a grievance procedure, provide appropriate aids and services without charge to the patient and companion, inquire into each patient's need, given primary consideration to the individual's preference. Document the assessment of needs and notes in the medical records. Document denials and give patients notice of grievance procedures when a request for a sign language interpreter was denied. Develop a process to

determine whether interpreters are qualified and make sure they speak the same language as patients. And ensure that the interpretation services are provided in a timely manner. Just to know about this facility, it was located in the same town as the Maryland School of the Deaf, so they had a fair amount of Deaf patients and should have been more familiar on the unique challenges that individuals who are deaf or hard of hearing face and how to best communicate with them. Also it required that they comply with certain standards if they adopted video remote interpreting, that they keep a log of auxiliary aids and services provided so we could review that and they provide regular staff training regarding Section 504, Section 1557, effective communication and the provision of auxiliary aids for individuals who are deaf or hard of hearing on an annual basis. And we will continue to monitor MM it's compliance with 504 and 1557 for three years. So I'm going to turn it back to Deb for our last case.

>> DEBORAH KOLODNER: And our last complaint that we are going to share with you today is a complaint that was filed in September 2018 alleging that an individual with an intellectual disability was in need of a heart transplant, but a doctor on the staff at University of North Carolina healthcare determined that the patient was not a good candidate for the heart transplant because of his/her developmental learning disabilities. And because the patient didn't live independently. The complainant asserted that without the transplant the individual would eventually die. Because of the need for faster resolution in this case, OCR used its early complaint resolution process. ECR is a facilitated negotiation between the parties to an OCR complaint with the goal of achieving a resolution that quickly provides a remedy to the individual that has been allegedly discriminated against. As well as securing additional measures that can be implemented to reduce the likelihood of future discrimination.

I got to go back. Could you take me back one, please?

So in January 2019 UNC Healthcare agreed that the individual's medical record would be amended to clarify that the individual is eligible to be considered for placement on the transplant list and OCR provided technical assistance to UNC Healthcare in the development of its transplant eligibility policy. And I believe that takes us to our question and answer period.

>> LEWIS KRAUS: Thank you, Deborah and Alisha. That was really great. Everyone, it is now time for you to submit any questions that you may have in the chat window and we're going to get to them as we go along. Before we go too much farther away from something we just talked about, I was curious to know, how frequent are your -- well, across the agency, really, are ECR cases, considering a lot of these are healthcare, you know, situations where the need for something might need to be immediate, how frequent are those out of your caseload?
>> I'm not sure about specific numbers but it's not unusual for us to get a complaint or a phone call saying I have a medical appointment on Friday and I'm told I won't be given an interpreter, can you help me out? We can usually resolve those with phone calls. We also have engaged during the pandemic given how quickly things are moving, especially with regards to state crisis standards of care, just to make sure they don't

discriminate on the basis of disability or age, and those are all visible on our website, if anybody is interested in that.

>> LEWIS KRAUS: Great. All right, let's go get some questions that have come up. And these will have come up during the whole session, so we'll have to go back in time to your slides here. The first one says: When talking about program access under 504, was it a private subject to access, were they informed of a possible ADA Title III obligation?
>> We have to be careful not promulgating anything on authorities that we are not given information to enforce. If we were to be given a complaint and did not have jurisdiction under 504, because the doctor did not bill Medicaid, we would refer that complaint to the Department of Justice. But we can't be talking about Title III when we haven't been given congressional authority to enforce it.

>> LEWIS KRAUS: Next question is: Could you review how you prioritize addressing complaints, understanding that you do not have capacity to address all of them? Would it be the level of egregious? The possibility of setting a precedent, etc.? And a thank you for a very important informative and detailed presentation.

>> ALISHA WELCH: Sure. So, you know, we do get about 40,000 complaints a year. A big chunk is HIPAA cases. And also a big chunk of those are non-jurisdictional complaints. When you have a public-facing complaint portal, you're going to get a lot of complaints that we don't have any authority to review. But, you know, when we're reading a complaint that is purely jurisdictional, you know, we usually will investigate it, and the way we resolve it really depends on a number of factors, the egregious of the allegations, responsiveness of the covered entity, whether we have a history of complaints against the entity, whether it addresses a novel question of law, whether, you know, it affects a large number of people. Those are things we consider when moving towards a more formal voluntary resolution agreement, but we're often resolving a lot of complaints behind the scenes without any kind of publicity on a daily basis, where we're working with covered entities and saying, these allegations, these are our concerns, we reviewed your policies and we have this concern, this concern, we need you to change your policies and we train your staff. So that happens often without, you know, us making those public.

