



## Region VIII: Civil Rights Training Webinar

U.S. Department of Health and Human Services  
Administration for Children and Families  
Office of Family Assistance

### **Region VIII Webinar Series: Part 1 – Civil Rights Training**

**July 25, 2012  
10:00 a.m. MDT**

Operator - Papa: Hello and welcome to the Administration for Children and Families, Office of Family Assistance and Office for Civil Rights, TANF Civil Rights Training.

We welcome TANF stakeholders from ACF Region VIII. Today's Webinar is hosted by OFA Region VIII. The training conducted by OCR Deputy Regional Manager Andy Oliver and Equal Opportunity Specialist Ian Shipps.

The Q&A is facilitated by Vicky Herring, OFA Region VIII, Larry Brendel, OFA Region VI and Damon Waters, ICF International.

We encourage your questions and feedback at the conclusion of the Webinar and look forward to working with TANF stakeholder to manage the civil rights compliance.

Again welcome and thank you for your participation. And I will turn things over to Ian Shipps. (Ian) please go ahead.

Ian Shipps: Thank you very much (Papa). Hello and good morning and good afternoon to those of you on the East Coast if there are any people on the East Coast joining us today.

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As (Papa) mentioned, my name is Ian Shipps and I am an Equal Opportunity Specialist in the Office for Civil Rights. My supervisor is Andrea. We call her (Andy) Oliver. She is our Deputy Regional Manager here in Region VIII in Denver.

Again thank you for joining us today. We are going to talk to you about the Federal civil rights laws that we enforce in the Office for Civil Rights and how those particular Federal regulations apply to your TANF programs.

As (Papa) noted, we will do the question and answer period after this presentation is complete. So, if you have any questions that come up as I am going through the presentation please make note of those questions and then use the Q&A portion of your screen to submit those questions.

Without further ado we will get to the meat of our material. The slide that is up right now explains the activities that we do in the Office for Civil Rights.

I am not going to read every single activity, but just mention to you that there are a variety of federal non-discrimination laws that require that federally assisted programs be administered in a manner that does not discriminate or have the effect of discriminating on the basis of race, color, national origin, disability, sex, age or religion.

Some of the activities that we do include what we are doing today, which is providing education and outreach to you all.

A large portion of our workload in the Office for Civil Rights comes in the form of complaints that we receive from individuals alleging civil rights discrimination.

We also investigate complaints that we receive from individuals who allege Security Rule or Privacy Rule violations under HIPAA.

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At the end of this presentation, we will remind you that we are going to conduct a second webinar for TANF programs regarding our work in the Office for Civil Rights that is related specifically to the Privacy Rule.

Today we are going to focus on civil rights. When we do investigate civil rights complaints, ultimately, we try to secure voluntary compliance from the entity against whom the individual filed the complaint.

We have a great record in our office of forming good working relationships and ensuring that that voluntary compliance does occur.

However, if need be, and if we come across a covered entity that is not willing to cooperate with our investigation or with their obligations under the Federal civil rights laws then it can get to the point where we initiate proceedings to terminate the Federal financial assistance that those entities do receive.

Now let's get to the meat of our Webinar today: Civil rights and your TANF programs and how they intersect.

Because TANF agencies receive Federal funding from the Federal government in the form of TANF block grants those programs must comply with certain Federal civil rights laws. Put differently, those laws apply to these programs because they receive Federal funding.

Other common recipients of this funding include public and private institutions, other organizations and even individuals that operate, provide or engage in health or social service

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programs or activities, and receive that financial assistance from the Department of Health and Human Services directly or indirectly or through some other entity or recipient.

Other entities or recipients might include certain job training agencies and their contractors, subcontractors and vendors.

Title II of the Americans with Disabilities Act covers all states as well as their counties and all health and human service programs and activities of the state and local government entities carrying out the activities for that state.

We will get into the distinction between Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act later in this presentation.

When I say the ADA- I am referring to the Americans with Disabilities Act.

We will focus our presentation primarily on these two laws, the ADA and Section 504. But first, we will discuss other laws that are referenced in this particular slide.

Title VI of the Civil Rights Act is an important Federal civil rights law that we enforce, and TANF agencies are required to ensure that their programs do not discriminate against people on the basis of their race, color or national origin.

A TANF agency may violate Title VI if any of the following three things occurs. (1) If it excludes a person or people from a program or participation in that program based on their race, color or national origin, (2) if the agency denies benefits or services to a person or people based on their race, color or national origin, or (3) if the agency provides different or lesser benefits to a person or people based on their race, color or national origin.

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Here are a few examples where a Title VI violation might occur. In the context of TANF, a violation might occur if a case worker or a TANF program employee restricts work assignments based on its client's race.

Another potential Title VI violation is if the TANF program assigns minority clients to jobs that pay less or have fewer opportunities for permanent employment and work assignments given to non-minority clients.

Another example might be where a case worker or a TANF program employee provides different rates or types of sanctions for non-compliance and that those different rates or types of sanctions are based on the individual's or their client's race.

A final example might be that a person within the TANF program who has the authority to grant exemptions or extend certain TANF time limits grants or denies those requests based on the client's race or national origin.

Those are all examples in which it is possible that a program could perhaps violate Title VI.

Title VI might also be implicated in the delivery of services that a TANF agency provides to people who are Limited English Proficient.

When I say "Limited English Proficient," I may use the acronym LEP.

The Supreme Court has interpreted Title VI's prohibition of discrimination on the basis of national origin to also prohibit conduct that has a disproportionate effect on LEP persons.

