



pennsylvania

DEPARTMENT OF HUMAN SERVICES

SPECIAL TRANSMITTAL

SUBJECT: Voluntary Resolution Agreement Requirements – Nondiscrimination Policy and Procedure

TO: County Children and Youth Social Services Agencies
Pennsylvania Children and Youth Administrators Association

FROM: Laval Miller-Wilson 
Deputy Secretary | Office of Children, Youth and Families

DATE: **December 21, 2023**

PURPOSE

The purpose of this transmittal is to provide guidance on the steps necessary for County Children and Youth Agencies (CCYAs) to comply with the Voluntary Resolution Agreement (VRA) between the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) and the Pennsylvania Department of Human Services (DHS), Office of Children, Youth, and Families (OCYF).

There are several requirements in the VRA that are being implemented in separate phases. On September 1, 2023, DHS/OCYF released a Special Transmittal addressing the Voluntary Resolution Agreement Requirements – Notices of Nondiscrimination and Grievance Procedure.

This Special Transmittal provides guidance to CCYAs to assist them in meeting the requirement of creating Nondiscrimination Policies and Procedures.

BACKGROUND

A complaint was filed against a county within the Commonwealth. The Complainant alleged they were discouraged from applying to be a foster parent because of their use of medically prescribed methadone. OCR investigated potential violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and its implementing regulation, 45 C.F.R. Part 84 (Section 504), and Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., and its implementing regulation, 28 C.F.R. Part 35 (Title II or ADA [Americans with Disabilities]). OCR's investigation identified systemic deficiencies in DHS/OCYF's oversight of CCYAs' Section 504 and Title II policies, practices, and procedures to prevent discrimination against individuals with disabilities in Pennsylvania's child welfare system.

The ADA prohibits discrimination on the basis of disability. Addiction is considered a disability under the ADA because it substantially limits one or more of an individual's major life activities. The ADA protects persons in recovery from addiction to opioids and other drugs. Under the ADA, an individual's use of prescribed medication, such as that used to treat opioid use disorder (OUD), is not considered an "illegal use of drugs" if the individual uses the medication under the supervision of a licensed health care professional, including primary care or other non-specialty providers. This includes medications for OUD or medication assisted treatment (MAT).

Under Section 504 and Title II, child welfare agencies are required to ensure that individuals with disabilities are afforded an equal opportunity to participate in and benefit from all child welfare programs, activities, and services, including those services aimed at helping children achieve permanency with relatives.

DHS/OCYF receives Title IV-E and Social Services Block Grant funding from the HHS Administration of Children and Families. As the recipient of Federal financial assistance, DHS/OCYF and its program offices are obligated to comply with Federal civil rights laws and is subject to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulations, 45 C.F.R. Part 84. Section 504 prohibits discrimination on the basis of disability in all operations of any program or activity receiving Federal financial assistance.

As a public entity providing state government services, DHS is obligated to comply with Title II of the ADA and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by state and local government agencies, including denying opportunities to benefit from services and failing to reasonably modify policies and procedures.

The VRA resolves a complaint filed by an individual with OUD, who receives MAT.

DISCUSSION

There are several requirements in the VRA that will be implemented in separate phases.

The first Special Transmittal, released on September 1, 2023, was related to the Notice of Nondiscrimination and the Grievance Procedure.

This Special Transmittal is related to the next phase of the VRA, in which, CCYAs **must** develop and implement a Nondiscrimination Policy and Procedure. OCYF encourages CCYA's to be thoughtful in their decision making regarding the creation and adoption of the Nondiscrimination Policy and Procedure. It is important for implementation of the Nondiscrimination Policy and Procedure to occur in the most effective manner for the CCYA. OCYF reminds CCYAs that it is necessary to incorporate all the points required by the VRA.

For the Nondiscrimination Policy and Procedure:

CCYAs need to decide how to implement the Nondiscrimination Policy and Procedure.

A CCYA may choose to do one of the following:

- 1) Use the provided template (Attachment A) to develop a Nondiscrimination Policy and Procedure, which must mirror the language in the template provided, **OR**
- 2) Incorporate the VRA requirements into an already existing policy held by the CCYA, ensuring that the minimum requirements (Attachment B) of the VRA are included, **OR**
- 3) Create a CCYA specific Nondiscrimination Policy and Procedure, ensuring that the minimum requirements (Attachment B) of the VRA are included.

