

Administrative Manual	Section: General Administrative Procedures and Compliance
Policy Manual Number: 200.010	Chapter: Rights and Responsibilities

## **RIGHTS AND RESPONSIBILITIES**

**Legal Authority:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000 et seq.; 45 C.F.R. pt. 80); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.; 45 C.F.R. pt. 84 ); The Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.; 45 C.F.R. pts. 90 and 91); Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.; 45 C.F.R. pt. 86); The Americans with Disabilities Act (42 U.S.C. § 12101 et seq.; 28 C.F.R. pts. 35 and 36); Section 1557 of the Affordable Care Act (42 U.S.C. § 18116); Tenn. Code Ann. Title 4, Chap. 21, pt. 4.; The National Voter Registration Act of 1993 (52 U.S.C. § 20506); Tenn. Comp. R. & Regs. 1200-13-20

### **1. Policy Statement**

Federal and State laws do not allow TennCare to treat you differently because of your race, color, national origin, age, sex, disability, language, religion, or other protected status. These laws allow individuals, such as applicants, members, representatives, or providers (also called “complainants”) to file a complaint with TennCare’s Office of Civil Rights Compliance (“OCRC”) if they think they have been treated in a discriminatory manner (such as denied a service or benefit) based on one of the above listed factors. Under the civil rights laws an organization cannot retaliate against a person for filing a complaint. You can find more information about filing a discrimination complaint online at: <https://www.tn.gov/tenncare/members-applicants/civil-rights-compliance.html>.

TennCare, at all administrative levels, shall not discriminate against any individual for reasons of age, race, color, sex, disability, religion, creed, national origin or any other group protected by the applicable federal and state civil rights laws. Individuals with Limited English Proficiency (LEP) and individuals with disabilities have equal access to TennCare programs.

TennCare is required to seek and recover certain funds paid by the TennCare Medicaid program. TennCare Medicaid individuals who receive institutionalized care are subject to estate recovery. Individuals are notified of estate recovery in the TennCare application and can find more information here: <https://www.tn.gov/tenncare/legal/estate-recovery.html>.

TennCare is required to provide individuals the opportunity to register to vote at the time of application, renewal, and a reported address change.

### **2. Federal Non-Discrimination Laws**

The federal non-discrimination laws listed below prohibit discrimination on the basis of race, color, national origin, age, sex and disability in programs or activities that receive or benefit from federal financial assistance. Discrimination on the basis of disability is prohibited in all programs, services or activities of public entities. The Americans with Disabilities Act (ADA) coverage does not depend on receipt of federal funds.

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- a. **Title VI of the Civil Rights Act of 1964 (“Title VI”)**: Prohibits discrimination, denial of benefits or being excluded from participation on the basis of race, color or national origin in any program or activity that receives federal financial assistance from the U.S. Department of Health and Human Services.
- b. **The Americans with Disabilities Act of 1990 and Amendments (“ADA”)**: Prohibits discrimination on the basis of disability by both public and private entities, whether or not they receive federal financial assistance.
- c. **The Age Discrimination Act of 1975 (“ADEA”)**: Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
- d. **Section 504 of the Rehabilitation Act of 1973 (“Section 504”)**: Protects a qualified individual with a disability from discrimination in the provision of any benefit or service provided under any program or activity receiving funds from the Department of Health and Human Services.
- e. **Title IX Education Amendments of 1972 (“Title IX”)**: No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance
- f. **Section 1557 of the Patient Protection and Affordable Care Act (“Section 1557”)**: An individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.

### 3. Title VI Prohibition on Discriminatory Conduct in Federally Funded Programs and Activities

Under Title VI, TennCare shall not discriminate against people on the basis of race, color or national origin in how its programs are administered.

TennCare shall not exclude or deny benefits to persons based on their race, color or national origin.

TennCare shall not impose different standards or procedures to determine who may receive benefits on the basis of race, color or national origin.

Examples:

- a. Staff shall not reject an individual for benefits because he is, or appears to be, African American, Hispanic, Asian, American Indian, Alaskan Native or a member of another racial or ethnic group.

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- b. Staff shall not reject an application based on the assumption that a person with a foreign-sounding last name is not a U.S. citizen and therefore not eligible.
- c. Staff shall not deny benefits to persons who are not fluent in English (known as being LEP) because they assume persons who are or appear to be from other countries are not eligible for such benefits. Instead, staff shall ensure that appropriate language assistance services are provided to the individual such as contacting a language interpreter or arranging translation of documents.
- d. Where a qualified immigration status requires verification for eligibility, staff shall not accept a self-declaration of that status from individuals who appear to be of African origin, yet require that all immigrants from Spanish-speaking nations submit documentation because of an assumption that these individuals are undocumented.