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Thus, under the Title VI regulations, in order to avoid discrimination on the basis of national origin, TANF agencies must make reasonable steps to ensure meaningful access for people who are Limited English Proficient.

Given that every TANF agency services a different geographic area, then those TANF agency's obligations to serve their clients will vary with respect to the services they need to provide for Limited English Proficient clients.

Federal guidance has set forth the following four factors that recipients of Federal financial assistance, including TANF agencies, should use in determining their responsibilities to providing meaningful access for people who are Limited English Proficient.

Depending on the results of a TANF agency's analysis of these four factors, it may be necessary for that agency to provide interpreter services for those people who are Limited English Proficient, or to translate certain documents into languages other than English to ensure that the agency provides equal access to the TANF agency services.

Let's go through those four factors, the first, of course, being that the agency needs to look at the number or proportion of LEP persons within their geographic service area.

This factor explains that the greater the number or proportion of LEP persons in the geographic area, then the more likely that TANF agency will need to provide language access services.

TANF agencies can get an idea of the proportion of LEP persons in their service area by looking to the latest census information, or by referring to other organizations such as school systems, community groups, state and local governments, religious organizations, or other legal aid entities that have experience with a particular community.

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The second factor is the frequency of contact, and that pretty much speaks for itself. The less frequent the contact that an agency might have with different language groups, then the less Title VI will typically require of that agency.

As a corollary, where a person from a particular LEP group accesses that recipient's program on a daily basis, then that TANF agency will likely have a greater duty to provide language services under Title VI.

The third factor is: the nature and importance of the program, activity or service. And I want to note here that the immediate access to language services are more likely required when the activity is both important or urgent.

Decisions by the federal, state or local entity to make an activity compulsory can often serve as strong evidence of that program's importance.

For example, I believe that a TANF program's work and training requirements are compulsory.

Thus, those components of the TANF program - when those obligations need to be met - it is most likely that those are seen as important and that agency would need to provide language services in those certain settings.

The fourth factor on this slide as far as determining what your TANF agency's obligations might be with respect to providing interpreter services is the costs and available resources.

So, smaller recipients with more limited budgets are not expected to provide the same level of language services as larger entities are with larger budgets.

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With that in mind, the reasonable steps that each TANF agency or state takes will be different for varying recipients or will be different based on their essentially their pockets and how many resources they have available.

I would note that the resources that would be considered are the state's resources and not necessarily the specific individual decision or TANF program.

Some examples of national origin discrimination based on limited English proficiency include possibly requiring a Limited English Proficient person to pay for or provide their own interpreter. Such a requirement might violate Title VI because it would be providing an unequal or lesser benefit to that individual.

Another example might be a local office located in a neighborhood with a number of immigrant groups that provides no language assistance to those TANF applications or participants to who are Limited English Proficient.

If that agency or that office advises the client or applicant to bring with them friends or relatives to serve as interpreters then, that is also an instance where they are likely in non-compliance with Title VI. The problem of using family members is that it is definitely possible that doing so would create a conflict of interest.

The family member who is being asked to interpret may not communicate exactly what is being said, and it is certainly possible, especially for younger family members who are being asked to interpret, that they may not know the specific technical terms that are being used to discuss the different aspects and requirements of your TANF programs.

However, there are going to be cases or instances where the individual insists that they want to use a family member or a friend to serve as an interpreter. This is okay, but all of the TANF



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agencies who allow this should make sure that they let those individuals know that they offer or they have interpreter services available to that individual free of charge to that individual.

Andrea Oliver: I would also add that, in addition to the notice of the availability of free interpreter services, as long as the covered entity does not believe that there are any potential conflicts of interest or the other issues that (Ian) had indicated with respect to potential problems with use of family members or friends.

If a CE, covered entity, does determine that there may be problems with the individual that the TANF beneficiary would like to utilize, we would ask that covered entities provide an interpreter as well to ensure that the communication is effective.

Ian Shipps: To reiterate, depending on the results of this four factor analysis, it may be necessary for your specific TANF program to provide interpreter services or to translate documents into those certain languages that are prevalent in your area in order to ensure that your programs are providing equal access to those persons who are Limited English Proficient.

This slide is intended to inform you where you can go to get additional information and resources regarding providing access to individuals who are Limited English Proficient.

We will make sure that you all get access to a copy of this PowerPoint presentation, so you don't necessarily need to write this Web address down at the moment. You will have that once we conclude the presentation and finalize our administrative requirements for the Webinar.

Another Federal civil rights law that we enforce at the Office for Civil Rights is the Age Discrimination Act of 1975.

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Based on the Act, a TANF program or even a healthcare provider may not exclude, deny or provide different or lesser services to applicants or beneficiaries on the basis of age.

It is important to note that the Age Discrimination Act applies to persons of all ages not just the elderly and not just young children.

Examples of conduct that might violate the Age Discrimination Act in the context of the TANF program might be in a computer training program where trainees over the age of 40 are discouraged from seeking referrals to computer systems jobs.

In such an instance, these trainees who are older than 40 years old are told that the systems jobs require travel between different job sites, they are tiring, and they are more suitable for the younger trainees. To divvy up those specific training programs based on age might be an issue with respect to the Age Discrimination Act.

Another example might be where there is a training program for classroom aids and that program does not admit anyone to serve as an aid that is under the age of 30 because the provider believes that persons under 30 are not mature enough to work with school age children. Again there is an issue there potentially with regard to the Age Discrimination Act.

A third example might be where a provider has a job referral arrangement with an employer who refuses to accept anyone over 30 from the provider's automotive repair training class.

Anytime there is a training class or service or benefit that the TANF program provides that seems to group individuals based on their age is problematic in the eyes of the Age Discrimination Act of 1975.

