



BlueCare Tennessee & CoverKids Non-discrimination Compliance Information for Providers 2016



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CoverKids

Discussion Topics

- Cultural Competency in Health Care
- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Title II of the Americans with Disabilities Act of 1990
- Title III of the Americans with Disabilities Act of 1990

Cultural Competency in Health Care

Cultural competency in health care – the effective integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices and attitudes used in appropriate cultural settings to increase the quality of health care, thereby producing better health outcomes.

Culture - the sum total of values, beliefs, standards, languages, thinking patterns, behavioral norms, communication styles, etc. of a group of people, institutions or organizations that guides decisions and actions and are transmitted from one generation to another.

Cultural Knowledge - familiarization with selected cultural characteristics, history, values, belief systems and behaviors of the members of another ethnic group.

* Source: *State of Tennessee Department of Finance and Administration Training Manual*

Cultural Competency in Health Care

Cultural awareness - developing sensitivity and understanding of another ethnic group. This process involves internal changes in terms of attitudes and values. Cultural awareness also refers to the qualities of openness and flexibility that people develop in regards to others. Cultural awareness should be supplemented with cultural knowledge.

Cultural sensitivity – knowing that cultural difference, as well as similarities exists, without assigning values (i.e., better or worse, right or wrong) to those cultural differences.

Addressing cultural competence is imperative. More and more, health and human service providers must operate in cross-cultural contexts. Proper preparation is necessary to effectively prevent, identify and treat many health problems.

* Source: *State of Tennessee Department of Finance and Administration Training Manual*

Cultural Competency in Health Care

The cultures of patients and providers may be affected by:

- educational level
- income level
- geographic residence
- identification with community groups
 - i.e. religious, professional, community service, political, etc.
- individual experiences
- place of birth
- length of residency in the U.S.
- age

Cultural Competency in Health Care

Values and Attitudes

Culture shapes how people experience their world. It is a vital component of how services are both delivered and received.

Cultural competence begins with an awareness of your own cultural beliefs and practices, and recognition that people from other cultures may not share them.

This means more than speaking another language or recognizing the cultural icons of a people. It means changing prejudgments or biases you may have of a person's cultural beliefs and customs.

Cultural Competency in Health Care Continued

It is important to promote mutual respect. Cultural competence is rooted in respect, validation and openness towards someone with different social and cultural perceptions and expectations than your own. People tend to have an “ethnocentric” view in which they see their own culture as the best. Some individuals may be threatened by, or defensive about, cultural differences.

Moving toward culturally appropriate service delivery means being:

- knowledgeable about cultural differences and their impact on attitudes and behaviors;
- sensitive, understanding, non-judgmental and respectful in dealings with people whose culture is different from your own;
- flexible and skillful in responding and adapting to different cultural contexts and circumstances.

** Source: State of Tennessee Department of Finance and Administration Training Manual*

Title VI

What is Title VI?

- Federal law protecting individuals from discrimination on the basis of race, color or national origin in programs that receive federal financial assistance, such as the following:
 - Medicare
 - Medicaid
 - CoverKids
 - Public Health Services Grants/Awards
 - Loans
 - Land use
- Full text of Title VI of the Civil Rights Act of 1964 can be found online at www.justice.gov/crt/about/cor/13166.php

Title VI (Continued)

Recipients of federal financial assistance may not:

- Deny an individual a service, aid or benefit on the grounds of race, color or national origin
- Provide a benefit or service that is different, or provided in a manner that is different, from the way the service or benefit is provided to other individuals served by the recipient
- Subject an individual to segregation or separate treatment
- Use different treatment or criteria in determining an individual's eligibility for benefits, or selecting sites or locations of facilities that exclude protected individuals

Title VI (Continued)

Executive Order 13166 – “Improving Access to Services for Persons with Limited English Proficiency”

- On August 11, 2000, former President Clinton signed Executive Order 13166. This Executive Order required federally funded agencies to examine, identify, develop, and implement services for those with limited English proficiency (LEP).
- The Executive Order also requires federal agencies to take reasonable steps to ensure meaningful access to their programs by individuals with LEP and their beneficiaries.

