



*Tennessee Department
of
Mental Health and Substance Abuse
Services*

E. Douglas Varney, Commissioner

CIVIL RIGHTS

COMPLIANCE TRAINING



TRAINING OBJECTIVES



- To understand the meaning of the word "prejudice" and the legal definition of "discrimination" and covered groups.
- To know the major non-discrimination laws and covered groups that are protected by these particular laws, and the effects on these groups while delivering services.
- To know how to recognize a possible violation and know your obligations and responsibilities under State and Federal laws



TRAINING OBJECTIVES



- To give an overview of State & Federal investigative procedures, related to a discrimination complaint.
- To understand the basic measures needed in order to achieve non-discrimination compliance in service delivery
- To know the techniques for communicating with service recipients and/or advocates on their behalf, as it relates to a possible discrimination complaint.



Overview and Introduction



Prejudice

- “Prejudice” is an opinion or leaning adverse to anything without just grounds or before sufficient knowledge. It is also an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics.
- Prejudice can be for OR against an individual, group, or object. Any individual or group can hold prejudice(s) toward another individual, group, or object



Prejudice - Basic Example

- A person can be prejudiced in favor of (for) anyone perceived to have a "Southern Accent" but be prejudiced against anyone perceived to have a "Northern Accent".



Discrimination

- "Discrimination" is differential treatment that favors one individual, group, or objective over another.
- Discrimination is often the result of actions based on prejudicial attitudes.
- In most cases, an institution or entity may treat individuals differently UNLESS the individual is in a protected group or class as defined under law.



Discrimination - Basic Examples

- It is discriminatory and illegal to refuse provided services to an individual based solely on the fact that the person is of Hispanic Origin.
- It is discriminatory and illegal to deny employment to someone based solely on the fact that the person uses a wheel chair.
- It is discriminatory, if an agency offers services to recipients ages 0-21 and you deny persons services because your belief is: At 21 recipients do not need the services.



Federal Laws and Regulations Prohibiting Discrimination

- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- Age Discrimination Act of 1975
- Title IX of the Education Amendments of 1972



Title VI of the Civil Rights Act of 1964



What is Title VI?

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

Civil Rights Act of 1964



Legislative History & Purpose of Title VI

The landmark Civil Rights Act of 1964 was a product of the growing demand during the early 1960s for the Federal Government to launch a nationwide offensive against racial discrimination. In calling for its enactment, President John F. Kennedy identified "simple justice" as the justification for Title VI:



JFK's "Simple Justice"

"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds is as invidious; and it should not be necessary to resort to the courts to prevent each individual violation."



Title VI Prohibited Practices

- Denial of any service recipient, any services, opportunities, or other benefits for which that individual is otherwise qualified;
- Provide any service recipient with any service, or other benefit, which is different or is provided in a different manner from that which is provided to others in a program;
- Subject any service recipient to segregated or separate treatment in any manner related to his receipt of service;



Title VI Prohibited Practices

- Restrict a service recipient in any way in the employment of services, facilities or any other advantage, privilege or other benefit provided to others under the program;
- Adopt methods of administration which would limit participation by any group of recipients or subject them to discrimination; and
- Address a service recipient in a manner that denotes inferiority because of race, color, or national origin.



Title VI

Limited English Proficiency

- "Limited English Proficiency" – is defined as the inability to speak, read, write, or understand the English language at a level that permits a service recipient to interact effectively with staff in accessing public services and benefits.
- Executive Order 13166 (August 11, 2000) requires all agencies that receive federal funding to provide services that are accessible to persons with limited English proficiency.
- Not providing services that are accessible constitutes discrimination based on national origin.¹⁶



Four Factor Analysis to Assess LEP Needs

Assess and balance the following four factors for your agency:

1. Number or proportion of individuals with LEP eligible or likely to be served by your agency;
2. Frequency with which persons with LEP come in contact with your agency;
3. Nature and importance of your agency's programs to people's lives; and
4. Resources available to your agency and the costs of providing these services.



Four Elements of Effective Language Assistance Programs

1. Develop and implement written policies and procedures for language access.
2. Assess language needs of your consumers and community.
3. Train staff.
4. Monitor vigilantly.