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Now to the final Federal civil rights laws we will discuss today: the Americans with Disabilities Act, which, again, I will refer to as the ADA and Section 504 of the Rehabilitation Act of 1973.

Both Section 504 and the ADA do very similar things: prohibit discrimination on the basis of disability.

In order to be subject to Section 504 requirements, an agency or a program must 1) operate or provide or engage in health or social service programs and activities, which every TANF program does, and the agency or program must receive Federal financial assistance from the Department of Health and Human Services directly or indirectly.

Again this is something that happens for every TANF program because the program receives block grants from HHS, and those grants constitute Federal financial assistance.

Coverage or jurisdiction under the Americans with Disabilities Act, the ADA, is a little different than Section 504 because we are not concerned so much with whether or not the organization or entity receives Federal financial assistance.

Under the ADA, coverage doesn't depend on receipt of Federal financial assistance. Instead, coverage depends on whether the entity is a state or local government entity providing health or human services.

Given that TANF programs are typically part of a state or local government, then those TANF programs are also required to comply not only with Section 504 but also with the ADA.

Some TANF contractors, although not governmental agencies, do carry out the activities of that state TANF program; therefore, that state TANF program has an obligation to ensure non-discrimination on the basis of disability under the ADA.

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That said, non-governmental TANF program contractors are also under the jurisdiction of Title II of the ADA. The non-governmental contractors who assist or that assist states in running their programs they must also comply with Section 504.

The reason why we are focusing on Section 504 and the ADA is because a significant proportion of TANF clients have either a physical or a mental disability.

We should also highlight the fact that many TANF clients might also be caretakers for family members who are disabled. And we should just point out to you that Section 504 and the ADA also prohibit discrimination on the basis of an individual's association with someone who has a disability.

So, even if a TANF client him or herself does not necessarily have the disability but lives with someone else who does then the TANF program should make sure that they are not discriminating against the TANF client based on his or her association with t the person with the disability.

This slide lists some of the disabilities that are common among not only TANF recipients but among the general population.

Many people and TANF clients with disabilities that are less visible include learning, cognitive, and psychiatric disabilities. It is probably common knowledge that a disability can interfere with an individual's successful completion of their TANF program requirements.

People with disabilities face barriers to employment that non-disabled people don't have to face.

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For example, individuals with disabilities may have attained less education or fewer job skills. It is not uncommon for individuals with disabilities to lack access to health insurance.

It is not uncommon for individuals with disabilities to experience discrimination in the form of people making assumptions about what they can or can't do based on whatever disability it is they might have.

Getting to the heart of Section 504 in the ADA requires that we talk a little bit about the definition of a disability, which is: a physical or mental impairment that substantially limits one or more major life activities. An individual's impairment might meet the definition of disability under Section 504 and the ADA in any one of three ways.

First, if a person presently has a substantially limiting impairment, which includes such impairments as contagious and non-contagious diseases.

Orthopedic conditions, visual conditions, impairments that are related to speech or hearing, cerebral palsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, emotional illness and other specific learning disabilities.

HIV, whether it is symptomatic or asymptomatic, is considered a disability, as is tuberculosis.

Thus, if a person currently has one of those conditions or any other impairment that I didn't mention, would meet the definition of an individual with a disability.

A second way is if a person has a history of a substantially limiting impairment. For example, someone who has had cancer and is in remission, and therefore, has a record of having an impairment but is not currently substantially limited, that person would also meet the definition of a person with a disability.

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Third, if a person is *viewed* as having a substantially limiting impairment, then that person would also meet the definition of a person with a disability. This third instance is more about perception than reality.

An example of this third instance might be where the partner of an HIV positive person who is assumed to have contracted HIV through sexual contact.

Or, consider a person in a medical assistant program with a post-surgical facial and neck disfigurement. If that person is viewed by a program as being limited to a greater degree than that person actually is limited, then those people who are perceived to be limited or are perceived to have an impairment would also be protected under Section 504 in the ADA.

We note that the definition of disability under Section 504 and the ADA differs from that definition that is typically used to determine eligibility in other programs that provide cash assistance such as the Federal supplemental security income and social security disability insurance programs.

Andrea Oliver: And I would just add, with respect to the - (Ian) has made reference that individuals who have drug addiction may be covered under the regulations. There are some caveats to that in particular that the individuals cannot be utilizing illegal drug use so it is not as broad as it appears.

And as Ian indicated, truly this list is not exhaustive and those are just some examples to give you of the broader range of disabilities that people may have.

Ian Shipps: In 2009 the ADA Amendments Act went into effect and the primary purpose of the ADA Amendments Act was to basically restore Congress' original intent of the original ADA which was passed in 1990.

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And the reason why Congress felt it was necessary to restore their original intent was because, over the years, courts had narrowed the definition of a disability to such a degree that most cases became more about whether a person met the definition of a disability rather than focusing on access to a program or accommodating that individual with the disability.

Courts also limited the ADA by, among other things, ruling that episodic conditions may not constitute a disability and also that mitigating measures might eliminate a disability. The ADA Amendments Act essentially reversed those judicial trends.

Episodic impairments are defined as long-term conditions which have fluctuating periods of poor health and deterioration or relapse but the person otherwise can maintain or does maintain a level of functionality. Some examples of episodic conditions might include chronic fatigue syndrome, multiple sclerosis, HIV, Lupus, Hepatitis C, some forms of arthritis, Crohn's Disease and cancer.

With respect to episodic conditions, the ADA Amendments Act says: impairments that are episodic or in remission are disabilities if those disabilities or if those impairments would substantially limit major life activities when those impairments are active.