CCYAs must submit their new or updated policy containing the minimum requirements of the VRA, to OCYF via the ADA Resource Account (RA) (RA-PWOCYF-ADARESOURSE@pa.gov). OCYF staff will verify that the content of the policy meets the language and standards requested by OCR.

- CCYAs must submit their policy to the RA by **January 17, 2024**.

CCYAs are encouraged to reach out to OCYF by emailing RA-PWOCYF-ADARESOURSE@pa.gov if there are questions. OCYF is prepared to provide support regarding the creation of the Nondiscrimination Policy and Procedure.

(Attachment A)

Nondiscrimination Policy

As a recipient of Federal financial assistance, (insert CCYA) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by (insert CCYA) directly or through a contractor or any other entity with which (insert CCYA) arranges to carry out its programs and activities. (insert CCYA) will ensure that participants with disabilities are afforded opportunities to serve as legal guardians, foster parents, and adoptive parents that are equal to the opportunities offered to participants without disabilities. (insert CCYA) will not exclude or otherwise deny equal services, programs, or activities to a participant or other individual because of their relationship or association with a participant with a disability.

As the recipient of Federal financial assistance, (insert CCYA) is obligated to comply with Federal civil rights laws and is subject to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulations, 45 C.F.R. Part 84. Section 504 prohibits discrimination on the basis of disability in all operations of any program or activity receiving Federal financial assistance.

As a public entity providing state government services, (insert CCYA) is obligated to comply with Title II of the Americans with Disabilities Act and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by state and local government agencies, including denying opportunities to benefit from services and failing to reasonably modify policies and procedures.

If you believe that (insert CCYA) has failed to provide appropriate services or discriminated in another way on the basis of race, color, national origin, age, disability, sex, sexual orientation, gender identity, religion or creed you can file a grievance by contacting:

(insert CCYA Section 504/ADA Coordinator's name/address/phone number/email address - this should be the same contact information that was approved on the CCYA's Notice of Nondiscrimination Policy)

(insert CCYA) does not discriminate on the basis of color, national origin, disability, age, sex, sexual orientation, gender identity, religion, or creed. (insert CCYA) has an internal complaint procedure providing for prompt, equitable resolution of complaints alleging discrimination. Laws and regulations protecting participants from discrimination in child welfare programs and activities may be examined by visiting the U.S. Department of Health and Human Services website at <https://www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/index.html>.

Purpose

The purpose of the Nondiscrimination Policy is to describe how (insert CCYA) follows the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA). (insert CCYA) shall not discriminate against qualified participants with disabilities on the basis of disability in its services, programs, or activities.

A “disability” is defined as a physical or mental impairment that substantially limits a major life activity, such as caring for oneself, performing manual tasks, breathing, standing, lifting, bending, speaking, walking, reading, thinking, learning, concentrating, seeing, hearing, eating, sleeping, or working. Major life activities also include the operation of major bodily functions, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, or bladder, neurological, brain, and respiratory, circulatory, endocrine, and reproductive functions.

Additionally, drug addiction and substance use disorders, including opioid use disorder (OUD), are disabilities under the ADA when they substantially limit a major life activity. These laws protect qualified individuals with drug addiction or substance use disorder that substantially limits a major life activity when: 1) individuals have successfully completed a supervised drug rehabilitation program or have otherwise been successfully rehabilitated and are not currently engaged in the illegal use of drugs; 2) individuals are participating in a supervised drug rehabilitation program and are currently not engaged in the illegal use of drugs; or 3) individuals are erroneously regarded as engaging in such use, but are not engaging in such use.