Types of Language Assistance Services

- Oral interpreter services
- Bilingual staff
- Telephone interpreter lines
- Written language services
- Community volunteers



Section 504 of the Rehabilitation Act of 1973



Section 504 of the Rehabilitation Act of 1973

- Section 504 prohibits organizations and employers, who receive federal financial assistance, from excluding or denying qualified individuals with disabilities an equal opportunity to receive program benefits and services.
- It defines the rights of individuals with disabilities to:
 - participate in, and have access to program benefits, and services.



Section 504 of the Rehabilitation Act of 1973

- “Qualified Individual With Disabilities” - are persons who have:
 - a physical or mental impairment that substantially limits major life activities;

AND ONE OR BOTH OF THE FOLLOWING:

- with reasonable accommodations, can perform the essential functions of the job for which they have applied or have been hired to perform; OR
- in terms of accessing and receiving public services and benefits are persons who meet the normal and essential eligibility requirements.



Section 504 of the Rehabilitation Act of 1973

- Physical & Mental Impairment - Include but are not limited to:
 - visual, speech, and hearing impairments,
 - mental retardation,
 - mental or emotional illness,
 - cerebral palsy,
 - epilepsy,
 - muscular dystrophy,
 - multiple sclerosis,
 - orthopedic conditions,
 - cancer, heart disease, or diabetes,
 - contagious and non-contagious diseases such as tuberculosis and HIV diseases (symptomatic or not)



Section 504 of the Rehabilitation Act of 1973

- “Reasonable Accommodations” – requires an employer or government agency to take reasonable steps to accommodate a person with a disability, unless it would cause undue hardship.
- In relationship to accessing public services and benefits, covered entities must take reasonable steps to make sure a person with a disability can access programs, services, benefits, or has opportunities to participate. This includes the opportunity to participate regardless of physical barriers.



Americans With Disabilities Act of 1990



Americans With Disabilities Act of 1990

- Based on Title VI of the Civil Rights Act of 1964 & Section 504 of the Rehabilitation Act of 1973.
- Provides comprehensive civil rights protections to individuals with disabilities in the areas of:
 - employment,
 - state and local government services,
 - public accommodations, transportation, and
 - telecommunications.
- Unlike Section 504, ADA compliance is mandated for state and local governments OR businesses that service the public even if they do not receive federal funds.

Americans With Disabilities Act of 1990

- “Qualified Individual with a Disability” - a person who has:
 - a physical or mental impairment that substantially limits major life activities;
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- Decisions about whether or not a particular condition constitutes a disability within the meaning of the ADA should be made based on case-by-case determination.



Americans With Disabilities Act of 1990

- Physical & Mental Impairment - Include but are not limited to:
 - visual, speech, and hearing impairments,
 - mental retardation,
 - mental or emotional illness,
 - cerebral palsy,
 - epilepsy,
 - muscular dystrophy,
 - multiple sclerosis,
 - orthopedic conditions,
 - cancer, heart disease, or diabetes,
 - contagious and non-contagious diseases such as tuberculosis and HIV diseases (symptomatic or not)



Americans With Disabilities Act of 1990

- Major life activities – means functions such as
 - caring for one's self,
 - performing manual tasks,
 - walking, or seeing,
 - eating or sleeping,
 - interacting with others,
 - hearing, speaking, or breathing,
 - learning,
 - concentrating,
 - thinking, or
 - working.



Americans With Disabilities Act of 1990

- Title II – prohibits discrimination against qualified individuals with disabilities based on their disability in all programs, activities, of public entities. Public entities include state and local governments and their departments and agencies. Title II applies to all activities and services programs of a public entity.
- **Important Note:** Public entities must consider the ability to access services and benefits and “reasonable accommodations”...interpreters, television captioning, telecommunications devices, accessible sidewalks/ doors & water fountains, Braille materials, larger print, auxiliary aids, etc...



Examples of Preferred Language

Adapted from the Vanderbilt University Opportunity Development Center on Descriptive Words and Images and Tennessee Department of Finance and Administration Bureau of TennCare

PREFERRED

- Person with a disability, people with disabilities
- Person with mental illness/disorder
- Person with substance use disorder
- Person with intellectual disability
- Non-disabled
- Uses a wheelchair, is a wheelchair user
- Uses a walker, walks with the assistance of a walker/crutches
- Person with cerebral palsy
- Person with polio
- Person with a specific learning disability
- Person with a speech impairment/impediment
- Person who is blind or with a visual impairment
- Person who is deaf
- Person with Down Syndrome
- Person with Epilepsy
- Person has seizures
- Congenital disability
- Persons with diabetes

