

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES**

**CHAPTER 1200-8-16
CIVIL RIGHTS COMPLIANCE
RULES AND REGULATIONS**

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1200-8-16-.01 DEFINITIONS.

- (1) *Health Care Facility (Facility):* Any facility licensed under the authority of the Board for Licensing Health Care Facilities as defined in T.C.A. §68-11-102.
- (2) *Civil Rights:* Personal and individual rights guaranteed by the federal or state constitution and/or any federal or state statute.
- (3) *Commissioner:* The Commissioner of the Tennessee Department of Health or his designated representative.
- (4) *Department:* Tennessee Department of Health.
- (5) *Board:* Board for Licensing Health Care Facilities.
- (6) *Title VI:* Title VI of the Civil Rights Act of 1964, 45 C.F.R., Part 80.
- (7) *Section 504:* Section 504 of the Rehabilitation Act of 1973, 45 C.F.R., Part 84.
- (8) *Handicapped Person:* means any person who (a) has a physical or mental impairment which substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment.
- (9) *Qualified Handicapped Person:* (a) With respect to receiving services, means a handicapped person who meets the eligibility requirements for receiving services offered by the facility; (b) with respect to employment, means a handicapped person who, with reasonable accommodations, can perform the essential functions of the job in question without undue hardship to the facility. Reasonable accommodations may include: Making facilities readily accessible to and usable by handicapped persons; Providing part-time or modified work schedules; and, providing readers or interpreters. In determining whether an accommodation would result in an undue hardship on the facility, factors to be considered may include: The overall size of the facility with respect to number of employees, number and type of facilities, and size of budget; and type of facility, including the composition and structure of the facility's workforce; and, the nature and cost of the accommodation needed.
- (10) *Physical or Mental Impairment:* means (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (b) any mental or psychological disorder, such as mental retardation organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Rule 1200-8-16-.01, continued)

- (11) *Discrimination*: Any act, policy, practice, or procedure which result in different treatment based on race, color, national origin or handicapping condition that impacts negatively upon qualified handicapped individuals and others protected under Title VI of the Civil Rights Act of 1964.
- (12) *Office on Civil Rights Compliance (OCRC)*: The administrative unit established within the Tennessee Department of Health charged with the responsibility of monitoring and investigating complaints related to civil rights compliance of facilities regulated by the Board.
- (13) *Minority*. Persons who fall within the following categories: Black, not of Hispanic origin; Hispanic; American Indian; Asian or Pacific Islander.

Authority: T.C.A. §§68-1-113, 68-11-102, 68-11-203, 4-5-202, 45 C.F.R., Part 80 and 45 C.F.R., Part 84.
Administrative History: Original rule filed November 21, 1990; effective January 5, 1991.

1200-8-16-.02 REQUIREMENTS FOR CIVIL RIGHTS COMPLIANCE.

The Board for Licensing Health Care Facilities may deny, suspend, or revoke a facility's license, or otherwise discipline the facility for violations of the following requirements pursuant to T.C.A. §§68-11-207 and 68-1-113. Licensed health care facilities must comply with the following:

- (1) Shall not directly or through licensing, contractual or other arrangements, utilize criteria or methods of administering services which have the effect of subjecting individuals to discrimination on the basis of race, color, national original or handicapped condition.
- (2) Admission policies and procedures shall include measures to admit patients/residents to the facility without regard to race, color, national origin or handicapping condition.
- (3) Shall include in their operational policies and procedures manuals measures to provide all services in a nondiscriminatory manner (i.e. medical, dental, nursing, laboratory, pharmacy, skilled rehabilitative, social, volunteer, dietary and housekeeping).
- (4) Physical facilities including lounges, dining facilities, beauty and barber shops shall not be used in a segregated or discriminatory manner.
- (5) Shall include in their operational policies and procedures manuals that patients/residents are assigned to rooms, wards, floors, sections, buildings, and other areas without regard to race; color; national origin; or handicapping conditions if medically indicated,
- (6) Shall include in their operational policies and procedures manuals that a aspects of all their training programs -those operated by the facility, and those operated by other institutions within their facility for which the facility provides clinical training are conducted without discrimination, on the basis of race, color, national origin or handicapping condition.
- (7) Shall use all reasonable efforts to recruit minority and handicapped persons to training programs offered by the facility.
- (8) Shall inform all patients/residents, potential patients/residents, and the general public that admissions and services are provided on a non-discriminatory basis. This shall be accomplished by:

(Rule 1200-8-16-.02, continued)