Title VI (Continued)

How are individuals determined to have LEP?

Anyone who does not speak English as a primary language or has a limited ability to read, write, speak or understand English is considered LEP. In the case of LEP persons that are blind or deaf, under Section 504 of the Rehabilitation Act of 1973, recipients must provide equal access through auxiliary aids and services.

Language assistance must be provided to the member or the member's representative.

Title VI - Four Factor Analysis

Four Factor Analysis used in determining a provider's obligation

1. Number or proportion of LEP persons eligible to be served
2. Frequency of contact
3. Importance of service or benefit
4. Costs and resources

When utilizing the Four Factor Analysis, the organization should first attempt to determine how many LEP persons are eligible to be served, or likely to be affected by the program being offered by the organization. Useful sources may be: encounter data, Census data, school systems, state and local governments and community organizations. A hospital with a significant number of Spanish speaking patients may find it necessary to have immediate oral interpreters available. They may even consider hiring bilingual staff to assist the patients.

Title VI - Four Factor Analysis (Continued)

- Secondly, the organization should determine frequency of contact with LEP individuals. If for example, a dentist's office who encounters one Kurdish speaking patient once per month may only need to utilize a telephone interpreter service.
- Thirdly, the organization should determine the importance of the program, activity or service being offered.
 - What are the possible consequences if the program is not effectively communicated?
 - Could denial or delay of the service or information have a serious, life-threatening impact?
- Lastly, the organization should consider the cost of providing language services and examine available cost-effective resources. This will be discussed in more detail on the following slides.

Title VI - Interpreter Services

- The provider is responsible for providing interpretation services for LEP persons at the point of service free of charge. Which means that the provider is financially responsible for providing the interpreter.

Note: The **exception** to financial responsibility occurs when language assistance services are directly requested by a BlueCare Tennessee enrollee from a provider and the provider has an agreement with the enrollee's managed care organization (MCO) or behavioral health organization (BHO) to accept financial responsibility for the interpretation services.

- Providing interpretation services is vital to ensuring the client's welfare.
 - **MSN** news reports: A nurse ordered an oral antibiotic to clear up a 7-year-old's ear infection. The mother did not speak English. A bystander was asked to translate and they told the mother to pour the drug into the girl's ear instead of giving her the medication orally.

Title VI - Language Assistance Services

Ways to provide cost-effective language assistance services

- Train bilingual staff
- Utilize telephone and video conference services
- Pool resources and standardize documents
- Use qualified translators and interpreters to avoid errors
- Use qualified volunteers
- Provide language assistance in a timely manner

Title VI – Language Assistance (Continued)

When deciding to use interpreters the provider should consider the following:

- The interpreter should demonstrate proficiency in both English and the other language.
- The interpreter should demonstrate knowledge of the specialized terms or concepts associated with the services being rendered.
- Example: In a medical setting, the interpreter should be familiar with medical terminology.
- Demonstrate an understanding of the need for confidentiality and impartiality.
- Understand the role of an interpreter and not deviate to other roles.
- When it is determined that language assistance is needed, it should be provided in a timely manner. In other words, if a medical provider knows he/she has an appointment with an LEP person and language assistance will be required, the interpretation/translation service should be pre-arranged.

Title VI – Language Assistance (Continued)

When Title VI requires the provision of language assistance, providers should

- Inform the LEP person that an interpreter can be provided at no cost to them
- Not require the LEP person to bring their own interpreter
- Not rely on family members or friends of the LEP person to serve as an interpreter
- Providers should respect an LEP person's desire to use an interpreter of their own choosing instead of the free language assistance offered by the provider. However, the provider must also consider issues of competence, appropriateness, conflicts of interests and confidentiality when allowing the LEP person to use their own interpreter.
- Minor children should never be used as interpreters.

