

U.S. Department of Health & Human Services and The Office of Civil Rights



Health and Human Services (HHS)

HHS is the U.S. government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves.

Office of Civil Rights (OCR)

OCR is HHS' civil rights and health privacy rights law enforcement agency. OCR seeks to ensure understanding of and compliance with nondiscrimination and health privacy laws. It:

- investigates complaints,
- enforces rights,
- promulgates regulations,
- develops policies,
- provides technical assistance and public education.



What laws does OCR enforce?

- Title VI of the Civil Rights Act of 1964;
- Section 504 of the Rehabilitation Act of 1973;
- Age Discrimination Act of 1975;
- Title II of the Americans with Disabilities Act;
- Titles VI and XVI of the Public Health Service Act;
- HIPAA; and
- Section 1557 of the Affordable Care Act

What is a complaint?

A written or electronic statement to HHS claiming that the rights of one or more people have been violated. A complaint asks that HHS take action to resolve the problems listed.

The complaint form may be found at

www.hhs.gov/ocr/civilrights/complaints/complaintformpackage.pdf

Complaints may be submitted via:

- Mail
- Hand-delivery
- Fax
- E-mail to *OCRcomplaint@hhs.gov*
- An e-mailed complaint is considered to be signed.

What is not a complaint?

Not all correspondence concerning an allegation of Civil Rights violation is a complaint, for example:

- Anonymous correspondence;
- Inquiries that ask for advice or information but not action or intervention;
- Courtesy copies of court pleadings;
- Courtesy copies of correspondence or of a complaint addressed to another agency;
- Newspaper articles;
- Courtesy copies of internal grievances; or
- Oral allegations, unless the complainant is a person with a disability or other special circumstances exist that prevent the person from submitting a written complaint.

Can OCR decide to investigate correspondence that is not considered to be a complaint?

If correspondence raises a concern that a covered entity may be violating the law, OCR may schedule a review of their activities or talk with local organizations to determine if further action is needed.

What types of complaints can you file with OCR?



- Intimidation
- Threats
- Coercion
- Discriminatory conduct, including clinical quality of care complaints
- Retaliation

Hypothetical of a clinical quality of care complaint.

An individual with intellectual disabilities went to the emergency room complaining of a headache, she alleges that she waited twice as long as the patients without disabilities, and as a result suffered a stroke while waiting to be seen by a doctor. OCR takes the case and investigates for discrimination because of disability.



Who can file a complaint?

A complaint can be filed by the person/people who say they have a problem or on behalf of the person/people who have a problem.

Who can you file a complaint against?

Any entity that receives federal financial assistance/grant from the Department of Health and Human Services or is covered under Title II of the Americans with Disabilities Act as a program, service, or regulatory activity relating to the provision of health care or social services.

- Doctors, Clinics, Psychologists, Dentists, Chiropractors, Nursing Homes, Pharmacies, Health insurance companies, HMOs, Company health plans, Government programs that pay for health care, such as Medicare, Medicaid, and the military and veterans health care programs

Information needed to determine if OCR can take a complaint

- A description of the alleged discriminatory action;
- A way to contact the complainant;
- Identification of the person injured;
- Identification of the entity alleged to have discriminated; and
- Sufficient information to understand the facts as the complainant sees them, leading to the discriminatory act and the basis of discrimination (i.e., race, color, national origin, disability, age, gender, religion).

How does OCR determine that it has oversight of entity or program?

- OCR has oversight of institutions that receive HHS financial assistance directly or indirectly (Title VI, Section 504, the Age Act, and Title IX);
- OCR has oversight of certain state and local government agencies, regardless of federal funding (Title II of the ADA);
- OCR has oversight of HHS operated programs (Section 504).
- Sometimes jurisdiction is shared with another agency: DOJ, EEOC, or the Architectural & Transportation Barriers Compliance Board (Access Board).

What are some HHS operated programs?

- Administration for Children and Families
- Center for Disease Control and Prevention
- ***Centers for Medicare and Medicaid Services***
- Food and Drug Administration
- Health Resources and Services Administration
- Substance Abuse and Mental Health Services Administration

Do I have to say who I am when I file a complaint?