The other thing that the ADA Amendments Act did was put a stop to the trend that the courts had taken with respect to mitigating measures. Mitigating measures include medication or any other assistive device that an individual uses to eliminate and reduce the effects of an impairment.

Examples of mitigating measure include medications for conditions such as epilepsy, insulin to control diabetes, some prosthetic devices, walkers, canes and crutches.

The ADA Amendments Act says that these mitigating measures are, now, not to be considered in determining whether an individual's impairment substantially limits a major life activity.

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This slide lists some major life activities that do include things such as walking, talking, hearing, seeing, eating, caring for oneself and learning and working.

The ADA Amendments Act also provided some specific major life activities in the statute, but, it also made clear that the list and the statute were non-exhaustive.

The importance of having this non-exhaustive list in the statute is, again, that some agencies had regulations that restricted major life activities more than Congress had initially intended.

So what does all this mean as far as what TANF agencies' obligations are with respect to not discriminating on the basis of disability?

Under Section 504 and the ADA, TANF agencies must ensure equal access to TANF programs through the provision of appropriate services to people with disabilities.

And they should do this by providing services that are designed to afford their beneficiaries who have disabilities with an opportunity to participate in or benefit from the TANF program that is equal to the opportunity that the agency affords to non-disabled individuals.

And in addition to that, people with disabilities have a legal right to equal access in all TANF programs for which they are qualified.

Another thing that the TANF agency must do is to modify any policies, procedures or practices to ensure access to individuals with disabilities unless doing so would result in a fundamental alternation of the TANF program, to possibly include program applications, training that is conducted through the program, education, and work stages.



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Again, modifications must ensure that people with disabilities have equal access and an equal opportunity to benefit from that program.

The TANF program must provide its clients with disabilities those services that are appropriate and give them an equal opportunity to benefit from the agency's job placement, education, skills training, employment and other TANF activities.

Another thing that the TANF program must do is adopt non-discriminatory methods of administration. And we will get into more detail about methods of administration later on in the presentation.

But essentially this phrase refers to the official written policies of the TANF agency and to its actual practices. The methods of administration, which must be non-discriminatory, ensure that the policies and procedures guide their own employees in such a way that they know how to serve clients with disabilities.

In addition to informing and educating their employees how to work with individuals with disabilities, the methods of administration should also ensure that the program trains their staff to make sure that they know that they need to provide equal access to their TANF programs again for individuals with disabilities.

And that training should occur for staff or service providers who have contractual oversight or who conduct regular oversight of TANF programs and services.

Failure to do any one of those three things might result in discriminatory exclusion of individuals from your TANF programs. In the past we have found that some states and some programs' policies relating to individuals with disabilities consist simply of exemption for TANF requirements.

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For example, even though it might be easier, resources-wise, to exempt a person with a disability,

That approach also could result in discrimination and perhaps a violation of Section 504 and the ADA.

How can a TANF program ensure equal access to people with disabilities?

The agency ensures equal access to its applications and beneficiaries by delivering services that are appropriate in view of the person's particular physical or mental impairment. And, the agency must provide an equal opportunity to the individual with the disability to benefit from the agency's job placement, education, skills training, employment and other TANF activities.

To ensure equal access to people with disabilities, the TANF agencies should have comprehensive and effective screening and assessment tools in place.

We note that the TANF statute and regulations require that the TANF agency assess the skills, prior work experience and employability of beneficiaries. To that end, the agencies and the programs should have these two functions in place for its beneficiaries.

So, TANF agencies should offer to conduct an initial screening of each applicant and beneficiary to identify those individuals with possible disabilities.

The TANF program should inform the applicants and beneficiaries that their participation in this screening and their disclosure of any disability is completely voluntary. When the screening is conducted it should be conducted by trained staff using validated screening tools.

If there is an initial indication that an individual has a disability that might impact his or her ability to successfully complete or benefit from a current or proposed program assignment then the

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TANF program should give that individual an opportunity for a more comprehensive assessment that is conducted by a qualified professional.

Speaking of assessments, it is critical that TANF programs allow their clients with disabilities to receive an individualized assessment that allows them equal opportunity to benefit from the program and the assessment process.

The assessment should incorporate an individualized analysis of each person's ability to meet the program requirements rather than on stereotyped or assumptions about how that person's disability might affect their ability to comply with the program.

Some of the things that the assessment should determine include whether the individual in fact has a disability, the nature of the disability, the extent to which the individual is capable of employment or participation in employment-related activities, the implications of the disability on securing and maintaining employment, the appropriateness of a particular work assignment or plan for employment, the need for reasonable accommodations or reasonable modifications to policies, the provision of auxiliary aids and services and communication assistance.

The assessment should also determine the need for training and education prior to employment, the applicability of work participation rules, time limits, and the assessment should also help to determine the appropriateness of applying sanctions.

Appropriate services provided by the TANF agency should be based on the agency's review of its own programs and on the TANF beneficiaries' needs as identified through the agency's screening and assessment process.

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For example, an individual with a learning disability may need specialized instruction in reading and writing before that individual can comply with a TANF plan that requires the individual to obtain employment.

It is also possible that a person might need on-the-job-training and mentoring, and a person might also need certain job skills or training or employment in certain settings that are accessible to individuals with mobility impairments.

On our website, which will show up at the end of this presentation contains a section dedicated to special topics and one of those special topics is TANF.

There are a number of resources available to you all with regard to how to modify or create your current TANF programs with respect to certain civil rights laws that we enforce.

