



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



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Who We Are and What We Do

- OCR is the Department's civil rights, conscience, and religious freedom, and health privacy rights law enforcement agency.
- To ensure understanding of and compliance with non-discrimination and health privacy laws, OCR:
 - Investigates complaints
 - Enforces rights
 - Promulgates regulations
 - Develops policy
 - Provides technical assistance and public education

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Scope of Enforcement

OCR enforces laws that bar discrimination on the bases of race, color, national origin, disability, age, sex, religion, and the exercise of conscience by recipients of Federal financial assistance from HHS.

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Who Is Covered by OCR's Civil Rights and Conscience Regulations?

All recipients of HHS Federal financial assistance (FFA), either directly or indirectly, through a grant, contract or subcontract.

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Jurisdiction and Authority

Program Jurisdiction

HHS/OCR has jurisdiction over providers of health and human service benefits such as:

- State agencies
- Medical schools & other health care programs
- Welfare programs
- Hospitals
- Nursing homes
- Substance abuse treatment centers
- Day care centers
- Medicaid Health Mgt. Organizations (HMOs)
- Child service agencies
- Outpatient rehabilitation clinics
- Public health clinics
- Rural health agencies
- Adult day activity programs
- Home health agencies and hospices
- Area agencies on aging

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Primary Statutes and Regulations Enforced by OCR



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Title VI of the Civil Rights Act of 1964



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The Law: Title VI of the Civil Rights Act

No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 601 of Title VI of the Civil Rights Act of 1964
42 U.S.C. Section 2000d et. seq.

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Practices Prohibited on the Basis of Race, Color, or National Origin

- 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

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Section 504 and Title II of the Americans with Disabilities Act



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Section 504 of the Rehabilitation Act (Section 504)

Section 504 prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance.



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The Americans with Disabilities Act (ADA)

- Prohibits discrimination on the basis of disability by a State or local government.
- Title II applies to public entities.
- Title III applies to public accommodations.



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Prohibited Activities

Recipients may not, on the basis of disability:

- Deny the opportunity to participate in or benefit from any aid, benefit, or service;
- Provide an aid, benefit, or service, that is not equal to that provided to others, or that is not as effective as that provided to others;

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Prohibited Activities (cont.)

Recipients may not, on the basis of disability:

- Provide different or separate aids, benefits, or services (unless necessary to provide aids, benefits, or services that are as effective as those provided to others);
- Otherwise limit the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

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Covered Entity Requirements

A Covered Entity **must**:

- Designate a responsible employee to coordinate their efforts to comply with Section 504 and the ADA
- Adopt grievance procedures to handle complaints of disability discrimination in their programs and activities

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Covered Entity Requirements (cont.)

- Provide notice that indicates:
 - That the covered entity does not discriminate on the basis of disability;
 - How to contact the employee who coordinates the covered entity's efforts to comply with the law; and
 - Information about the grievance procedures

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Disability Defined

- For the purpose of these civil rights laws, disability is defined as a physical or mental impairment that substantially limits one or more major life activities.
- Definition includes an individual who:
 - **Has a disability;**
 - **Has a history of** having a disability; or
 - **Is regarded as** having a disability.

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Major Life Activities

- General list--“caring for oneself, performing manual tasks, *seeing, hearing, eating, sleeping,* walking, *standing, lifting, bending,* speaking, breathing, learning, *reading, concentrating, thinking, communicating,* and working.” (Those in *italics* are new).
- “Major bodily functions” list--“functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

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Age Discrimination Act

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. The Age Discrimination Act applies to individuals of all ages.



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Age Discrimination Act

- Does NOT apply to:
 - Age distinctions in other laws or statutes adopted by a legislative body
 - Employment practices

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Exceptions to the Age Discrimination Act

- Age distinctions in HHS regulations
- Special benefit programs for children and the elderly
 - Examples: Head Start and Meals-on-Wheels
- Voluntary affirmative action to address conditions which resulted in limited participation on the basis of age
- Reasonable factors other than age

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Exceptions to the Age Discrimination Act

Normal Operation or Statutory Objective

- Age is used as a measure or approximation of one or more other characteristics; and
- 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
- The other characteristic(s) can be reasonably measured or approximated by the use of age; and
- The other characteristic(s) are impractical to measure directly on an individual basis.

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Section 1557 of the Patient Protection and Affordable Care Act



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Section 1557 of the Patient Protection and Affordable Care Act (Section 1557)

- Section 1557 prohibits discrimination based on race, color, national origin, sex, age or disability in certain health programs and activities.
- Section 1557 is the FIRST Federal civil rights law to prohibit sex discrimination in health programs and activities.
- Section 1557 applies to health programs and activities that receive Federal funds, including issuers that participate in the Marketplaces; the Health Insurance Marketplaces; and health programs conducted by HHS.