- Sometimes in order to investigate a complaint, you **may** have to sign a “consent to reveal”, which allows OCR to say who is making the complaint. Not doing this may make the investigation impossible and the case may be closed.
- Giving your permission to reveal who you are makes it easier for OCR to get material and information, including personnel and medical records. Even without a consent to reveal, OCR has the authority to look at your records.
- If the complaint is filed by someone other than you, OCR may ask for your consent to reveal. If the person with the complaint is a minor or lacks capacity, the person making the complaint on their behalf may have to prove they have the right to do so.

Does OCR reveal the name or other information about the person making the complaint?

Generally, OCR does not reveal the identity of the person making the complaint unless it is necessary:

- For completion of an investigation;
- For enforcement activities against the entity violating the law;
- or
- Under the Freedom of Information Act or the Privacy Act.



Filing a complaint

Complaints must be filed within 180 days of the event. The filing date is usually the earlier of:

- The postmark of the complaint;
- The date the complaint is received by OCR; or
- The date the complaint is received by another agency, including the Department of Justice.

Can time for filing be extended?

Yes under certain situations.

- Whether the complainant became aware of the discrimination within the respective filing period (e.g., person with a disability does not find out that she was denied a transplant because of her disability until after the 180 days);
- The extent to which the complainant has sought or obtained relief through other administrative or legal proceedings;
- Whether actions of the covered entity contributed to the late filing;
or
- Other reasons that OCR determines sufficient to warrant an extension.

How are complaints processed?

- A complaint should be acknowledged within ten (10) calendar days by letter. The letter informs that the complaint has been received and will be evaluated for appropriate action-example of what that means.
- OCR may send consent forms for the complainant to review, sign, and return and/or combine requests for information from the complainant with the acknowledgement letter. When this is the case, complaints should be acknowledged or closed within 30 calendar days of receipt.
- If a complaint is filed without a signed consent form, a Complainant Consent Form Package, including the related privacy notification, will be sent with the acknowledgement letter. If the package is not returned within 20 calendar days the case **may** be closed.

Missing Information

If OCR believes there is information missing in your complaint they will contact you. Some typical questions asked are:

- What and when did it happen?
- Who did it?
- Was someone denied a service or benefit?
 - If yes, who was denied and what services?
- Do you believe that unlawful discrimination is the reason for the action?

If your response is not made within 20 calendar days the case will be closed.

- OCR will notify you in writing about the closure of the case.

Timeframes for the covered entity to respond

- In most cases it is 30 days from the date of the oral request or from the date of receipt of the data request letter.
- Additional time may be given based on the complexity of the issues.

Case Evaluation and Classification

- OCR staff should evaluate each case accepted for investigation in order to understand the complainant's claims and determine how to handle the complaint. The purpose of case evaluation and classification is to help OCR ensure that investigations are managed based on the urgency and specific circumstances of the case, including significance, likelihood of a violation finding, and potential impact, and that appropriate resources are dedicated based on case complexity. Case classification is an important management tool to ensure maximization of resources to achieve the most impact.

Urgency

An issue is accepted for investigation because it is time sensitive and the complainant's rights may be adversely affected without speedy OCR action.

- Example – an individual or her advocate alleges that she is not being provided an interpreter by a surgical practice in their discussions with her about the appropriate treatment for a serious condition.

National/Local Significance

- A case that:
 - Has potential for significant impact because of its special interest to a community-based organization that represents the interests of a large number of individuals;
 - Has generated significant concern in the community or among the public;
 - Involves a significant interpretation of policy affecting individuals inside or outside the case; or
 - May implicate regulations or policies of state or local government or other federal agencies.

National/Local Significance (cont'd)

An advocacy organization files multiple complaints alleging that the covered entities are discriminatorily applying an Administration for Children & Family policy.

Example:

- A person with a disability is participating in a TANF work program. Under State law, the general population participating in the program must put in 30 hrs /wk. The participant with the disability, however, can only work 15 hrs/wk. Even though state cannot count them as having served them, they still have to serve them. This would require a change in state policy to allow for an accommodation for a person with a disability.

Potential Impact

OCR tries to maximize the use of its resources by considering whether a complaint alleges individual harm or harm involving a class of people.

