



DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

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April 18, 2018

Ms. Larisa Cummings
Disability Rights Education and Defense Fund
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Mr. Michael Kanotz
California Department of Social Services, Legal Division
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Sacramento, CA 95814-5512

Mr. Jared Goldman
California Department of Health Care Services
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Sacramento, CA 95899-7413

OCR Transaction Numbers: 12-14607 and, 12-148527

Dear Ms. Cummings, Mr. Kanotz, and Mr. Goldman:

The U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), has completed its investigation of the complaints filed against the State of California, Department of Social Services (CDSS), and the State of California, Department of Health Care Services (DHCS), the recipients, by the Disability Rights Education and Defense Fund (DREDF), the complainant.

Legal Authority

OCR conducted this investigation pursuant to its authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. §794, and its implementing regulations at 45 C.F.R. Part 84, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

OCR determined that it also had jurisdiction over the matter presented pursuant to Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12131-12134, and the implementing Title II regulation, 28 C.F.R. Part 35.

Further, as pertains to DHCS, OCR is responsible for enforcing Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116. Section 1557 provides that “an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) [race, color, national origin], Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) [sex], the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) [age], or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) [disability], 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 from HHS.”

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Background and Facts

Issue Presented

The complainant, on behalf of six affected parties, and other similarly situated individuals, alleged that the California Department of Social Services (CDSS) and the California Department of Health Care Services (DHCS) fail to adequately monitor the administration of public benefits for compliance with disability civil rights laws at the county level in the following programs: California Work Opportunity and Responsibility to Kids (CalWORKS); In Home Supportive Services (IHSS); Cash Assistance Program for Immigrants (CAPI); and Medi-Cal.

The complainant alleged that the State's failure to adequately monitor the administration of benefits results in, or allows, county welfare departments (CWDs) to discriminate on the basis of disability in a multitude of ways including: denying or discouraging eligible persons from obtaining benefits by a lack of, or inconsistent provision of, screening and assessment to identify disabilities; failure to advise the public that it can provide assistance through program modifications; and wrongfully sanctioning individuals, resulting in reduction or termination benefits. The complainant alleged noncompliance by all fifty eight (58) CWDs in screening, assessing, and providing program modifications for people with disabilities, noting particularly the detriment to those individuals with hidden disabilities such as learning and mental health disabilities who may not be able to, read, complete, or understand written materials, or follow program rules, without assistance.

The complainant suggested a number of remedies including: increasing the staff at the CDSS Civil Rights Bureau (CRB), the CDSS office responsible for monitoring the county agencies' civil rights compliance; train CRB staff in state and federal disability civil rights laws; modify the template used for compliance reviews to better assess workers' knowledge of disability rights; review the procedure and provision of program modifications during compliance reviews; evaluate the county Civil Rights Coordinator's (CRC) ability during the compliance review; develop and use screening tools to identify disabilities; offer assessments and reassessments of screening; and provide notices of 504 and ADA rights in a variety of formats. The complainant also noted the lack of, and importance of, a prominent indicator in the three electronic record systems used by the CWDs to easily identify beneficiaries with disabilities and the potential existence of a program accommodation for that person.

Recipient's Responses

CDSS disagreed with the allegations and responded that DREDF inferred systemic discrimination based on a handful of cases. It responded that it has policies and procedures in place to ensure civil rights compliance with both federal and state civil rights and non-discrimination laws, and it adequately monitors CWDs through a network of state civil rights consultants, county civil rights coordinators, state and county level complaint processes, state hearing processes, and civil rights audits (compliance reviews) of CWDs. It noted that all of the affected parties in the complaint did receive benefits.

