

Civil Rights Compliance for Patients

What You Need to Know and How to Help Your Facilities Comply

Objectives

- At the end of this session the participant will:
 - Identify Civil Rights law as it pertains to healthcare
 - Understand recent enforcement activity
 - Understand the components of a successful Civil Rights compliance program



WHAT IS THE LAW?

What is the Law?

- Section 504 of the Rehabilitation Act of 1973
- Title VI of the Civil Rights Act of 1964
- Age Discrimination Act of 1975
- U.S. Department of Health and Human Services Title 45 Code of Federal Regulations – Parts 80, 84 and 91
- Section 1557 of the Affordable Care Act
- Proposed Law HHS Title 45 CFR Part 92
- Other applicable federal rights statutes

Section 504

- Hearing impaired
 - Center responsibility for assessment, care planning
 - Sign language interpreter if requested
 - Center expense
- Language barriers
 - Center responsibility for assessment, care planning
 - Interpreter provided

Civil Rights Act of 1964 Age Discrimination Act of 1975

- Civil Rights Act
 - Title VI prevents discrimination by government agencies that receive federal funding
- Age Discrimination Act
 - Does not cover employment discrimination
 - Law states no person in the U.S. 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

U.S. HHS Title 45 CFR Parts 80, 84, and 91

- Part 80
 - Effectuates the provisions of Title VI of CRA of 1964
 - No person in the U.S. shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance for DHHS
- Part 84
 - Refers to Section 504
 - No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which receives benefits from federal financial assistance
- Part 91
 - Prohibits discrimination based on the basis of age in programs or activities receiving federal financial assistance

Affordable Care Act Section 1557

- 2010 - Affordable Care Act
 - Prohibits discrimination on the basis of sex in health care
 - Extended to all individuals enrolled in coverage through the Health Insurance Marketplaces and certain other health coverage plans
 - All HHS health programs are covered by this rule

Proposed Law – 45 CFR Part 92

- Purpose is to implement Section 1557 of ACA
- Prohibits discrimination on the basis of race, color, national origin, sex, age, disability or association in certain health programs and activities
- Individuals shall not be excluded from, be denied the benefits of, or be subjected to discrimination under any health program or activity that is administered by the Executive Agency or any entity established under Title I of the ACA



PURPOSE & DEFINITIONS

Purpose

- Must be able to provide proper care to patients
- The laws we are discussing today are intended to provide all patients with meaningful access to services

Discrimination Types

Affordable Care Act and Proposed Rule

- Race
- Color
- National origin
- Sex
- Age
- Disability
- Association
 - Cannot discriminate against an individual on the basis of race, color, national origin, age, disability, or sex of an individual with whom the individual is known or believed to have a relationship or association

Discrimination Types

Affordable Care Act and Proposed Rule

- Disability
 - Visually impaired
 - Blind, low vision
 - Hearing impaired
 - Deaf, hard of hearing
- Limited English Proficiency (LEP)
 - Individual whose primary language for communication is not English and who has limited ability to read, write, speak, or understand English

Discrimination Types

Affordable Care Act and Proposed Rule

- Gender
- Gender Identity
 - Individual's internal sense of gender, which may be different than that individual's sex assigned at birth – transgender
 - The way an individual expresses gender identity is frequently called gender expression
 - May or may not conform to social stereotypes associated with gender

Discrimination Types - Other

- Religion
- Marital Status
- Sexual Orientation
- Pregnancy
 - False pregnancy
 - Termination of pregnancy
 - Recovery from childbirth or related medical conditions
- Genetic Information
- Amnesty
- Status as covered veterans

Non-Discrimination – Sample Statement

- The covered entity cannot deny benefits to, or otherwise discriminate against any person on any grounds prohibited by federal, state or local laws on the basis of race, color, religion, national origin, gender, gender identity, sexual orientation, age, disability, marital status, pregnancy, ancestry, genetic information, amnesty or veteran status in admission to, participation in, or receipt of the services and benefits under any of its programs and activities.

ENFORCEMENT

Evaluation of the Complaint

- Office of Civil Rights (OCR) carefully reviews all complaints received
- The entity identified in the complaint must be under OCR's jurisdiction
- The complaint must allege an action, policy or procedure covered by relevant laws and regulations prohibiting discrimination
- The complaint must be filed within 180 days from when the complainant knew or should have known of the alleged discrimination
- Consent required from complainants where the name must be revealed in order to investigate
 - Case will not proceed if complainant refuses to consent
- Complainant may be contacted for more information to determine if above criteria are met

OCR will dismiss if...