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Conscience and Religious Freedom



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Conscience Protections

- Conscience protections apply to health care providers who refuse to perform, pay for, refer for, or assist with certain health care services on religious or moral grounds, such as abortion, sterilization, and assisted suicide.
- Providers are protected if they,
 - Objected to, participated in, or refused to participate in specific medical procedures, including abortion and sterilization, and related training and research activities
 - Were coerced into performing procedures that are against his/her religious or moral beliefs
 - Refused to provide health care items or services for the purpose of causing, or assisting in causing, the death of an individual, such as by assisted suicide or euthanasia

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Types of Statutes CRF Enforces

Conscience

- Church Amendments
- Coats-Snowe Amendment (Public Health Service Act § 245)
- Weldon Amendment
- Affordable Care Act Sec. 1553
- Affordable Care Act Sec. 1303(b)4

Religion

- Religious Freedom Restoration Act (RFRA)
- Block grant programs prohibiting religious discrimination

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Final Conscience Rule

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- On January 26, 2018, OCR published a proposed conscience regulation to ensure enforcement of approximately 25 healthcare-related conscience and religious freedom provisions.
- OCR received over 242,000 public comments, analyzed, and carefully considered all comments submitted by the public.
- On May 21, 2019, HHS finalized this rule and it was set to go into effect on July 22, 2019. In light of significant litigation over the rule, HHS agreed to a stipulated request to delay the effective date of the rule until November 22, 2019, pursuant to Administrative Procedure Act § 705, in order to allow the parties more time to respond to the litigation and to grant entities affected by the rule more time to prepare for compliance.

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OCR's Enforcement Tools



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Complaints and Investigations

- OCR is a fact-finding agency that receives, investigates and resolves thousands of complaints from the public alleging discrimination in health and human services.
- OCR also conducts compliance reviews of covered entities that OCR believes may not be in compliance with the law.
- When OCR finds a violation, a covered entity will be required to take corrective actions, which may include revising policies and procedures and implementing training and monitoring programs.

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Enforcement

When a covered entity fails to take corrective actions, OCR may undertake proceedings to suspend or terminate Federal financial assistance from HHS. OCR may also refer the matter to the U.S. Department of Justice for possible enforcement proceedings.

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I would never discriminate!

How do these laws apply in the day-to-day operations of health care providers?

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Different Treatment on the Basis of Race



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Success Story

Shiawassee County Medical Care Facility in Corunna, Michigan

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Failure to Provide Meaningful Access Based on National Origin – Limited English Proficiency



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Who is a Limited English Proficient (LEP) Person?

An LEP individual is a person who does not speak English as his or her primary language and who has a limited ability to read, write, speak or understand English.

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The Connection

How do the protections against national origin discrimination apply to LEP persons?

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U.S. Supreme Court

Lau v. Nichols, 414 U.S. 563 (1974) held that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination.

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Principles for Communicating with LEP Individuals

- A covered entity must take reasonable steps to provide meaningful access to LEP persons eligible to be served or likely to be encountered in its programs and activities. Reasonable steps may include the provision of language assistance services, such as oral language assistance or written translations.

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Principles for Communicating with LEP Individuals

- A covered entity is expected to offer a qualified interpreter when oral interpretation is a reasonable step to provide an individual with meaningful access.
- Where language services are required, they should be provided free of charge and in a timely manner.

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Example of a Language Assistance Program

- Regular assessments of language needs
- Correct identification of LEP persons
- Policies and procedures
- Notice of language assistance services
- Staff training
- Ongoing monitoring of the language assistance services provided

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Selecting Language Assistance Services

There are two major considerations to be addressed in selecting services:

- Competency
- Timeliness
- Note: Recipients have flexibility in determining the appropriate mix of language assistance services provided, but must ensure the quality and accuracy of such services.

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Interpreter Competency

The recipient should take reasonable steps to assess that the interpreter is able to:

- Demonstrate proficiency in both English and in the other language
- Demonstrate knowledge of specialized terms or concepts
- Demonstrate an understanding of the need for confidentiality and impartiality
- Understand the role of interpreter

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Timeliness

When language assistance is needed, it should be provided at a time and place that avoids the effective denial or delay of the service, or benefit.

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Options for Providing Language Assistance Services

- Bilingual staff
- Staff interpreters
- Contractors
- Telephone lines and video teleconferencing
- Community volunteers

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Use of Family Members or Companions as Interpreters

An adult family member or companion may be used:

- In an emergency involving an imminent threat to safety or welfare where there is no qualified interpreter immediately available; or
- Where the LEP individual specifically requests that the family member or companion interpret, the person agrees, and reliance on the family member or companion is appropriate under the circumstances.

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Risk of Using Family Members or Friends as Interpreters

- Family and friends may:
 - Not be proficient in complex terminology
 - Fail to possess the necessary skills and ethical training to interpret
 - Not be emotionally able to handle sensitive personal information being conveyed (especially children)
 - Un/intentionally omit or alter critical information (circumstances involving domestic violence)

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Success Story

**Alabama Department of Human
Resources (ADHR)
Child Welfare Program (CWP)**

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**Failure to Provide
Auxiliary Aids for a
Person with a Disability**



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Covered Entity Requirement

Provide auxiliary aids, at no additional cost, where necessary to ensure effective communication with individuals with hearing, vision, or speech impairments

- A Covered Entity must provide auxiliary aids in accessible formats, in timely manner, and in manner that protects privacy and independence of individual.