>> LEWIS KRAUS: Next question: I am curious the area surrounding a complaint relative to mask wearing and COVID. Not meeting the needs for hearing impaired.

>> ALISHA WELCH: You know, we have heard the concerns about masks, whether that's in regards to individuals who are hearing impaired and need to read lips or with regards to individuals who have disabilities who may not be able to wear a mask. We are continuing to review those complaints and work with other federal civil rights agencies to come up a unified response to those kind of questions. If you have concerns about those, I encourage you to file a complaint with us online and we will review it as we look at these novel questions about face masks.

>> LEWIS KRAUS: Next question: Many deaf have limited English proficiency and complaint forms are hyper-technical. Do you offer training on how to complete the complaint forms?

>> ALISHA WELCH: If you have trouble filing complaints because of your disability, you can call the number on our website and as a reasonable accommodation we will help you complete the complaint over the phone rather than in writing. If your disability makes it too difficult to do that.

>> LEWIS KRAUS: Okay. Next question... and Joanna, I'm going to try to figure out what... I've got two parts to your question. Hopefully I got it right.

First she says she would like to say that deaf and hard of hearing have the right to choose live interpreter over VRI, and then that legal guardians who have the right to sign language interpreters often denied. Not sure what the question is there, but maybe you guys can understand what that...

>> ALISHA WELCH: Yeah, I can take those one at a time. First with regards to a live interpreter over VRI. The language in Title II, incorporated into other regulations, does say that entities have to give primary consideration to those preferences, but we do have to keep in mind the limitations covered entities, you know, in rural areas, there are often not enough sign language interpreters and entities, you know, if they get an emergency room visit in the middle of the night, they might not be able to get an interpreter there in time or you know, as more voluntary resolution... sorry, remote interpreting agencies posts pop up, it's harder for hospitals to hire or contract for live interpreters because more people are interested in working at home. So we have to consider those limitations as well. With regards to legal guardians who are denied an interpreter, that is absolutely not appropriate, and if you run into those issues, we highly encourage you to file a complaint with the office so that we can investigate that.

>> LEWIS KRAUS: All right, next question... is the full text of OCR voluntary resolution agreements posted to the OCR website or somewhere else that is publicly available?

>> ALISHA WELCH: So our website is not always easy to navigate, but if you go to HHS.gov/OCR, and then go to newsroom, that contains the press releases and copies of all the voluntary resolution agreements for OCR.

>> LEWIS KRAUS: Can you repeat website.

>> ALISHA WELCH: HHS.gov /OCR and you want to click on newsroom.

>> LEWIS KRAUS: Great. Thank you. Next question... you stated that you receive approximately 40,000 complaints a year. What is your typical turnaround time from receipt of complaint to resolution?

>> ALISHA WELCH: So our goal, if we get a complaint that is non-jurisdictional is to close those within 120 days. Receipt, we're often closing that much quicker. With regards to complaints we need to do a full investigation, our goal is to close them within one year of receipt, but as Deb talked about, our early complaint resolution agreement process, if we were to get complaints that have more urgent concerns, we would engage in that process, and sometimes we can get those done in, you know, just a few days to a few weeks.

>> LEWIS KRAUS: All right. Next question: Section 1557 states that the 2010 ADA standards is permitted for Section 504 compliance. However, the Section 504 regulations require compliance with UFAS and have not been updated to formal permit use of the 2010 ADA standards. Are there plans to update the Section 504 regulations? What happens if the ACA is rescinded?

>> ALISHA WELCH: I'm not sure that I can really speak to that, and I apologize. But as I'm more on the investigating side rather than the policymaking side, I don't have insight into what regulations they're working on. But if you, you know, have concerns that something is not sufficient, you know, you could write to our office and that would be reviewed by our policy team.

>> LEWIS KRAUS: All right, next question. I suspected addressing lack of accessible medical equipment in facilities has been hampered by the lack of regulations from the Access Board on this issue. I think progress in this area has been stalled. Would it still be worth filing a complaint about a facility that refused to provide an accessible exam for a procedure resulting in the radiologist noting in a report that it was not complete because of the way the procedure was performed?

>> ALISHA WELCH: We're also frustrated by the lack of regulations from the Access Board on this issue, but we are investigating complaints with regards to accessible medical equipment as is the Department of Justice. I believe the Department of Justice entered into a settlement agreement maybe last year and I apologize, I forget the hospital. I do believe there was one in Philadelphia. So, you know, that work is being done even though the regulations aren't out because it's still a reasonable modification issue even without specific guidance from the Access Board. So if you have complaints about that you can file them with us or with the Department of Justice.