**4. Section 504, Section 1557, and the ADA Prohibit Discriminatory Conduct on the Basis of Disability**

TennCare shall not discriminate against any qualified individual with a disability in providing services or administering any program or activity, whether or not the program receives federal financial assistance. In general, an individual with a disability is qualified if that person meets the essential eligibility requirements for receipt of services or the participation in programs or activities provided by TennCare. TennCare shall not refuse to allow a person with a disability to participate because the person has a disability. There cannot be unnecessary eligibility standards or rules that deny an individual with a disability an equal opportunity to participate. TennCare shall not harass an individual based on a disability.

TennCare is required to make reasonable modifications in its policies, practices and procedures so that qualified individuals with disabilities can take part in TennCare’s programs, services or activities, unless a requested modification would result in a fundamental alteration or undue financial and administrative burden to TennCare.

**5. Effective Communication (LEP and Individuals with Disabilities)**

To ensure compliance with Title VI, Section 1557, the ADA and Section 504, individuals with LEP and/or disabilities must have meaningful access to TennCare’s programs, services or activities. To do this, TennCare works to ensure that communications with members and potential members and these individuals’ families or representatives are as effective as communications with others who are not LEP or have disabilities by using language and communication assistance services and/or auxiliary aids or services that are free to these individuals.

**a. Individuals with Disabilities**

Under Section 504, Section 1557, and the ADA, effective communication is required except where TennCare can show that providing effective communication would fundamentally alter the nature of the service or program in question or would result in an undue financial and administrative burden. In order to be effective communication, auxiliary aids and services must be provided in

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accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

Remember, the type of auxiliary aid or services needed by an individual can change during a conversation or service encounter. During brief or simple face-to-face exchanges, very basic aids are usually appropriate. For example, exchanging written notes may be effective when an individual with a hearing disability asks for a copy of a form at a doctor’s office. Conversations that are more complex or lengthy may require more advanced aids and services. Consideration should be given to how important the communication is, how many people are involved, the length of the communication anticipated, and the context.

When an auxiliary aid or service is requested by someone with a disability, they must be provided an opportunity to request the auxiliary aids and services of their choice, and TennCare must give primary consideration to the individual’s choice. “Primary consideration” means that TennCare must honor the choice of the individual with a disability, with certain exceptions (see below for a list of the exceptions). The individual with a disability is in the best position to determine what type of aid or service will be effective.

The requirement for consultation and primary consideration of the individual’s choice applies to orally communicated information (i.e., information intended to be heard) as well as information provided in visual formats.

The requesting person’s choice does not have to be followed if:

- i. TennCare can demonstrate that another equally effective means of communication is available;
- ii. Use of the means chosen would result in a fundamental alteration in the service, program or activity; or
- iii. The means chosen would result in an undue financial and administrative burden.

**b. LEP Individuals**

Similar steps are taken to ensure effective communication with individuals with LEP. It is important that LEP individuals understand their rights and the services, programs and activities that are available.

In order to ensure that LEP individuals are not excluded from equal program participation, TennCare makes available free qualified interpreters and translators who can provide appropriate oral and/or written language assistance services to accommodate these individuals. TennCare may:

- i. Contract with an outside interpreter or translation service; or
- ii. Use a telephone interpreter service.

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LEP individuals must be advised that a free interpreter is available. It is not advisable to use friends and family members as interpreters. Using friends and family as interpreters may compromise the effectiveness of the communication, create a conflict of interest and violate confidentiality and privacy safeguards. At the request of the LEP individual, they may use friends and family as their interpreter. However, if the friend or family member is not competent or appropriate, a trained interpreter should be used to ensure reliable and correct interpretation of information. Minor children cannot be used as interpreters.

The LEP individual’s decision to accept or decline the offer of free interpreter services must be documented. TennCare has an Interpreter Waiver form in English and Spanish that documents the individual’s decision to use either a free interpreter or a family member. This form is located on OCRC’s webpage, which is listed above. If requested, this form can be translated into other languages by contacting OCRC.

Questions regarding when an interpreter should be used, or when written materials should be translated, should be directed to supervisory staff. If you need to use an interpreter in order to assist an individual, use TennCare’s contracted Language Services vendors. You may need to ask your supervisor for assistance with contacting the vendors. If, after speaking with your supervisor, you still need help communicating with an applicant or member, contact OCRC at (615) 507-6841. Individuals who need help communicating with TennCare such as during a hearing, meeting, or training, can complete a free, online Communication Help Form located at: [https://stateoftennessee-cvlyz.formstack.com/forms/communication\\_help\\_form](https://stateoftennessee-cvlyz.formstack.com/forms/communication_help_form).

Some of TennCare’s documents have been translated into the Spanish language and are available on the TennCare website at: <https://www.tn.gov/tenncare>.