Title VI – Written Translations

- Vital written materials should be translated
- Documents considered vital depends on:
 - Importance of the program
 - Information and service involved
 - Consequences to the LEP person if information is not provided accurately or in a timely manner
- Vital written materials could include:
 - Consent forms, complaint forms, member handbooks, provider directories, newsletters, application forms and notices advising LEP persons of free language assistance.
- Non-vital materials may include:
 - General information about a program that is intended for informational purposes only, menus, third-party documents, forms or pamphlets.

Title VI - Written Translations (Continued)

Safe Harbor

- Safe Harbor stipulates all vital documents are to be translated for each LEP group of 5 percent or 1,000 (whichever is less) of the eligible population.
- When fewer than 50 persons in a language group reaches the 5 percent level of the eligible population, a provider receiving federal financial aid must provide the vital materials orally in the primary language of the group, free of charge.

Note: When translating documents, it is important to consider the reading level of the audience who will be utilizing the material.

Note: The BlueCare Tennessee website has a function that allows users to translate content into languages other than English.

Language Assistance Planning

How can you protect yourself

Design an effective language assistance plan

- Identify LEP individuals
 - Attempt to identify LEP persons and the primary language of your LEP clients by utilizing language identification cards, encounter data, posted notices and census results.
- Identify methods for language assistance
 - This would not only include determining the types of language assistance available, but also:
 - How to respond to LEP callers
 - How to respond to written communications from LEP persons
 - How to obtain the services available

Language Assistance (Continued)

- Train internal staff
 - Training staff could simply mean taking steps to ensure your staff are familiar with the LEP policies and procedures.
- Provide notice of language services
 - Ensure the LEP Plan is applicable. The LEP Plan should be reviewed periodically to ensure it is still applicable and providing meaningful access to the program services for LEP persons.
- Monitor and update plan, as needed

Language Assistance (Continued)

- Office of Civil Rights has resources and staff available to assist with compliance issues
- Establish policies and procedures
- Contact Department of Health and Human Services for guidance at [hhs.gov](https://www.hhs.gov)

Language Assistance (Continued)

- Locate organizations specializing in meeting medical needs of LEP clients

Language Line 1-800-874-9426

Institute of Foreign Language 1-615- 741-7579

AVAZA Language Services 1-866-452-6482

I Speak Flash Card

Use the “I speak” Language Identification Flash Card

- Published by the Department of Commerce Bureau of the Census, in 38 languages www.lep.gov/ISpeakCards2004.pdf
- Use to identify patients’ primary language
- Display the card for your patients

Section 504 of the Rehabilitation Act of 1973

What is Section 504?

- A national law that protects qualified individuals from discrimination based on their disability.
- The non-discrimination requirements of the law apply to employers and organizations that receive financial assistance from any federal department or agency, including the U.S. Department of Health and Human Services.
- Section 504 ensures that individuals with disabilities have the right to participate in, and have access to, program benefits and services.

Section 504 of the Rehabilitation Act of 1973 (Continued)

Who is Protected from Discrimination?

- Under this law, individuals with disabilities are defined as persons with a physical or mental impairment which substantially limits one or more major life activities.
- Major life activities include caring for yourself, walking, seeing, hearing, speaking, working, performing manual tasks, and learning.
- As it relates to employment, qualified individuals with disabilities are persons who, with reasonable accommodations, can perform the essential functions of the job they have been hired to perform.

Section 504 of the Rehabilitation Act of 1973 (Continued)

Prohibited Acts of Discrimination

- Prohibited acts of discrimination apply to the availability, accessibility and delivery of services, as well as employment and the administrative activities of organizations receiving federal financial assistance.
- Recipients of federal financial assistance may not on the basis of disability:
 - Deny qualified individuals the opportunity to participate in or benefit from federally funded programs, services or other benefits.
 - Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers.
 - Deny employment opportunities, including hiring, promotion, training and fringe benefits, for which they are otherwise entitled or qualified...

* Source: U.S. Department of Health and Human Services, Office of Civil Rights –
“Your Rights Under Section 504 of the Rehabilitation Act “

Americans with Disabilities Act (ADA)

- Title II of the law pertains to public entities and public transportation and prohibits disability discrimination by all public entities at the local and state level.
- The regulations cover access to all programs and services offered by the entity.
- Access includes both physical access as described in the ADA Standards for Accessible Design and programmatic access, which may be obstructed by discriminatory policies or procedures used by the entity.
- Accommodations may vary based on the needs of the applicant or employee with a disability and not all individuals with disabilities (or even all individuals with the same disability) will require the same accommodations.