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Examples of Auxiliary Aids

- Qualified interpreters
- Notetakers
- Transcription services
- Written materials
- Telephone handset amplifiers
- Assistive listening systems

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Examples of Auxiliary Aids

- Telephones compatible with hearing aids
- Closed captioning
- TDDs / TTYs
- Videotext displays
- Video Remote Interpreting

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Examples of Auxiliary Aids

- Audio recordings
- Brailled materials
- Large print materials
- Electronic/text formats
- Other effective methods

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Important Reminders

- A Covered Entity may not place a surcharge on a particular individual with a disability or a particular group of individuals with a disability to cover the cost of providing auxiliary aids and services.
- In determining what type of auxiliary aid and service is necessary, a Covered Entity **shall give primary consideration** to the requests of the individual with a disability.

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Important Reminders

A covered entity **may NOT**

- Require an individual to provide his or her own interpreter
- Rely on a minor child to interpret, except in a life threatening emergency where there is no qualified interpreter immediately available
- Rely on interpreters that the individual prefers when there are competency, confidentiality or other concerns
- Rely on unqualified staff interpreters
- Use low-quality video remote interpreting services

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Success Story

**The University of Connecticut
Health Center (UConn Health),
*January 3, 2017***

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**Failure to Provide
Reasonable
Modifications to Avoid
Discrimination on the
Basis of Disability**



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Covered Entity Requirements

- Make reasonable modifications in policies, practices, and procedures, based on an individual's needs, to avoid discrimination on the basis of disability, unless it would result in a fundamental alteration of the program.
- Conduct an individualized assessment
- Ensure that programs, services, activities, and facilities are accessible

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Reasonable Modifications

- Examples of reasonable modifications
 - Permitting the use of motorized mobility devices
 - Permitting service animals

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Success Story

Town of Simsbury, Connecticut

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Service Animal - Definition

- Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability
 - Only dogs are recognized.
 - Examples of work or tasks: guiding people who are blind, alerting people who are deaf, pulling a wheelchair, calming a person with PTSD during an anxiety attack.
- Special rule for miniature horses
 - Revised regulations recognize miniature horses as service animals, which generally range in height from 24 inches to 34 inches measured to the shoulders and generally between 70 and 100 pounds.

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Service Animal – Definition (cont.)

- Other species of animal, whether wild or domestic, trained or untrained, are not service animals.
- The work or tasks of performed by the service animal must be directly related to the handler's disability.
 - If a dog's sole function is to provide emotional support, well-being, comfort or companionship, the dog does not qualify as a service animal under the ADA.
 - Individuals with physical, sensory, psychiatric, or other mental disabilities can use service animals

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Service Animals

- A covered entity may ask the individual with a disability questions about the service animal in limited circumstances.
- When it is not obvious what service an animal provides, staff may ask **only** two questions:
 - Is the dog a service animal required because of a disability?
 - What work or task has the dog been trained to perform?

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Service Animals

- Staff **may not** ask about the person's disability or require documentation, such as proof that the animal has been certified, trained or licensed.
- Covered Entity **may not** require written documentation/ "certification" of need for animal.

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Service Animals

- A service animal may be removed if:
 - The animal is out of control and the handler does not take effective action to control the animal, or
 - The animal is not housebroken
- A service animal must be on a harness, leash, or tether unless the handler is unable to use due to a disability or the use would interfere with the service animal's performance of work or tasks

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Service Animals

- Covered Entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany their handlers to areas of a public accommodation or at a public entity.
- Covered Entity may not restrict where the individual and/or the animal is permitted.

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Service Animals

- Covered Entities may not require people with disabilities to pay pet fees or surcharges that are not applicable to individuals without pets.
- But a Covered Entity *may* impose reasonable cleaning fees if damage beyond normal wear & tear.

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Success Story

St. Edward Mercy Medical Center (Mercy)

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**Different Treatment on the
Basis of Disability –
HIV status/AIDS**



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Discrimination on the Basis of HIV/AIDS

- Discrimination may occur when an entity excludes an individual with HIV from participating in a service or denies the individual a benefit.
- If the individual with HIV meets the essential eligibility requirements for the service or benefit, the entity may be required to make a reasonable accommodation to enable the individual to participate.
- The ADA also protects other persons, such as family and friends, who are discriminated against because of their association with someone who has HIV.

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Success Stories

**Kaiser Permanente Los Angeles
Medical Center**

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Success Stories

Example of Approved Termination of FFA

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Success Stories

Heritage Hills Living & Rehabilitation Center

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Different Treatment on the Basis of Sex



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Success Stories

**Touro Infirmary Emergency
Department in Louisiana**

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Success Stories

St. Bernard Medical Center

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Protecting Conscience Rights of Health Care Providers



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Success Story

California Notice of Violation



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Success Story

Hawaii Notice of Resolution



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Contact Information

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