- No legal authority
- Complaint fails to state a violation of the law
- Complaint is not filed timely and waiver not granted
- Complaint is unclear or incomplete
 - 20 days to submit more info if requested
- Allegations have been resolved
- Allegations investigated and resolved by another agency
- Same allegations have been filed by the complainant in state or federal court
- Allegations are foreclosed by previous decisions

Investigation Process

- Case Opened
- Notification
 - Letters of notification issued to complainant and covered entity
- Information Gathered
 - OCR is neutral fact-finder
 - Interview witnesses, including the complainant
 - Obtain documentation
 - Site visits where appropriate

Determination of Findings

- Insufficient evidence to support conclusion that the covered entity failed to comply
- OR
- Preponderance of evidence supports recipient failed to comply
- Letter sent to complainant and recipient contains fact based findings

Resolution – Non Compliance

- OCR contacts covered entity to negotiate voluntary resolution
 - Written resolution agreement
 - Describes remedial action to address areas of non-compliance
 - Implementation monitored by OCR
- If covered entity refuses to negotiate voluntary resolution:
 - OCR informs of 30 day requirement to engage in negotiations
 - Letter of Finding providing factual and legal basis for finding of non compliance
- If the covered entity continues to refuse negotiations
 - OCR issues Letter of Impending Enforcement

Enforcement Actions

- Administrative enforcement to suspend, terminate, or refuse to grant or continue federal financial assistance to the recipient
- Possible referral to DOJ
- May defer any new or additional federal financial assistance to the covered entity
- An issue may occur in only one center, but may impact ALL centers in portfolio

Enforcement Examples

- March 2013
 - MD Nursing Home Settlement Agreement
 - Failure to provide sign language interpreter services to a deaf patient
 - 30 month enforcement - included provisions for auxiliary aids/services, training, outreach, advisory committee, monitoring and reporting
- August 2015
 - 3 deaf residents sue IL nursing home (civil lawsuit) for failure to provide interpreters in order to communicate with staff, participate in daily care, or understand treatments provided
- July 2015
 - VA Nursing Home Settlement Agreement
 - Failure to provide auxiliary aids and services
 - Failure to provide interpreters to communicate with resident's companions regarding care & treatment
 - 3 year enforcement - included provisions for providing auxiliary aids/services and interpreters, designated ADA Administrator, complaint resolution process, training, notification requirements, periodic compliance reports, monetary fund to train other VA facilities on best practices, monetary compensation to complainants



HOW TO COMPLY

How to Comply

- Note: Recommendations we are providing are based on our specific experience and the Proposed Anti-Discrimination Law

Civil Rights Compliance Elements

- Coordinator
- Policies & Procedures
- Postings
- Training
- Identification of Services
- Provision of Services
- Investigation of Grievances
- Monitoring

Civil Rights Coordinator

- Designate a Civil Rights Coordinator
 - Corporate
 - Each business location
- Responsible for oversight of the Civil Rights Program elements
- Responsible for investigating grievances alleging non-compliance

Policies & Procedures

- In addition to information in your Code of Conduct, Employee Handbook, Residents Rights Policy and other standard policies:
- Develop written policies to address Civil Rights Program
 - Non-Discrimination
 - Grievance process
 - Communication with LEP Persons
 - Procedure for Auxiliary Aids

Postings

- Notice of Non-Discrimination
 - Covered Entity (CE) does not discriminate
 - CE provides appropriate auxiliary aids and services
 - Including Qualified Interpreters and information in alternate formats
 - Free of charge and in a timely manner
 - CE provides language assistance services
 - How to obtain aids and services
 - Identification of responsible employee and contact information
 - Availability of grievance procedure/how to file a grievance
 - How to file discrimination complaint with OCR
 - English language and 15 top language taglines
 - Taglines: short statements in non-English that indicate the availability of language assistance services free of charge

Recommended Postings

- Additional Postings
 - Recommended, but not Required
 - Separate Civil Rights Grievance Posting
 - Confidential Disclosure Program (e.g., hotline)
- Note: Recommendations are based on the Proposed Anti-Discrimination Law

Training

- Who should be trained?
 - All staff
 - Location level
 - Corporate level
 - Contractors (e.g., physicians and physician extenders)
 - Regular volunteers (e.g., weekly, monthly) that are likely to come in contact with patients

Training

- How trained?
 - On-Line
 - Classroom
 - Collect Acknowledgment
 - Other Methods (e.g., intranet postings, corporate newsletters)
- Frequency?
 - Upon Hire
 - Annually
 - Periodic as necessary

Training – Other Resources

•Dedicated Intranet Page

- Links
 - How to arrange for Interpreter Services and Language Assistance
 - Reference Guides
 - Cue Cards and other language aids
 - FAQs
 - State Resources
 - Training Information
 - Corporate Civil Rights Contact Information

Identification of Services

- Pre-Admission
 - Disabilities or communication barriers should be documented in the pre-admission assessment
 - E.g., hard of hearing, LEP, sign language needs
- Admission
 - Admission packet includes notice of non-discrimination
 - Document patient's understanding of interpreter services that are available free of charge
 - Document use of family member, advocate, or friend of resident that has been designated as an interpreter
 - Document method of communication with patient's companion
 - Designee to communicate with staff on patient's behalf
 - Any person with whom staff would normally communicate regarding the patient's care, condition or to help patient act on the advice, information, or instructions from staff
 - Consider specific admission form
- Ongoing
 - Specific Care Plan
 - Monitor for new or modified services