- (a) If a facility publishes or uses brochures, pamphlets and newsletters which are designed to acquaint potential patients/residents and members of the general public with the facility's programs and services, a statement of the facility's commitment and compliance to Title VI and Section 504 must be included. All efforts to communicate to the public should convey the message that services are provided in a nondiscriminatory manner.
 - (b) Including a statement of the facility's commitment and compliance to Title VI and Section 504 on all application forms for admission and employment.
 - (c) Notifying all customary referral sources and the minority community within the service area that the facility's services and benefits are provided in a non-discriminatory manner.
 - (d) Displaying in prominent places in the facility notices indicating the Title VI and Section 504 compliance and commitment.
- (9) Shall be responsible for conveying to all staff their non-discriminatory policy and how to file a complaint under Title VI or Section 504. This shall be accomplished by providing, as part of new employee's orientation and periodic retraining of permanent employees, information regarding the obligation, intent, and meaning of Title VI and Section 504 compliance.
- (10) Those facilities with fifteen or more employees shall designate a responsible employee (Section 504 Coordinator) to coordinate its efforts to comply with Section 504 regulations.
- (11) Shall establish and adhere to an internal procedure for handling patient/resident and employee grievances. The grievance procedure shall include:
 - (a) Complainant's right to due process.
 - (b) Time frames for the review, resolution and/or findings process.
- (12) Shall ensure that the opportunity to participate as members of planning, advisory, and policy boards whose membership is opened to the public, is available in a non-discriminatory manner.
- (13) Shall develop procedures for monitoring all aspects of its operation to ensure that no policy or practice is, or has the effect of discriminating against applicants, patients/residents, employees or other participants on the basis of race, color, national origin, or handicapping condition. Each facility shall establish a system to review annually all new and existing policies to determine compliance with such policies with Title VI and Section 504.
- (14) Shall maintain and make available to the OCR for the purpose of demonstrating compliance and upon request, all data and information necessary to determine the facility's compliance with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. Such statistical data shall include racial and ethnic data showing the extent to which minority and handicapped individuals participate in the facility's services and programs.
- (15) All recruitment and employment practices shall not discriminate on the basis of race, color, national origin, handicapping condition, or have an adverse effect on the provision of services, privileges, or advantages offered to the facility's patients/residents.
- (16) Shall include in their operational policies and procedures manuals a procedure for effective communication with handicapped persons and persons with limited English proficiency for

(Rule 1200-8-16-.02, continued)

the purpose of giving notice concerning benefits, services, waiver of rights, and consent to treatment, including emergency treatment.

- (17) Shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from services provided by the facility. Auxiliary aids may include information in braille, taped material and interpreters.
- (18) Shall include in assurance of compliance with Title VI and Section 504 in all contracts with service agencies, health care providers and other health care facilities, eg. "services will be provided in a non-discriminatory manner without regard to race, color, national origin or handicapped condition."

Authority: T.C.A. §§68-1-113, 68-11-102, 68-11-203, 4-5-202, 45 C.F.R., Part 80 and 45 C.F.R., Part 84.
Administrative History: Original rule filed November 21, 1990; effective January 5, 1991.

1200-8-16-.03 MONITORING PROCEDURES.

- (1) Periodic compliance reviews.

The Office on Civil Rights Compliance shall have the authority to periodically review the practices of facilities to determine compliance with these regulations. Whenever a deficiency in compliance is cited by OCRC, a deficiency report shall be submitted to the facility. The facility shall develop and implement an acceptable plan of correction, specifying steps to correct the deficiencies and the time frame in which corrective measures will be taken. An acceptable plan of correction must be returned to OCRC no later than ten (10) days after receipt of the deficiency report, unless an extension is granted by the Director of OCRC or his/her designee. Documentation of already corrected deficiencies may be submitted with the plan of correction. The plan must be approved by the Director of OCRC, or his/her designee.

- (2) Non-Compliance Investigations.

The Office on Civil Rights Compliance shall have the authority to conduct an investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with State and federal law, and these regulations.

- (3) Complaints. Complaints involving discrimination prohibited by State and federal law may be filed with the Office on Civil Rights Compliance by the complainant or his or her representative. The identity of complainants shall be kept confidential to the extent the law permits.
- (4) Intimidatory or Retaliatory Acts Prohibited.

No health care facility shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the Board or the Department, or other agency having jurisdiction in the matter. A health care facility shall neither retaliate, nor discriminate against the complainant because of information provided to these authorities.

(Rule 1200-8-16-.04, continued)

Authority: T.C.A. §§68-1-113, 68-11-102, 68-11-203, 4-5-202, 45 C.F.R., Part 80 and 45 C.F.R., Part 84.
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1200-8-16-.04 CORRECTIVE ACTION.

If the facility has discriminated, or policies and procedures have resulted in discrimination against persons on the ground, of race, color, national origin or handicapping condition, the facility must take action that will result in correcting the deficiency or the discriminatory act.

Authority: T.C.A. §§68-1-113, 68-11-102, 68-11-203, 4-5-202, 45 C.F.R., Part 80 and 45 C.F.R., Part 84.
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