Example: An advocacy organization alleges that for the past two years a state TANF agency has fined clients with disabilities for missing deadlines at a higher rate than other clients.

Complexity

OCR considers:

- The number and nature of issues raised;
- Whether the investigation is likely to require significant data collection, statistical analysis or expert consultation;
- The scope of the covered entity's program and services;
or
- Whether the case is a good candidate for early resolution or a full investigation with an on-site visit.

There are four types of Evidence

- Direct Evidence
- Circumstantial Evidence
- Comparative Evidence
- Statistical Evidence



Direct Evidence

Evidence that demonstrates, without having to draw an inference, the truth of the complaint that is alleged.

Example: In an allegation of intentional discrimination, the covered entity's board meeting minutes reflect the administrator's statement that he "would not hire the complainant because he is a paraplegic."

Circumstantial Evidence

Evidence that infers the complaint is accurate because of actions taken by the entity being complained against.

Example: A nurse with a good work record and seniority is fired after complaining that people with disabilities are always made to wait longer for treatment than non-disabled individuals – this could potentially demonstrate retaliation against the nurse.

Comparative Evidence

Evidence that tends to prove that a person in a protected class was treated differently than a similarly situated member of another class.

Example: A patient living with HIV in a nursing facility is not permitted to take meals out of the dining room even though other residents without disabilities are permitted.

Statistical Evidence

A survey of a particular environment that may tend to show that similarly situated persons are treated differently because of their membership in a protected class.

Example: A home health care agency “redlines” a certain community because of “safety reasons.” Statistics show that the area is disproportionately populated by people with mental health disorders.

There are two sources of Evidence

Testimonial evidence – written or oral complaint from the complainant; employees and contractors; residents, applicants for jobs, or advocates.

Documentary evidence – written policies, notices, letters, admissions data, meeting minutes, patient records, or handwritten notes.

Standard of Proof



Preponderance of the Evidence

- When considering all the evidence fairly and impartially, enough evidence exists to create a reasonable belief that the complaint is more likely true than not true.
- The quality outweighs the quantity of the evidence.

There are three ways of settling a complaint

- Early complaint resolution;
- Letter confirming a voluntary action taken or to be taken; or
- Voluntary Resolution Agreement

Early complaint resolution

This provides parties involved quick resolution when the allegations are specific to a single injured party or group.

For example: an individual who uses sign language that is unique to the individual, family members and small group within the community, alleges that he was not provided effective communication during an office visit.

An early complaint resolution could be to use and compensate one of the people known to the individual as a qualified interpreter.

Letter confirming a voluntary action taken or to be taken

This is an action taken by a covered entity.

For example: A covered entity:

- may submit a voluntary plan of action or a letter committing itself to a specific act;
or
- could request a letter from OCR detailing compliance measures that can be taken;
or
- could submit data proving to OCR that it has taken the necessary steps to ensure compliance.

Voluntary Resolution Agreement

A resolution of a complaint before the conclusion of an investigation whether the entity offers the resolution or agrees to the resolution offered by OCR.

Example: The agency agrees to develop an ADA policy, appoint an ADA monitor and report on compliance every 6 months for the next two years.

If the case does not settle, how will I be notified of a decision?

Through a letter of findings or closing complainants will be informed of the outcome of their complaint.

Can I appeal a decision?

OCR allows an opportunity for reconsideration, but the reconsideration process is not mandated.

In the letter of findings or closing, a notice will be included informing the complainant of their opportunity to request a reconsideration.

A written request for reconsideration must be sent to OCR's Deputy Director of Civil Rights within 30 calendar days.

Region II – New York includes New Jersey,
New York, Puerto Rico, and the Virgin Islands

Regional Manager – Linda Colon
Office of Civil Rights
U.S. Department of Health and Human Services
Jacob Javits Federal Building
26 Federal Plaza, Suite 3312
New York, New York 10278
1-800-368-1019
TDD: 1-800-537-7697



For more information

If you would like more information please contact :

Lourdes I. Rosa-Carrasquillo, Esq.

Director of Advocacy

Center for Independence of the Disabled, NY (CIDNY)

80-02 Kew Gardens Road, Kew Gardens, NY 11415

Irosacarrasquillo@cidny.org

646-442-4148

VP