

CHAPTER 107. NONDISCRIMINATION

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Source

The provisions of this Chapter 107 amended October 19, 1979, effective November 19, 1979, 9 Pa.B. 3517, unless otherwise noted.

§ 107.1. Policy.

(a) *Legal provision.* Under the Civil Rights Act of 1964 (42 U.S.C.A. §§ 1971, 1975a—1975d, 2000a—2000a-6, 2000b—2000b-3, 2000c—2000c-9, 2000d—2000d-4, 2000e—2000e-17, 2000f, 2000g—2000g-3 and 2000h—2000h-6) discrimination in Federally assisted programs is prohibited. Notwithstanding the limited applicability of the Federal law, the provisions of this chapter apply to all categories of public assistance regardless of sources of financing. Section 601 of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000d) states:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

In addition, section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794) states:

No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

(b) *General policy.* General policy relating to nondiscrimination is as follows:

(1) The prohibition against discrimination extends to all forms of assistance, including money payments and vendor payments for medical care, social services and information and referral services.

(2) The provisions governing the administration of public assistance are, and shall continue to be, designed to assure equal rights, benefits and opportunities to persons, regardless of race, color, national origin or handicap.

§ 107.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Handicapped person—A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of an impairment or is regarded as having an impairment.

§ 107.3. Requirements.

(a) *Application.* Nondiscrimination requirements shall apply to applicants and recipients and others participating in the programs. The requirements relate not only to the activities of employees of the Department engaged in the direct administration of public assistance but also to services purchased or otherwise obtained from other agencies, organizations and institutions for public assistance clients; and to the treatment of clients in facilities in which the services are provided.

(b) *Prohibited practices of discriminatory actions.* Specifically prohibited shall be discriminatory actions which directly or indirectly:

(1) Deny an individual any aid, care, services or other benefits of the public assistance programs.

(2) Provide any aid, care, services or other benefits to an individual which are different, or are provided in a different manner, from those provided to others under the programs in the same circumstances.

(3) Subject an individual to segregation or separate treatment in any matter related to his receiving any aid, care, services or other benefits of the programs.

(4) Restrict an individual in any way in the enjoyment of an advantage or privilege enjoyed by others receiving any aid, care, services or other benefits provided under the programs.

(5) Treat an individual differently from others in determining eligibility for aid, care, services or benefits under the programs.

(6) Deny an individual the right to participate in service programs or afford him an opportunity to do so which is different from that afforded others under the program.

(c) *Nondiscriminatory requirements of Department personnel in the processing of applications.* The following requirements apply to Department personnel involved in the processing of applications:

(1) The methods employed in administering financial assistance and services are directed to enhancing and facilitating the participation of each individual applicant or recipient in the rights, benefits and opportunities available to him under the public assistance programs.

(2) Specifically prohibited are discriminatory practices because of race, color, national origin or handicap with respect to the use of physical facilities, intake and application procedures, caseload assignments, methods of determining eligibility and the amount of the grant, or entitlement to other benefits under the programs and the use of the grant and other benefits.

(3) An employee engaged in the administration of public assistance who in any way curtails, jeopardizes or infringes on the rights, benefits and opportu-

nities of an individual applicant or recipient because of his race, color, national origin or handicap will be subject to disciplinary action.

(d) *Nondiscriminatory requirements of participating agencies, institutions, organizations and vendors.* Agencies, institutions, organizations and vendors may participate in the public assistance programs only on agreement to provide care and services on behalf of recipients without discrimination on the ground of race, color, national origin or handicap and to continue compliance with this agreement. Exceptions will be made for medical emergencies, that is if it is necessary to provide immediate care or services to an individual to prevent his death or serious impairment of his health, and it is impossible for the care or services to be provided except by or through a medical institution which has refused or failed to comply with the requirements prohibiting discriminatory actions. The agencies, institutions and organizations affected by this section and the requirements for each shall be as follows:

(1) *Medical institutions.* The requirements for medical institutions shall be as follows:

(i) A medical institution shall be defined as a public or private establishment or facility organized to provide medical care, including nursing and convalescent care.

(ii) The medical institutions to which the provisions of this section apply shall be hospitals, nursing homes, geriatric centers and mental institutions, both profit and nonprofit, and public or private. To participate in the program each the medical institution shall admit persons without regard to race, color, national origin or handicap and shall provide care and treatment without discrimination based upon these factors.

(iii) Medical institutions shall be subject to the Pennsylvania Human Relations Act (43 P.S. §§ 951—963) prohibiting discrimination in “the accommodations, advantages, facilities or privileges” of the institutions because of race, color and national origin, as well as other factors. Since this statute of the Commonwealth carries enforcement authority and penalties for noncompliance, the absence of an official citation of violation is acceptable evidence for initial participation in the program that a hospital or nursing home is complying with the terms of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 1971, 1975-d, 2000a—2000a-6) and this section.

(iv) Continued compliance for assistance purposes will be certified on the invoice forms submitted by the hospitals or nursing homes for payment in behalf of public assistance recipients.

(2) *Home nursing care agencies.* A public or private nursing agency or association otherwise eligible for participation in the medical care program and providing home nursing care for assistance recipients shall comply with the regulations of the Department prohibiting discrimination on account of race, color, national origin or handicap. The nondiscriminatory requirements for home nursing care agencies shall apply to the following:

- (i) Intake policies and practices.
- (ii) The nature and extent of the care and treatment provided by the agency.
- (3) *Practitioners and vendors.* Requirements for practitioners and vendors shall be as follows:
 - (i) Practitioners and vendors participating in the Medical Assistance Program shall be subject to the regulations prohibiting discrimination on account of race, color, national origin or handicap.
 - (ii) Invoices from practitioners and vendors shall contain a certification that the practitioner or vendor does not discriminate in his practice by reason of race, color, national origin or handicap.

