

Health Care Finance and Administration	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.

### **1. Policy Statement**

Federal and State laws do not allow HCFA to treat you differently because of your race, color, national origin, age, sex, disability/handicap, language, or religion. Federal laws also protect people from different treatment based on their sexual orientation in: Programs of All-Inclusive Care for the Elderly (PACE), hospitals (including critical access hospitals), and long-term care facilities (nursing homes, hospice).

HCFA, 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 HCFA programs.

HCFA 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 HCFA application.

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

The federal non-discrimination statutes 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.

- **Title VI of the Civil Rights Act of 1964:** 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.
- **The Americans with Disabilities Act of 1990 (ADA):** Prohibits discrimination on the basis of disability by both public and private entities, whether or not they receive federal financial assistance.

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- **The Age Discrimination Act of 1975 (ADEA):** Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
- **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.
- **Title IX Education Amendments of 1972:** 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
- **Section 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. 18116):** , an individual shall not, on the ground 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, HCFA shall not discriminate against people on the basis of race, color, or national origin in how its programs are administered.

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

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

#### Examples:

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

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- Eligibility Specialists shall not accept a self-declaration of qualified immigration status requiring verification 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 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 Prohibited Discriminatory Conduct on the Basis of Handicap or Disability**

HCFA 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 HCFA. HCFA 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. HCFA shall not harass an individual based on a disability.

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

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

To ensure compliance with Title VI, the ADA, and Section 504, individuals with LEP and/or disabilities must have meaningful access to HCFA’s programs, services, or activities. To do this, HCFA 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 assistance services and/or auxiliary aids or services that are free to these individuals.

**a. Individuals with Disabilities**

Under the ADA, effective communication is required except where HCFA 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 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

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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 HCFA must give primary consideration to the individual's choice. "Primary consideration" means that HCFA must honor the choice of the individual with a disability, with certain exceptions (see the bullet points 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:

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

**b. LEP Individuals**

Similar steps are taken to ensure effective communication with LEP 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, HCFA must provide trained and competent interpreters and translators who can provide oral and/or written language assistance services to accommodate these individuals. HCFA may:

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

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. Before allowing this the LEP individual's declination of the offer of free interpreter services must be documented. 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.

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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 contact: AVAZA Language Services.

Eligibility Specialists should consult their supervisor for translation assistance.

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

## 6. Filing Discrimination Complaints

Any individual or his or her representative may file a discrimination complaint. The complaint may concern discriminatory practices or actions on the part of HCFA. The complaint may also involve practices or actions by other agency related institutions, organizations, contractors, medical care vendors or practitioners that participate in HCFA programs by providing aid, care, or services.

The Complaint Form is available at:

<http://www.tn.gov/assets/entities/tenncare/attachments/complaintform.pdf>

<http://www.tn.gov/assets/entities/tenncare/attachments/complaintformSP.pdf> (Spanish)

### Non-Discrimination Contacts:

#### HCFA ONCC

Bureau of TennCare  
310 Great Circle Road  
Nashville, TN 37243

Phone: (615)507-6474 or for free at 1-855-857-1673  
For TTY/TRS: Dial 711 and ask for 855-286-9085 (Toll Free).  
Email: [HCFA.Fairtreatment@tn.gov](mailto:HCFA.Fairtreatment@tn.gov)

### U.S. Department of Health & Human Services - Region IV Office of Civil Rights

Write to:  
U.S. DHHS / Region IV Office for Civil Rights  
Sam Nunn Atlanta Federal Center, Suite 16T70  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8909

Call: (800) 368-1019

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TTY/TDD: Toll Free 1-800-537-7697

Fax: (404) 562-7881

Use **Complaint Portal**:

[https://ocrportal.hhs.gov/ocr/cp/complaint\\_frontpage.jsf](https://ocrportal.hhs.gov/ocr/cp/complaint_frontpage.jsf)

### **U.S. Department of Justice**

A person can file an ADA complaint alleging disability discrimination against a State or local government or a public accommodation (including, for example, a restaurant, doctor's office, retail store, hotel, etc.) by mail, fax, or email.

#### **To file an ADA complaint by mail:**

U.S. Department of Justice  
 950 Pennsylvania Avenue, NW  
 Civil Rights Division  
 Disability Rights Section – 1425 NYAV  
 Washington, D.C. 20530  
 Fax: (202) 307-1197

**To file a complaint by email:** <http://www.ada.gov/complaint/>

## **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.

Estate recovery applies to:

- TennCare Medicaid-covered services received by individuals permanently confined to a Long-Term Care Facility regardless of age;
- TennCare Medicaid-covered services received in a LTCF or in a home and community-based services setting and related hospital and prescription drug services, by individuals age 55 or older.

Adjustment or recovery from the recipient's estate may be pursued only:

- After the death of the individual's surviving spouse, if any; and
- 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

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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).

HCFA 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 HCFA application. The State cannot impose a lien on real property which is occupied by an applicant for TennCare Medicaid.

### **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 HCFA 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

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