CDSS provided OCR its manual of policies and procedures designed to comply with federal and state civil rights and nondiscrimination laws, as well as examples of the ongoing guidance it provides to CWDs through All County Letters (ACLs) which constitute binding directives from the State to the CWDs, and All County Notices (ACNs). CDSS noted that its guidance to the CWDs largely comes from OCR's TANF guidance on the prohibition of discrimination based on disability. CDSS replied that it provides information to all applicants of their civil rights, including the multiple avenues to seek redress, through official notifications, interactions with county workers, forms, posters, internet sites, and personal visits.

DHCS told OCR that it has a formal agreement with CDSS regarding discrimination issues in the Medi-Cal program. The agreement, through a contract for services, provides for hearings with the State Hearings Division, which conducts Medi-Cal fair hearings for DHCS, including those alleging discrimination based on disability. It responded that the agreement calls for CDSS to refer Medi-Cal discrimination complaints to the DHCS Office of Civil Rights, for investigation and follow up. Also, results of complaint investigations conducted at the county are forwarded to CDSS, and if the issue is one that DHCS is responsible for, such as Medi-Cal, CDSS sends the county complaint investigative results to DHCS for review and action.

In addition to the review of the county civil rights investigations, the DHCS Office of Civil Rights also reviews compliance review forms submitted by Medi-Cal health care providers, e.g., hospitals, care facilities, and other entities that treat Medi-Cal patients.

DHCS initially responded that it would be duplicative for DHCS to conduct a review of the same items that CDSS covers at its compliance reviews of the CWDs because the CWDs and county workers are already subject to civil rights compliance reviews by CDSS. It responded that civil rights compliance requirements for funds provided by HHS would require the same nondiscrimination notices, physical access requirements, and complaint processes across all programs. Thus, if the CWD creates a policy to meet requirements for one state department, the CWD would generally be complying with the requirements for other state departments that are provided funds from the same agency.

Since the time of its initial response, DHCS recently confirmed its obligation to nondiscrimination compliance and reported that it had undertaken, in the last year, training activities on disability rights for DHCS staff. It reported that it is currently developing structured training specifically for staff working in programs likely to be points of contact regarding accommodation requests or complaints of disability discrimination by Medi-Cal beneficiaries. It reported that it is studying the expansion of staffing with the goal of establishing a systematic compliance program. OCR encourages DHCS to continue all of these efforts.

Discussion and Analysis

Unlike the majority of States, which administer social services through a network of state offices, California, through its state agencies CDSS and DHCS, delegates the administration of its social services programs and its Medi-Cal program to California's 58 CWDs. These CWDs are independent entities at the county level. Within statutory and regulatory parameters, CWDs have flexibility in administering programs and developing best practices to meet local needs.

CWDs are audited by the CRB for civil rights compliance. Per current regulations, each CWD must designate an employee as the Civil Rights Coordinator (CRC), allocate adequate personnel and resources to implement civil rights procedures, and ensure nondiscrimination in the delivery of services at the CWD. The manner in which staffs are used to meet the requirements varies by county.

OCR's investigation included the review of materials submitted by DREDF, the responses to the allegations by CDSS and CDHCS, declarations by and interviews with legal aid attorneys, interviews with program beneficiaries, data responses from several counties, observation of a compliance review, interviews with staff at county (CWD) offices, and reviews of CDSS Compliance Reviews and Corrective Actions Plans. While OCR notes the affected parties did experience varying degrees of delays or denials, all received services.

However, while the affected parties in this complaint, and three other complaints lodged by Bay Area Legal Aid (BALA)¹ that were consolidated into this complaint, did receive benefits and services, the complaints, as well as OCR interviews and its investigation, demonstrated to OCR that procedures regarding the provision of program modifications warrant attention. OCR has concerns about the ability of CWDs to easily identify beneficiaries with disabilities and effectively track and provide agreed to accommodations. There are also concerns about the oversight of the CRC and the CRC's role at the county level, including the investigation and documentation of discrimination complaints. During an OCR interview with county staff, OCR was told that discrimination complaints are handled by the program unit, and not forwarded to the CRC. Additionally, the CDSS handbook of civil rights policies and procedures, which provides guidance to the counties, is outdated and difficult to follow. Lastly, there is no affirmative monitoring of the Medi-Cal program.