And one such resource that you can find on there is an example of a resolution agreement between a southern state and one of our other regional offices that require that state to develop certain policies and procedures that required them to develop appropriate screening tools for clients with disabilities prior to requiring those clients to perform job searches.

That is one example of something that you will find on our website related to TANF programs' obligations for screening and providing individualized assessment.

Under Section 504 and the ADA, TANF agencies must reasonably modify policies, practices and procedures to avoid discrimination on the basis of disability.

It is important to note that one size does not fit all with respect to modifications. TANF programs should assess the needs of each applicant or beneficiary with the disability and then make a reasonable modification tailored to meet that particular person's needs.

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We should also point out that any accommodations that are made are offered to that individual at no charge.

Some examples of where modifications might be needed include the TANF application process, procedures related to notifying TANF applicants and the beneficiaries about their rights and requirements of the TANF program.

Modification might also be needed in the program's policies and procedures concerning exemptions, extensions and sanctions.

Modifications might also be needed in the TANF program's policies and procedures that aid individuals in sustaining TANF program participation.

The fundamental alteration and undue burden is an exception to the requirement of providing a modification; if providing a modification would fundamentally alter the nature of the service program or activity, then the program may not be required to make the modification.

As an example, obviously, people have to apply for the program to receive TANF benefits. And, if there was some modification that an individual requested that would require the program to eliminate the application process across the board, then that might be a situation where that fundamental authorization of the program might come into play.

A TANF agency must document any fundamental alteration or undue burden and it must consider its available resources when determining whether or not in fact it is an actual undue burden.

The agency must also take another action if it determines that the one particular modification might result in undue burden, meaning that the agency must still try to take another action that

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would not result in an undue burden and that would still ensure access for that individual to the program.

It is very rare that there are instances where a request for a modification or accommodation would result in a fundamental alteration or undue burden.

Andrea Oliver: Ian is absolutely right. With respect to the fundamental alteration, that would be something that would completely change the nature of the program being offered.

I just wanted to add, with respect to the undue burden we would typically look to see if it would be an undue burden either financially or administratively in implementing the program or the actual modifications that are being requested.

Ian Shipps: This slide simply gives you an idea of some examples or samples of common, reasonable accommodations. I to quickly note the difference between an accommodation and an auxiliary aid or auxiliary service.

Sometimes these terms, “accommodations” and “auxiliary aids” are used interchangeably. But when we talk about auxiliary aids and services we are really talking about effective communication devices.

Accommodation is a broader term that is used for the modifications that a facility makes to provide accessibility.

A question that we come across somewhat frequently is whether or not a TANF agency is legally obligated to provide a reasonable modification even if it results in the state not being able to count a person with a disability in its federal work participation rate.

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And the answer to that question is yes. Section 504 and the ADA require non-discriminatory treatment of people with disabilities by TANF agencies in general.

So by focusing on what applicants and beneficiaries with disabilities need in order to move from government dependency to self-sufficiency, a TANF program can then ensure compliance with the civil rights laws that we enforce.

And, if a TANF client with a disability needs a reasonable modification and providing that modification means that the state will not be able to count the person in its federal work participation rate, then the state is still obligated to provide that reasonable modification.

An example where this might come about is if a TANF program requires a client to make 10 job contacts per week but the client only completes 7, then that particular client explains that his or her active cancer or mental illness has prevented him or her from making additional, those last 3 contacts. Perhaps, instead of initiating sanctions, the state or the program should modify the requirements to work with that person to help her or him make those additional contacts.

Another example might be if a TANF client is finding it difficult to get to work early in the morning due to side effects of HIV or AIDS medications.

Then, perhaps the program would need to work with the client to establish a modified schedule that will account for that person's side effects from those medications.

And there are some other examples that we will go through regarding some reasonable accommodations. You know, in most cases it is probably common that there would be a face-to-face interview for eligibility determinations for TANF, and it could be that a person's disability prohibits him or her from being able to physically access the facility where the TANF program is located.

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So, a reasonable accommodation might be for that program to meet with the client at a location that is accessible to that person with a mobility disability or to conduct the eligibility interview over the telephone.

Also just to note here real quick that the guidance to the regulations states that carrying an individual is not permitted as an alternative to a structural change such as a ramp or a lift. So that can't be a modification that you offer someone who has a mobility impairment.

Another example of a reasonable modification might come in the context of education and training programs in which it has instituted some time limits for completing the programs.

In such a case, a client with a learning disability might have difficulty completing the education and training program within that required timeframe. So a reasonable modification in this case might be for the program to grant an extension for that time limit if that extension would not fundamentally alter the nature of that program.

The best way is to ensure that your TANF programs ensure equal access to individuals with disabilities by providing accommodations is to just get out there and know what resources are available in your service area; and to maintain a list of the resources along with the contact information on how to get in touch with the people in the organizations who can provide those resources.

Another way might be to ensure that the service providers that you use can actually provide accommodations to individuals who have a disability.

Training your staff is huge, in our experience as far as informing them how to handle a request for an accommodation or to work with people who have disabilities.



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And another way to ensure your program provides equal access is just to monitor your policies and procedures on an ongoing basis to make sure you have appropriate screening and assessment tools that I touched on earlier.

Andrea Oliver: With respect to providing accommodation, (Ian) had touched on what the qualifications are for an individual to be covered under the ADA and 504.

Civil rights coverage is very broad for individuals with disabilities. Once a covered entity believes there are potential disabilities involved with the TANF beneficiary, you all are required to engage in the interactive process to learn what the disability is what are the major life activities that may need to be accommodated.