## 6. Civil Rights Contacts:

<p><b>TennCare Office of Civil Rights Compliance</b>  310 Great Circle Road, Floor 3W  Nashville, Tennessee 37243  Email: HCFA.Fairtreatment@tn.gov  Phone: 1-855-857-1673 (TRS 711)</p> <p><b>You can file a complaint online at:</b>  <a href="https://www.tn.gov/tenncare/members-applicants/civil-rights-compliance.html">https://www.tn.gov/tenncare/members-applicants/civil-rights-compliance.html</a></p>	<p><b>U.S. Department of Health &amp; Human Services  Office for Civil Rights</b>  200 Independence Ave SW, Rm 509F, HHH Bldg  Washington, DC 20201  <b>Phone:</b> 1-800-368-1019 (TRS 711)</p> <p><b>You can get a complaint form online at:</b>  <a href="https://www.hhs.gov/sites/default/files/ocr-60-day-frn-cr-crf-complaint-forms-508r-11302022.pdf">https://www.hhs.gov/sites/default/files/ocr-60-day-frn-cr-crf-complaint-forms-508r-11302022.pdf</a></p> <p><b>Or you can file a complaint online at:</b>  <a href="https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf">https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf</a></p>
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<p>You can also file a discrimination complaint with the:</p> <p><b>U.S. Department of Justice</b>  Civil Rights Division  950 Pennsylvania Ave., NW  Washington, D.C. 20530  Fax: (202) 307-1197  Call: 855-856-1247 (TRS 711)</p> <p><b>To file a complaint online:</b>  <a href="https://civilrights.justice.gov/report/">https://civilrights.justice.gov/report/</a></p>	<p><b>Tennessee Human Rights Commission</b>  312 Rosa L. Parks Ave, 23<sup>rd</sup> Floor  Nashville, TN 37243  Free: 800-251-3589</p> <p><b>You can file a complaint online at:</b>  <a href="https://stateoftennessee.formstack.com/forms/2019_complaint_form">https://stateoftennessee.formstack.com/forms/2019_complaint_form</a></p>
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## 7. Estate Recovery

Estate recovery occurs when the State files a claim with the deceased individual’s estate for reimbursement of certain TennCare Medicaid expenditures incurred during the individual’s period of eligibility. Estate recovery is required by Federal and State law.

a. Estate recovery applies to:

- i. TennCare Medicaid-covered services received by individuals permanently confined to a long-term care facility, regardless of age;
- ii. TennCare Medicaid-covered services received in a long-term care facility or in a home and community-based services setting and related hospital and prescription drug services, by individuals age 55 or older.

b. Adjustment or recovery from the recipient’s estate may be pursued only:

- i. After the death of the individual’s surviving spouse, if any; and
- ii. Only at a time when the individual has no surviving child who is under eighteen (18) years of age or no surviving child, as defined in § 1614 of the Social Security Act, who is blind or permanently and totally disabled, or a child who became blind or permanently and totally disabled after reaching majority, if TennCare and the personal representative agree, or, in the event of a disagreement, the court, after de novo review, finds that repayment would constitute an undue hardship to the blind or disabled child. See Tenn. Code Ann. § 71-5-116(c)(1).

TennCare Member Services is required to inform the responsible party of individuals in long-term care facilities about the estate recovery provisions. Information about estate recovery is available in the TennCare application. The State cannot impose a lien on real property which is occupied by an applicant for TennCare Medicaid.

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**c. Estate Recovery Unit**

The Estate Recovery Unit is responsible for the estate recovery program. The TennCare Reform Act of 2002 requires a release to be obtained from TennCare indicating that no money is owed by a former Medicaid recipient before an estate can be settled. For further information, attorneys or relatives may contact:

Bureau of TennCare  
Estate Recovery Unit  
310 Great Circle Road  
Nashville, TN 37243  
Telephone: 1-866-389-8444  
Fax: 615-413-1941

**8. Voter Registration**

**a. Background**

The National Voter Registration Act of 1993 (NVRA), also known as the “Motor Voter Act,” requires states to provide uniform voter registration at offices that provide public assistance and state-funded programs primarily engaged in providing services to individuals with disabilities. The enactment of the NVRA enhances opportunities for individuals to register to vote and maintain voter registration.

TennCare provides voter registration forms when requested and offers to mail voter registration forms when an individual applies, at renewal, and when reporting an address change. When an individual does not want a voter registration form, such declination will be documented by TennCare. Voter registration or declination does not impact an individual’s TennCare eligibility.

**b. Receipt of Voter Registration Form**

If an individual returns the voter registration form to TennCare, TennCare will forward the voter registration form to the individual’s local County Election Commission within 10 days of receipt, or within 5 days if the form is received within 5 days before the last day to register to vote in an election.

If an individual believes that someone has interfered with his right to register or to decline to register to vote, he may file a complaint with the Election Commission at: <https://sos.tn.gov/products/elections/how-do-i-file-complaint>.

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