>> LEWIS KRAUS: All right, I just lost a question. Hold on.

Can anyone file a complaint? Or only people directly affected?

>> ALISHA WELCH: So anybody can file a complaint, but if we're doing an investigation, we do need the affected individuals' consent to proceed. Without that person's consent, we can do a more broad compliance review, but it's difficult to get into a specific detail about a specific incident if we don't have affected party's consent. And if that person is -- has a legal guardian, that legal guardian can consent on their behalf.

>> LEWIS KRAUS: Has consideration been given to sensitizing protective and law enforcement agencies to the delicate nature of dealing with persons with disabilities whose disabilities are linked to violations of the law such as substance abuse, addicts or alcoholics? Are there such agents who can discern deaf or blind persons who they might encounter while trying to enforce the law? What are the legal implications in these scenarios?

>> ALISHA WELCH: I apologize, we don't have jurisdiction over law enforcement agencies, I can't really speak to that. That's a better question for the Department of Justice as they would have jurisdiction over those kinds of issues. So that would be the Department of Justice Civil Rights Division.

>> LEWIS KRAUS: All right. Very excellent questions today, everyone. And I'm going to... I want to ask you before we continue on, have you been finding many issues yet with COVID-19? Are you finding any cases that are coming up or issues that are coming up for you?

>> ALISHA WELCH: I think our biggest thing that we have seen with regards to COVID-19 at the moment are the crisis standards of care, to make sure if God forbid there's a shortage of ventilators or medical treatments that they're not -- doctors are not discriminating against individuals with disabilities or individuals that are older. There are also concerns about drive-up COVID testing sites and whether those are accessible to individuals with disabilities. And I'm sure that urgent -- we haven't had it in our region, but I'm sure that urgent effective communication complaints have come into other regions where individuals who are hospitalized for COVID-19 need to get effective communication. Oh, I'm sorry, one other thing. We also have gotten complaints with regards to individuals with disabilities and their ability to receive visitors in the hospital. We resolved a complaint with a hospital in Connecticut to ensure that an individual with -- I think she had Alzheimer's, could have a visitor, to make sure that her family was able to appropriately communicate with the hospital about her care.

>> LEWIS KRAUS: Right. Okay. Okay. A few more questions here. Are doctor and dentist offices required to transfer mobility impaired patients like quadriplegics into or on to chairs and tables?

>> ALISHA WELCH: I don't want to give a definitive answer. That sounds like a reasonable modification issue. It seems like that would be a reasonable accommodation to help mobility impaired patients transfer on to exam tables or chairs. And I think also it would be -- they should also likely have power lifts to do that safely.

>> LEWIS KRAUS: I add that this is a straightforward ADA kind of question that you can ask the ADA Center in your region by calling 1-800-949-4232.

So a couple people responded to your responses. Medical people refuse to get a mask so those who don't sigh rely on lipreading, can they be required to get see-through masks to lipread?

>> ALISHA WELCH: Again, I think that would be something that we would analyze under reasonable modification analysis. And unless the entity could show that was an undue hardship, that sounds like something they should do.

>> LEWIS KRAUS: All right, we realize many may still have questions for our speakers and apologize if you did not get a chance to ask your question. You can, of course, as I mentioned contact your regional ADA Center at 1-800-949-4232. Many of the questions you asked are ADA related questions that our regional centers TA staff can answer, or they can also forward you the information along to your regional HHS OCR office if that was necessary.

So you will receive an email with a link to an online session evaluation. Please complete that evaluation for today's program as we really value your input and want to demonstrate the value of this series to our funder. And it looks like we have now put the contact information for Alisha and Deborah on the screen, so you can contact them if you would like to as well. We want to thank Deborah and Alisha today for sharing their time and knowledge with us. It was really great. There were a lot of comments coming in on the chat about how great of a presentation it was. So thank you so much for all of that.

For all of you...

>> ALISHA WELCH: Anybody can file complaints on our website. HHS.gov /OCR.

>> LEWIS KRAUS: And a reminder for all of you that today's session was recorded. It will be available for viewing next week at ADApresentations.org in the archives section in healthcare. Our next webinar will be on September 24th, and for that one we will be joined by the Centers for Medicare and Medicaid for a presentation on their efforts to increase healthcare access and quality of care for people with disabilities. We hope you can join us. Watch your email two weeks ahead of that one for the announcement about the reopening of registration. Thank you once again to Alisha and Deborah. Thank you for attending today. Have a good rest of your day and stay safe!

Good afternoon. Bye-bye!