With respect to identifying or getting documentation of a disability, I think that with respect to the law, you can absolutely do that; but, the coverage is so broad, that we really encourage covered entities not to get caught up in determining whether this person is even eligible.

There are certain disabilities that are visible on their face; and you wouldn't need to obtain the documentation. But for those disabilities that are less visible, or are uncommon and you are unable to connect the disability to the requested accommodation that is needed, you can absolutely obtain medical documentation as to how the disability impacts a major life activity and how the accommodation would assist the individual.

Ian Shipps: So now we will talk a little bit about effective communication for individuals with a disability.

Section 504 and the ADA require TANF programs, in this case, to ensure that, communications with individuals who have disabilities are just as effective as communications with individuals who do not have a disability.

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Auxiliary aids and services include a wide range of services and devices that promote effective communication. The types of services or aids that are needed to ensure effective communication will depend on the length and complexity of the communication that may be involved or need to be involved for that particular portion of your program or a program requirement.

So the bottom line is that your TANF program's policy regarding effective communication should be developed to ensure that individuals with disabilities can effectively communicate so that they have equal access to your program and services and benefits that you provide.

TANF programs are encouraged to consider the individual's primary request. However, the program might demonstrate that another equally effective means of communication is available or that the individual's choice would result in a fundamental alteration of the nature of its services or is an undue financial or administrative burden.

An example that came to light is one that Andy and I discussed earlier; it's a case where an individual who requested a specific sign language interpreter, a specific person but the program offered to provide this individual with a qualified sign language interpreter but it wasn't the exact person that the individual requested.

In that instance, the agency or the organization that provided that interpreter even though it wasn't the specific individual that was requested, that demonstrated an equally effective means of communication. So it was fine for that organization to do just that.

It is important for - and Andy sort of alluded to this earlier - for your program to communicate and to consult with the individual not only to determine the disability that might be involved but to also get an idea of what auxiliary aids and what forms of additional modifications are effective for that particular person because that person is going to be most familiar with his or her own disability.

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They are the ones who are in the best position really to determine what type of aid or service will be most effective for him or her.

For example, some individuals who are deaf at birth use sign language as their primary form of communication and may not be very comfortable with writing - written English or using a notepad to communicate. On the other hand, you might come across some individuals who lose their hearing later in life and may not be that familiar with sign language, and they might be more comfortable and even prefer to communicate effectively through writing on a notepad.

So again, even though you might come across more than two, three, or four deaf individuals, you should communicate with them to find out what's best for their individual needs because that is essential for your programs.

Again, I want to point out that your TANF programs cannot charge for the aid that you provide. Thus, it is incumbent upon your program to notify those individuals of the availability of the aids that your program does provide.

This next slide gives you an idea of some of the auxiliary aids that are fairly common as far as assisting individuals and providing them with a means for effective communication.

Programs are not required to provide an aid if doing so again results in an undue burden. And again, if the program feels that there is an undue burden with respect to financial and/or administrative cost, then they need to make sure that they document those burdens. And the services and auxiliary aids that are required are dependent on the circumstances.

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As I mentioned in my example before, a notepad or other written writing materials might be sufficient to provide effective communication, but in other circumstances, that might not be sufficient; an interpreter or a sign language interpreter instead might be appropriate.

Some additional factors that your program might want to consider when looking into whether it should or how to provide an auxiliary aid is to look at the importance of the communication that needs to take place. Also take into account the complexity of the topic that's being discussed or that is at issue at the current moment or at the specific point in your program where the client or person is seeking services or benefits.

Also, it's useful to figure out the number of people who are involved and perhaps the length of time that the communication might take. All those factors are things your program would want to take into account when determining how best to effectively communicate with a TANF beneficiary or client.

The TANF program's obligation to provide equal access for individuals with disabilities also includes the obligation to ensure that service providers have the requisite knowledge and experience and expertise to serve beneficiaries with disabilities. It is possible that an individual with a disability may be deprived of equal access to the TANF Program if they are required to wait for services, or if they are diverted to inappropriate services.

Given that the TANF statute establishes a maximum 60-month limit on TANF benefits, it also allows the states to create more stringent limits at their choosing, then it could be that the TANF agency's failure to ensure an adequate supply of knowledgeable service providers for people with disabilities could result in their being terminated from the TANF roles without having obtained appropriate job skills or work experience necessary to move successfully from welfare to self-sufficiency. So it's really important to make sure that the people who are providing services to your beneficiaries are aware and educated on how to interact with individuals with disabilities.

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Earlier I touched briefly on a message of administration, and there are a few things listed here on the slide we will get into in more detail in subsequent slides. But these are the main things that we look at when we look to - when we are looking at TANF Programs' Methods of Administration. Again, the term Methods of Administration refers to those official written policies of the TANF Agency and to the actual practices of that program.

And so a note on the policies: they should be written clearly and describe in detail how the TANF Program will respond when working with a person who has a disability. And the policy should also be provided to the entire agency and staff that have contact or who have contact with participants with disabilities. The policies again should be incorporated into any manual, handbook or directive that sets out the programs' policies with respect to administering its program.

The state's Method of Administration should include a written assurance that the TANF organization or program will comply with their requirements regarding Federal Civil Rights' Laws. It should also name the Agency's Civil Rights Coordinator and assign Civil Rights' responsibilities, to that designated coordinator.

The state must also adopt a Non-Discrimination Statement, which it should include in a notice informing the individuals that the program is capable of providing equal access to its TANF program for individuals with disabilities.

Also the TANF program must be equipped and ready to process and receive complaints that individuals might have regarding the administration of its program, and we'll get into more detail about those complaints and the grievance procedures in the next few slides.