OFFENSIVE

- Crippled, deformed, the disabled, the handicapped
- The mentally ill, crazy person, lunatic, etc.
- Drunk, dope addict
- Mentally Retarded, mentally deficient
- Able-bodied, normal, healthy
- Is confined to a wheelchair, is wheelchair bound
- Can't walk
- Is a cerebral palsy victim
- Suffers from polio
- Is learning disabled
- Stutterer, lisp
- The blind or the visually impaired
- The deaf, deaf and dumb
- The Down Syndrome child, Mongoloid (NEVER)
- Epileptics
- Fits
- Birth defected
- Has sugar



Age Discrimination Act of 1975



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 persons of all ages.
- It does not cover employment discrimination. Employment is covered under the separate Age Discrimination in Employment Act of 1967.



Age Discrimination Act of 1975

- The Age Discrimination Act does allow for certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age.
- Example: Federal and local government can enact statutes which provide benefits or target groups in age-related terms such as the TennCare TENNderCare (federal EPSDT) Program



Title IX of The Education Amendments of 1972



Title IX of the Education Amendments of 1972

- Applies to education programs and activities
- Prohibits discrimination based on an individual's gender
- Section 1681 of Title IX states:
"No person in the United States 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..."



Tennessee Code Annotative

T.C.A. 4-21-904

- On May 31, 1993, the State of Tennessee became the first state to pass legislation enforcing Title VI compliance in all of its departments, programs and agencies.



Compliance Activities



Keys to Effective Civil Rights Compliance



Ensure that service recipients receive:

- Equal treatment.
- Equal access.
- Equal rights.
- Equal opportunities.

Without regard to their:

- Race,
- Color,
- National origin (including English proficiency),
- Age,
- Gender, or
- Disability.



How Civil Rights Compliance Is Enforced

- Complaints
- Compliance Reviews
- Agency Activities
 - Education
 - Training
 - Technical Assistance



Subrecipient-Agency Level Investigating Discrimination Complaints

- Subrecipient-Agency is required to have specific policies and procedures in place on how complaints are to be handled.
- All complaints are to be monitored for indication of non-compliance with Title VI, Section 504 of the Rehab. Act, ADA, Age Discrimination Act, or Title IX.
- Any complaint that indicates non-compliance with the above should be logged by the agency and reported to TDMHSAS Office of Consumer Affairs (Toll free 1-800-560-5767 or local 532-6700).



Subrecipient-Agency Level Investigating Discrimination Complaints

- All complaints are logged upon receipt.
- Contact is made with the complainant for a full understanding of the complaint.
- Complaints must involve an incident that occurred in the past 180 days.
- Facts of the complaint are reviewed to determine possible non-compliance with the applicable regulations.



Subrecipient-Agency LEVEL – OTHER SERVICES

Investigating Discrimination Complaints

- If the complaint is related to Non-TennCare services, the agency involved is instructed to investigate and provide a written response to the issues.
- The agency provides written follow-up to TDMHSAS documenting all issues involved in the complaint and their response.
- Following a review by the Subrecipient-Agency, a determination is made of what steps will be taken to resolve the issue.



Subrecipient-Agency Level Investigating Discrimination Complaints

- The complainant is notified by the Subrecipient-Agency of the determination and the steps that will be taken to address the issues(s).
- Complainants are advised of their right to have their complaint reviewed by one of the following agencies if they are not satisfied with the decision
 - Tennessee Human Right Commission,
 - DHHS, Office of Civil Rights, Region IV Office,
 - Tennessee Department of Mental Health and Substance Abuse Services.



Subrecipient-Agency Level Investigating Discrimination Complaints

Upon completion of the investigating process, inform TDMHSAS of the outcome.



Thank you for attending this Training !!

Gwen Hamer at Gwen.Hamer@tn.gov
or 615-532-6510 (Mental Health
Services)

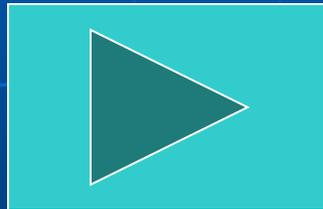
or

Ken Horvath at Ken.Horvath@tn.gov
or 615-253-4363 (Substance Abuse
Services)

5/15/13R



Title VI TIPs for Providers



Portions of this document were provided by The Department of Finance and Administration Office of Non-Discrimination Compliance/Health Care Disparities