Policy

(insert CCYA) will not categorically limit or exclude qualified participants with disabilities from participating in and benefiting from child welfare programs, activities, and services, including those services aimed at helping children achieve permanency with relatives, kin and resource families. (insert CCYA) will not exclude any participant with a disability from the full and equal enjoyment of its services, programs, or activities unless the participant poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Under the ADA, a participant’s use of prescribed medication, such as those used to treat OUD, is not an “illegal use of drugs” if the participant uses the medication under the supervision of a licensed health care professional, including primary care or other non-specialty providers. This includes medications for opioid use disorder (MOUD) or medication-assisted treatment (MAT). MOUD is the use of one of three medications (methadone, buprenorphine, or naltrexone) approved by the Food and Drug Administration (FDA) for the treatment of OUD; MAT refers to the treatment of OUD and other certain substance use disorders by combining counseling and behavioral therapies

with the use of FDA-approved medications. Participation in a MAT program is not considered illegal use of drugs.

(insert CCYA) will not discourage individuals from applying or participating in a (insert CCYA) program based on unfounded discriminatory assumptions that MAT or MOUD limits their ability to participate and enjoy the benefits of the program. (insert CCYA) will not impose eligibility requirements that screen out participants with disabilities based on substance abuse disorder or the use of prescribed medication to treat substance abuse disorder.

(insert CCYA) will not categorically limit or exclude the support of reasonable modifications for qualified kinship/foster care program applicants or participants with disabilities unless (insert CCYA) can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(insert CCYA) will not place a surcharge on a particularly qualified participant with a disability or any group of qualified participants with disabilities to cover the cost of measures, such as the provision of auxiliary aids and services or program accessibility, that are necessary to provide the nondiscriminatory treatment required by Title II of the ADA and Section 504. Request for reasonable modifications must be addressed in a timely manner. Modifications provided to a participant with disabilities, must be provided in a timely manner to ensure the participant has an equal opportunity to participate in (insert CCYA) programs.

(insert CCYA) will not coerce, intimidate, threaten, interfere, or engage in other discriminatory or retaliatory conduct against anyone because they have taken an action or participated in an action to secure rights protected by Section 504 and the ADA, including making a request for reasonable modifications or auxiliary aids and services or filing a disability discrimination complaint with (insert CCYA) or OCR.

To address any violations of this Reasonable Modification Policy, consult: (insert CCYA Section 504/ADA Coordinator's contact information – the CCYA may use just an email address if they choose - this should be the same information that was approved on the CCYA's Notice of Nondiscrimination Policy)

Note: Some issues such as the decisions of the Court, cannot be addressed through the Nondiscrimination Policy. Concerns about or dissatisfactions with the decisions of the Court must be addressed through the appropriate legal channels.

Procedure

Participants with disabilities have the right, under Section 504 and Title II, to file a complaint and/or a grievance alleging discrimination on the basis of disability to (insert CCYA). Any person who believes someone has been subjected to discrimination on the

basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion, or creed may file a complaint under this procedure. It is against the law for (insert CCYA) (including employees, contracted providers or other (insert CCYA) representatives) to retaliate in any way against anyone who files a complaint or cooperates in the investigation of a complaint.

Participants do not need to reference Section 504 or Title II or use terms of art such as “reasonable modification” in order to make a request. In case of questions, or to request an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a (insert CCYA) program, service, or activity, contact: at (insert CCYA Section 504/ADA Coordinator’s contact information – the CCYA may use just an email address if they choose - this should be the same information that was approved on the CCYA’s Notice of Nondiscrimination Policy).

Complaints due to alleged discriminatory actions must be submitted to the (insert CCYA) Section 504/ADA Coordinator within sixty (60) calendar days of the date the person filing the complaint becomes aware of the alleged discriminatory action.

A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought. If the complainant requires assistance completing the complaint, they may request assistance from (insert CCYA).

The complainant may also contact the Section 504/ADA Coordinator, listed below, for more information. The complainant may make a complaint in person, by telephone, by fax, by mail, or by email. To file the complaint by mail or email, the complaint shall be sent to:

(insert CCYA Section 504/ADA Coordinator’s name/address/phone number/email address - this should be the same contact information that was approved on the CCYA’s Notice of Nondiscrimination Policy)

The Section 504/ADA Coordinator shall issue a written decision on the complaint, based on the preponderance of the evidence, no later than thirty (30) calendar days after its filing, including a notice to the complainant of their right to pursue further administrative or legal remedies. If the Section 504/ADA Coordinator documents extenuating circumstances requiring additional time to issue a decision, the Section 504/ADA Coordinator will notify the complainant and advise them of their right to pursue further administrative or legal parties at that time while the decision is pending.