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Again, I just want to point out that in designing your programs' Methods of Administration, that your program should keep in mind that you'll need to conduct those individualized assessments and also give participants an effective and meaningful opportunity to participate in your program.

One part of the Methods of Administration that we touched on - we called it a Civil Rights Coordinator a second ago, but it's also referred to often as a Section 504 and/or ADA Coordinator. And so the requirement for designating this coordinator statutorily is dependent on whether the covered entity has 15 or more employees with respect to Section 504 or 50 or more employees under the ADA.

Andrea Oliver: And I wanted to add that with respect to the Methods of Administration, that is something that is required of state agencies and other entities that receive federal financial assistance, so even though vendors or other agencies that subcontract with the state to provide TANF Programs, your agencies will also be required to designate a coordinator and adopt and implement the non-discrimination notice that (Ian) talked about.

Ian Shipps: Yes and so, we would advise the states and your TANF Programs to ensure that whoever you designate as your coordinators, they are the ones who are responsible in overseeing your programs Section 504 and ADA efforts. And they should also be more familiar with requirements of the Federal Civil Rights Regulations.

Andrea Oliver: And the coordinator's identity should be disseminated to clients and beneficiaries and interested persons. The whole intent of designating a coordinator really is to assist covered entities in meeting their Section 504 obligations and addressing those at the front level.

Ian Shipps: Which brings us to the next slide about grievance procedures. So TANF Programs must adopt and publish their specific grievance procedures for the resolution of complaints of any

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action that is prohibited by the ADA or Section 504. And the intent of this requirement is to try to resolve the complaints that you receive internally and at your level.

Your programs' grievance procedures should be made available to any interested persons who feel that they might need to file a grievance. As an example, what we do here in the Office for Civil Rights, we have a 180-day time limit within which individuals must file their complaints with our office.

I'm just pointing that out as an example - that's what our time limit is. Your program does not have to have such a time limit at all. Your grievance procedures must incorporate appropriate due-process standards and provide for the prompt and equitable resolution of the complaints that you do receive.

Individuals are not required to exhaust your program's grievance process before they file a complaint with our office here at OCR. And again, you know, we would just note that if an individual chooses to file a grievance through your own grievance procedure, then it's possible that that person who filed a complaint or grievance with you would want to have you all resolve it before they file a complaint with us if they do. And we will take that into consideration when we analyze whether or not they filed a complaint within 180 days of the alleged discriminatory act.

So for example if an individual filed a complaint with your organization and they waited for you to determine, the outcome of the grievance, and it takes 175 days for you all to reach a conclusion, that individual could still file a complaint with our office a week, two weeks, three weeks later. We would just take into account that it took 175 days for the person to get an answer from you all before we say, "No, you can't file a complaint with us because you failed to meet the 180 days deadline."

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Andrea Oliver: Additionally, I would just add that TANF beneficiaries must not exhaust a covered entity grievance process before coming to the Office for Civil Rights. Obviously the intent of having a grievance procedure is to attempt to resolve the issue at the local level. However, individuals may file directly with OCR.

I just wanted to add with respect to time limits in filing complaints, that if a covered entity imposes time limits they should be reasonable. We recently received a complaint in which a covered entity was only allowing individuals five days to file a grievance through their internal process, and we had negotiations with them to extend that to 30 days in order to allow individuals sufficient time to file a complaint with the covered entity.

Ian Shipps: Moving on to this Non-Discrimination Policy Statement which again, is a part of the Methods of Administration, your TANF Program must provide information about its Non-Discrimination Policies to the public, and that of course includes applicants and current participants and beneficiaries.

The easiest way to do this is to have your programs' Non-Discrimination Policy Statement posted in a clear and prominent location or locations; plural. The notice should include the name and contact information of your program's Section 504 and ADA Coordinator. It should also make clear that the Non-Discrimination Policy is continuous and your program should also include this Non-Discrimination Policy Statement in publications that you distribute.

Simply posting the notice in your programs facility is not sufficient to satisfy this requirement. Again, you can post it in several locations in your facility and it should be posted for sure in those parts of your facility where, you know, members of the public and applicants and beneficiaries are likely to be physically located - those spots where the most traffic from the public occurs; you should definitely have those Non-Discrimination Policy Statements posted there. And again, any



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publications that you disseminate to the beneficiaries should include this Non-Discrimination Policy Statement.

That concludes our Webinar Presentation Training regarding the Civil Rights Laws that we enforce here at OCR, and specifically how those laws might interact with your TANF Programs. Here you have our contact information. Again you'll get copies of these slides made available to you so that you don't necessarily have to jot down this information right now.

Just to point out, though, on this slide, we have our website at the very bottom there, and it's got a wealth of information, not only for your TANF Programs but for perhaps other divisions in the states in which you operate that will give you better guidance on how to tailor your programs to make sure that they comply with the Federal Civil Rights Laws that we enforce here at OCR.

And again, I would point to you to specifically to the Special Topics Tab or link that we have on our Web site. And when you get to the Special Topics link you can scroll down and you'll see TANF, and again there is a wealth of information there for you all to access.

So at this point our presentation is over, and we'll open up our question-and-answer session.

Damon Waters: Thanks (Andy) and (Ian). We had a couple of previous questions that I just wanted to pose to you. The first one was, "What Civil Rights protections are in place to reduce disproportionate and disparate impacts of TANF Programs on racial, ethnic and language minorities?"

Ian Shipps: So all of the Civil Rights protection that we've touched on briefly during our presentation, are in place to ensure as much as possible that there's as little disproportionate or disparate impact of TANF programs on those ethnic and racial minorities and language minorities.