Provision of Services - LEP

- Language Assistance Requirements
 - Must take reasonable steps to ensure meaningful access for the patient
 - Must be provided free of charge, be accurate and timely, and protect the privacy of the LEP individual
- Interpreter Services
 - Telephonic or video remote interpreter (VRI)
 - Arrange contract in advance
 - HIPAA Business Associate
 - Ensure staff trained on access to vendor/system
 - On-site interpreter or translator services
 - Arrange contract in advance
 - HIPAA Business Associate
 - Ensure staff trained on process for arranging services

Qualified Interpreters - LEP

- Qualified Interpreters
 - On-site or through Video Remote Interpreting (VRI)
 - Able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary OR
 - Has demonstrated proficiency in, and has above average familiarity with speaking or understanding, both spoken English and at least one other spoken language
 - For an LEP individual, able to interpret effectively, accurately, and impartially, both receptively and expressively, to and from such language and English, using any necessary specialized vocabulary

Interpreter Options - LEP

- Other Options
 - Bi-lingual staff
 - Consider 24/7 needs for translation
 - Backup method should be available
 - Family members/companions
 - Items to Consider
 - Confidentiality concerns
 - Should be HIPAA designee
 - Emotional involvement
 - Other factors that may adversely impact communication
 - If used, document in writing

Interpreter Restrictions - LEP

- A covered entity may **not**:
 - Require an LEP to provide own interpreter
 - Rely on an adult accompanying an LEP individual to interpret unless:
 - Emergency involving an imminent threat to safety and welfare of individual and no qualified interpreter is available
 - LEP individual specifically requests accompanying adult to interpret
 - Rely on minor child to interpret unless:
 - Emergency involving an imminent threat to safety and welfare of individual and no qualified interpreter is available
- **Note:** An LEP individual is not required to accept language assistance services

Provision of Services – Deaf/Hard of Hearing

- Furnish appropriate auxiliary aids and services to ensure effective communication
 - Person with disability
 - Companions with disabilities
- Qualified interpreters (sign language)
 - On-Site
 - Arrange contract in advance
 - HIPAA Business Associate
 - Ensure staff trained on process for arranging services
 - Video Remote Interpreting (VRI)
 - Arrange contract in advance
 - HIPAA Business Associate
 - Ensure staff trained on access to vendor/system

Auxiliary Aids

- Interpreter Services aren't the Only Option
- Additional Aids and Services Available
- Items to Consider
 - What is the patient comfortable using?
 - Family member needs
 - Staff Education on obtaining services
 - Ensure items available in advance

Auxiliary Aids and Services Hearing Impaired/LEP

- Note takers
- Computer-aided transcription services
- Written materials
- Exchange of written notes
- Telephone handset amplifiers
- Assistive listening devices
- Telephones compatible with hearing devices
- Closed caption decoders

Auxiliary Aids and Services Hearing Impaired/LEP

- Open and closed captioning, including real-time captioning
- Voice, text, and video-based telecommunication products and systems
- Text telephones (TTYs), videophones, captioned telephones
- Videotext displays
- Accessible electronic and information technology
 - Telephones, information kiosks, transaction machines, internet sites, multimedia

Auxiliary Aids and Services Visually Impaired

- Qualified readers
- Taped texts
- Audio recordings
- Braille materials and displays
- Magnification software
- Optical readers
- Secondary auditory programs (SAP)
- Large print materials
- Accessible electronic and information technology
 - Telephones, information kiosks, transaction machines, internet sites, multimedia

Service Animals

- Service animals refers to dogs
- Reasonable access must be provided to the resident
 - Resident must be able to care for the animal
 - The resident is responsible for any cost associated with the animal's well being
 - The animal must be controlled
 - It is not reasonable to expect staff to care for the animal or for the center to pay for veterinarian bills, animal food, litter boxes and litter, etc.



Monitoring

- Monitor Civil Rights Program Elements
 - Interview Civil Rights Coordinator and sample of staff
 - Knowledge of program requirements
 - How to identify interpreter or language assistance services
 - Did you receive any grievances, how resolved?
 - Check for training – Employees, Vendors and Volunteers
 - Observe if required postings are in place
 - Review documentation at pre-admission
 - Review admission packet documentation – notice of non-discrimination
 - Review sample documentation of interpreter services discussion/form upon admission



OTHER RESOURCES

Resources

- OCR Website
 - <http://www.hhs.gov/civil-rights/index.html>
- ADA Website
 - <http://www.ada.gov/>
- Contact Info
 - Sue Smith sue.smith@genesishcc.com
 - Laura Loftis laura.loftis@genesishcc.com