The person filing the complaint may appeal the decision of the Section 504/ADA Coordinator by writing to (insert name of individual reviewing appeals – this should be the same contact information that was approved on the CCYAs Grievance Procedure) within fifteen (15) calendar days of receiving the Section 504/ADA Coordinator’s decision. (insert name of individual reviewing appeals), shall issue a written decision in response to the appeal no later than thirty (30) calendar days after its filing.

The person filing the complaint retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights (OCR), regardless of the decision made by (insert CCYA).

The availability and use of this procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in court or with the US Department of Health and Human Services, OCR. A person can file a complaint of discrimination electronically through the OCR Complaint portal at:

<https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf> or by mail or by phone at:

U.S. Department of Health & Human Services, Office for Civil Rights
200 Independence Ave., S.W. Room 509F HHH Bldg.
Washington, D.C. 20201
800-368-1019 (voice) 800-537-7697 (TDD)
OCRComplaint@hhs.gov

For complaints to the OCR, complaint forms are available at:
<https://www.hhs.gov/ocr/complaints/index.html>. Complaints shall be filed within one hundred and eighty (180) calendar days of the date of the alleged discrimination.

(Attachment B)

To comply with Section 504 of the Rehabilitation Act of 1973, CCYAs must develop or revise disability nondiscrimination policies and procedures. If a CCYA chooses to create their own policy and procedure or to update already existing policies and procedures, they must ensure that the minimum requirements of the VRA are included. The minimum requirements are listed below:

1. An explanation that drug addiction and substance use disorders, including opioid use disorder, are disabilities under Section 504 and Title II when they substantially limit a major life activity. These laws protect qualified individuals with drug addiction or substance use disorder that substantially limits a major life activity when: 1) individuals have successfully completed a supervised drug rehabilitation program or have otherwise been successfully rehabilitated and are not currently engaged in the illegal use of drugs; 2) individuals are participating in a supervised drug rehabilitation program and are currently not engaged in the illegal use of drugs; or 3) individuals are erroneously regarded as engaging in such use, but are not engaging in such use.
2. An explanation that MAT and MOUD are not the illegal use of drugs and that an individual's receipt of MAT or MOUD is not the illegal use of drugs.
3. A statement that individuals should not be discouraged from applying or denied participation in any child welfare program provided by the CCYA, or contractor based on unfounded discriminatory assumptions that MAT or MOUD limits their ability to participate and enjoy the benefits of the program. The CCYA shall not impose eligibility requirements that screen out individuals with disabilities on the basis of substance use disorder, including on the basis of receiving medication to treat substance use disorder.
4. A process for requesting reasonable modifications and auxiliary aids and services within the CCYA. The policy must make clear that an individual does not need to reference Title II, Section 504, their implementing regulations, or any provisions therein, or use any terms of art, such as "reasonable modification," to make such a request. Such policy must require that such requests be addressed by the CCYA and reasonable modifications provided to a participant with disabilities, or the request be otherwise resolved, in a timely manner to ensure that the individual has an equal opportunity to participate in any child welfare program provided by the CCYA or contractor.
5. A statement informing participants with disabilities that neither the CCYA nor the contractor will not impose a surcharge on a particular participant with a disability or any group of participants with disabilities to cover the costs of measures, such as the provision of auxiliary aids and services, reasonable modifications, or program accessibility, that are required for the CCYA or the contractor to provide such participant(s) with nondiscriminatory treatment.
6. A statement informing participants with disabilities of the right under Section 504 and Title II to file a complaint and/or a grievance alleging discrimination on the basis of disability to the CCYA, and to OCR.

7. A statement informing participants that neither the CCYA nor contractor will coerce, intimidate, threaten, interfere, or engage in other discriminatory or retaliatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by Section 504 and the ADA, including making a request for reasonable modifications or auxiliary aids and services or filing a disability discrimination complaint with the CCYA or OCR.