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As far as language goes, we mentioned the Limited English Proficient requirements, the 4-Factor Analysis and what a TANF Program is required to do as in providing language interpreters for Limited English Proficient individuals.

We also explained in the 4-Factor Analysis that each TANF Program is going to have different obligations with respect to providing language interpreters based on whatever geographic area they live in - based on the number of perhaps language minorities that exist in that particular location.

Those measures should make sure, to the extent possible, that those minorities aren't experiencing a disproportionate impact with regard to TANF program requirements.

Again, we obviously investigate certain complaints that we receive from individuals who do allege that they are being discriminated against based on their race, color, or national origin. And, you know, if the TANF Program isn't complying with the Federal Civil Rights' Laws as they are required to do, then at that point we will obviously look into their complaint and figure what corrective actions, if any, are necessary in that particular case.

Damon Waters: Thank you (Ian). The next question that we add is, "Are TANF programs required to assess clients for specific disabilities and offer professional diagnosis so that individuals with disabilities are identified and services coordinated accordingly?"

Ian Shipps: We discussed briefly that TANF Program must conduct individualized assessments and some of those things that the assessments are supposed to determine. There aren't any specific disabilities that the assessments need to focus on or should try to weed out, but just in general there should be a screening method in place for the TANF program to try to identify whether an individual might have a disability.

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And again, (Andy) mentioned the interactive process that should take place between a TANF applicant or beneficiary and the program to determine what accommodations, if any, would best suit that particular individual who has the disability.

As far as offering a professional diagnosis, the TANF Program is not obligated to do that. It might be necessary for - I think this is another thing that (Andy) touched on, for the program to get documentation that an individual might have a disability or in fact does have a disability. So in that case, it's not the TANF Program's responsibility to get that individual treated by a professional to provide a diagnosis.

If the person does claim to have a disability, then it would be acceptable for the program to ask the individual to provide documentation or proof that they do have a disability.

Damon Waters: Thank you (Ian). And the third question that was pre-submitted was, "Is there a specific case worker training available for TANF Programs to ensure that case workers are knowledgeable regarding the civil rights' requirements and to ensure that case workers understanding eligibility requirements and the availability of services?"

Ian Shippy: In general, OCR doesn't provide any specific social or case worker training. it's the state's responsibility to make sure that the employees who administer their TANF program are trained sufficiently to, again, interact with individuals with disabilities and to address requests for accommodations.

I again would point all of you out there to the resources available on our Web site that could perhaps be used by your states, by your programs, to put together your state-specific training that you would need, because all state TANF Programs are different.

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Based on how your program requirements work, there might need to be some specific tailoring that you do. The information on our Web site and the information that we're giving you all today is applicable across the board.

Unfortunately, there is nothing in particular that we can offer by way of case worker training. The states are required to make sure their employees and their caseworkers are educated about how to implement their programs; and, at the same time, do so in accordance with the Federal Civil Rights' Laws that we discussed today.

Damon Waters: Thank you (Ian). And there was just one last question that was just submitted. "Do you have any posters or other materials that TANF offices can use to put in their lobbies or distribute?"

Andrea Oliver: We do not have posters per se, but what we can do is - OCR has sample policies and procedures as well as notices that covered entities can adopt and utilize, and it gives language that is acceptable and meets the requirements of the Civil Rights regulations enforced by OCR. We could also include those materials for individuals to utilize as well as sample policies on developing effective communication policies for ensuring communication with LEP individuals and individuals with disabilities.

So we'll make sure we get that distributed.

Damon Waters: And we actually have one more question that came in. "Should all modifications or accommodations be recorded in the case file of the individual?"

Andrea Oliver: Absolutely. That really is the best practice; it ensures good customer service in a sense that staff who may be working with beneficiaries with disabilities will have the information documented, so they will know that accommodations are necessary. And it also shows the effort

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of the covered entity to meet their obligations under the disability laws that we enforce. Should there ever be any kind of inquiry, the covered entity will have the documentation that it did meet its obligations.

And additionally, it's another good way for covered entities to monitor their programs; to take a look at what types of clients they're seeing, what types of accommodations are being requested, and therefore they can make any types of modifications when they take a look at their programs.

Damon Waters: Thank you (Ian) and (Andy). So it doesn't seem like there are any more questions that were submitted, so I'm actually going to turn it back over to Vicky Herring and (Andy) and (Ian) to close us out.

Ian Shipps: So this is (Ian). I would just say again to all the people that attended the Webinar today, thank you very much for your attention and thanks for, being on the call and being cognizant of what your responsibilities are regarding your programs and making sure that they comply with the Federal Civil Rights' laws that we enforce at OCR.

I would reiterate that there will be a Part 2 Webinar that we will also do for you all regarding HIPAA and specifically the privacy rule and security rule within HIPAA, just so you all know that's coming in the next couple of months or two.

What else?

Andrea Oliver: I just also want to say thank you, we appreciate you taking time to join us today. We definitely value our outreach efforts because we do want covered entities to become knowledgeable of their civil rights obligations and be provided information about what their obligations are and be pro-active.

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On this slide you have our contact information. We definitely have investigators that field calls from the general public. So if you look at our website or have additional questions for us, of course you're welcome to call us - either me or (Ian) at the number there or just speak to any of our investigators.

I would also like to thank ACF for arranging this opportunity for us, and we appreciate the partnership with the regional ACF staff.

Vicky Herring: This is Vicky Herring and I want to thank (Ian) and (Andy) for doing this presentation for us, and thank everybody that is attending by the Webinar and on the phone. Thank you.

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