The State agencies have already begun to address, or have agreed to address, areas of concern identified by OCR. Over the course of the investigation, actions have been taken by CDSS which include some of the remedies sought by the complainant. The template used by CDSS in its compliance reviews has incorporated questions regarding disability accommodations and training. Currently all CWDs use the required OCAT appraisal/screening tool for CalWORKS program applicants or participants, which includes screening for potential learning and mental health issues and can indicate a need for an additional in-depth assessment. DHCS has begun training internally on disability rights, and is developing structured training for its staff, while seeking additional resources to build a more robust compliance program.

The State is currently in a multi-year process of moving from three automation systems (Leader, C-IV, CalWIN) to a single state system, which will be called CalACES, and will have the ability to identify people with disabilities through a prominent flag. The Leader Replacement and C-IV have the ability to display a prominent flag to identify people with disabilities. CalWIN, the final system which will be integrated, continues to use a "case note" section to identify disabilities, and/or accommodations. All counties, no matter the system in use, should be monitored to ensure the county is providing accommodations as required by law.

The State agencies have committed to additional process improvements through the following important steps:

1. CDSS will release an All County Letter (ACL), currently under review by multiple stakeholders, related to reasonable accommodations, which will also serve to notify CWDs of their obligations (as noted above, the ACL constitutes a binding directive from the State to CWDs);
2. CDSS and DHCS will document and track complaints received directly from clients, and from the CWDs. The CRB will ensure an effective, ongoing process for reviewing each CWD's compliance. CDSS will clarify appropriate reporting protocols in its regulations revisions;
3. The CRB will update the CRC training manual and provide training to counties;
4. CDSS is updating its civil rights regulations and will specifically address in the revisions complaints, grievances, case file documentation, and discrimination complaint tracking; and
5. CDSS conducted nondiscrimination training for the CRB staff on December 14, 2017.

¹ During the investigation of the DREDF complaint, OCR received additional complaints filed by Bay Area Legal Aid (BALA), against the San Francisco Human Services Agency, OCR Transaction Numbers 12-146075, 13-165452, and 14-188461, which alleged similar disability discrimination allegations (lack of or inconsistent screening and assessment of beneficiaries to identify disabilities, and inconsistent provision of reasonable accommodations), and those complaints were consolidated into the DREDF investigation. Because CDSS and DHCS oversee civil rights compliance for each of the 58 counties in California, including the City and County of San Francisco, OCR believes the resolution of the DREDF complaint will effectively resolve our compliance concerns resulting from the investigations of the BALA complaints.

Conclusions

A recipient may not, directly or through contractual, or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State. 45 C.F.R. § 84.4(b)(4).

Pursuant to regulations at 45 C.F.R. § 84.61, Section 504 incorporates the procedural provisions of Title VI, which provisions include that OCR shall "seek the cooperation of recipients in obtaining compliance ... and shall provide assistance and guidance to recipients to help them comply voluntarily..." 45 C.F.R. § 80.6(a). After investigation and review of this complaint, OCR has determined to resolve this matter based on the actions taken by CDSS and DHCS since the filing of the complaint, by actions CDSS and DHCS have committed to take going forward, and through OCR's provision of technical assistance to CDSS and DHCS regarding its obligations under Section 504 and the ADA, (and as pertains to DHCS, Section 1557). Therefore, OCR is closing this complaint without further action, effective the date of this letter.

Prohibition against Retaliation

CDSS and DHCS shall not intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, testified, assisted, or participated in the investigation of the matters addressed in this closure letter.

Disclosure of Records

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will seek to protect, to the extent provided by law, personal information which, if released, would constitute an unwarranted invasion of privacy.

Sincerely,



Michael Leoz
Regional Manager

cc: Ms. Nicole Britton Synder
Bay Area Legal Aid
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