Americans with Disabilities Act (ADA)

Title III - public accommodations (and commercial facilities)

- Under Title III, no individual may be discriminated against on the basis of disability with regards to the full and equal enjoyment of the goods, services, facilities, or accommodations of any place of "public accommodation" by any person who owns, leases, or operates a place of "public accommodation". "Public accommodations" include most places of lodging (such as inns and hotels), recreation, transportation, education, and dining, along with stores, care providers, and places of public displays.

Americans with Disabilities Act (ADA)

Title III - public accommodations (and commercial facilities)

Public accommodations must:

- Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
- Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.

Americans with Disabilities Act (ADA)

Title III - public accommodations (and commercial facilities)

Public accommodations must:

- Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the goods and services provided.
- Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

Americans with Disabilities Act (ADA)

Title III - public accommodations (and commercial facilities)

Public accommodations must:

- Remove architectural and structural communication barriers in existing facilities where readily achievable.
- Provide readily achievable alternative measures when removal of barriers is not readily achievable.
- Provide equivalent transportation services and purchase accessible vehicles in certain circumstances.
- Maintain accessible features of facilities and equipment.

Source: U.S. Department of Justice, Civil Rights Division

Discrimination Complaints

Who is Eligible to File a Complaint?

Any individual receiving services from, contracting or subcontracting with, participating in and/or employed by an agency, organization, program or institution receiving federal and/or state funding may file a complaint alleging violation of the regulations as stated in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act on 1973 and Title II of the Americans with Disabilities Act of 1990.

Discrimination Complaints (Continued)

As stipulated by the applicable laws and regulations, all complaints received alleging any form of discrimination should be thoroughly investigated and resolved.

Furthermore, no enrollee, contractor, subcontractor, grantee or employee should be subjected to any form of retaliation to include, threats, coercion, intimidation or discrimination as a result of filing a complaint, testifying, assisting or participating in an investigation, proceeding or hearing.

Filing Discrimination Complaints

Write to:

BlueCare Tennessee
Non-discrimination
Compliance Coordinator
1 Cameron Hill Circle
Chattanooga, TN 37402

Write to:

CoverKids
Non-discrimination
Compliance Coordinator
1 Cameron Hill Circle
Chattanooga, TN 37402

Filing Discrimination Complaints (continued)

Bureau of TennCare

Call the Office of Non-discrimination:

(615) 507-6474 or 1-855-286-9085

Fax (615) 253-2917

Write to:

HCFA, Office of Civil Rights Compliance

310 Great Circle Rd. Floor 4W

Nashville, TN 37243

TTY dial 711 and ask for 855-286-9085

Or email:

HCFA.Fairtreatment@tn.gov

Tennessee Human Rights Commission Title VI Compliance Program

Call toll-free: 1-800-251-3589 or (615) 741-5825

For Spanish 1-866-856-1252

Write to:

Tennessee Human Rights Commission

Title VI Compliance Program

Central Office Tennessee Tower

312 Rosa Parks Ave, 23rd Floor

Nashville, TN 37243

Fax: (615) 253-1886

www.tn.gov/humanrights

Filing Discrimination Complaints (Continued)

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

Call toll-free: 1-800-368-1019

Write to:

Director - Office of Civil Rights
U.S. Department of Human Services
200 Independence Ave., SW –Room 506 F
Washington, DC 20201
TTY/TDD: Toll-Free 1-800-537-7697

U.S. Department of Health & Human Services – Region IV Office of Civil Rights

Call: (404) 562-7859 or 800-368-1019

TTY/TDD: 800-537-7697

Write to:

U.S. DHHS / Region IV Office of Civil Rights
Sam Nunn Atlanta Federal Center Suite 16T70
61 Forsyth Street, SW
Atlanta, Georgia 30303
Fax: (404) 562-7881