Cross References

This section cited in 55 Pa. Code § 107.4 (relating to procedures to assure nondiscrimination of participating agencies, institutions, organizations and vendors).

§ 107.4. Procedures to assure nondiscrimination of participating agencies, institutions, organizations and vendors.

(a) *Administrative responsibilities for assuring nondiscrimination.* The administrative responsibilities for assuring nondiscrimination will be as follows:

(1) Participating agencies, institutions, organizations and vendors shall agree to comply with the nondiscriminatory requirements in order to be eligible for participation in the public assistance programs. However, the determination that discrimination does not occur in the care of services provided public assistance applicants or recipients will be a continuing responsibility of staff.

(2) The responsibility for assuring that in fact nondiscrimination exists will be carried out by observation and inquiry by the caseworkers and other staff in the course of visits to participating facilities, or in contacts with the client or other persons in the community. If a practice is observed which may be discriminatory, it will be reported to the Executive Director for further review, and, if necessary, corrective steps. A situation which cannot be resolved by the Executive Director in a reasonable period of time by negotiation will be referred to the regional compliance officer.

(b) *Notice of requirements.* Each applicant, recipient and participating agency, institution or organization will be provided with a copy of Information Leaflet No. 12 describing the terms of the Civil Rights Act of 1964 and the protections against discrimination assured by such act.

(c) *Complaint procedures.* The following procedures shall apply to filing of complaints:

(1) Under Federal regulations, an applicant or recipient of a Federally-aided category of public assistance may file a complaint of discrimination directly with the United States Department of Human Services. The complaint shall be filed within 180 days from the date of the alleged discrimination unless

the time for filing is extended by the responsible Department official or his designee. However, the Department and the County Assistance Offices will give prompt and just consideration to complaints of discrimination made to them.

(2) The following applies to filing of complaints:

(i) An applicant or recipient who believes he has been discriminated against on the basis of race, color, national origin or handicap by the Department, or by an agency, institution, organization or vendor participating in the program, may file with the Department or the County Assistance Office a written complaint of the alleged discriminatory conditions or practices.

(ii) If the complaint alleges discrimination by staff of the county office, the appeal and fair hearing process is made available to the client in the same way as it is for any other public assistance applicant or recipient who is dissatisfied with a decision or action in respect to granting or continuing public assistance aid and services. Reference should also be made to Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(iii) If the complaint alleges discrimination by another agency or person providing public assistance care or services, the following facts shall be obtained:

(A) The reason for the belief that discrimination occurred.

(B) The specific action which the complainant believed discriminatory and the dates of occurrence.

(iv) The county office will assess the validity of the complaint and makes a full report together with recommendation for corrective action to the Regional Compliance Officer within 30 days. The Bureau of Human Services Compliance will arrange for a further investigation as may be necessary. If the allegedly offending agency or institution is supervised or licensed by the Department, such as nursing homes or hospitals, the office responsible for the supervision or licensure will be asked to make the investigation. Otherwise, the investigation will be made by appropriate staff of the Bureau of Human Services Compliance, with consultative help from interested agencies such as the Human Relations Commission.

(v) The Commissioner will submit a report of the investigation of the complaint of discrimination, and related documents together with his recommendation to the Secretary.

(vi) The Secretary, with appropriate legal consultation, will determine whether or not the agency or institution is violating the Civil Rights Act of 1964 and the regulations of the Department. If the decision of the Secretary as in the affirmative, the agency, institution or vendor will be notified in writing of the nature and extent of the violation and asked to submit either of the following within 10 days:

(A) Written assurance that corrective action has been taken or will be instituted within 90 days.

(B) A request for a hearing to show cause why the agency or institution should not be disqualified for the receipt of public assistance payments in behalf of persons eligible for the aid.

(vii) If the agency, institution, organization or vendor requests a hearing, the hearing will be held in accordance with procedures of the Department respecting 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

(viii) Copies of complaints, reports of investigation, orders for corrective action and related documents will be transmitted to the Human Relations Commission for its review and action under the anti-discrimination statutes of the Commonwealth.

(ix) The county office will be notified of the final decision on complaints.

(d) *Failure to comply with nondiscriminatory regulations.* If an agency, institution, organization or other participant fails to comply with nondiscriminatory regulations, the following shall apply:

(1) The decision that an agency, institution, organization or other participant as defined in § 107.3 (relating to requirements) is failing to comply with the Civil Rights Act of 1964 and this chapter will be made by the Secretary from evidence presented to him through direct complaints, complaints to County Assistance Offices or others, and after appropriate investigation and hearings as may be requested.

(2) If it has been decided that a participating agency or person is not complying with the requirements on nondiscrimination, the agency will be:

(i) Advised in writing of the evidence of failure to comply and the effect of continuing noncompliance on further participation in the program.

(ii) Given an opportunity to present evidence of compliance, or the steps that will be taken to comply.

(3) If an agreement to comply is not reached within a specified time, 90 days, at the most, the participant failing to comply will be notified that eligibility for participation in the program is cancelled. No further payments will be made to the vendor in behalf of public assistance recipients being provided care or services.

(e) *Records and reports.* Procedures for records and reports will be as follows:

(1) State office will maintain a card file for ready identification of complaints of violations of the Civil Rights Act of 1964 and Department regulations. As the complaint is satisfied, either by corrective action or a decision that the complaint was not justified, appropriate notation will be made on the card.

(2) The card records will be maintained for 3 years or until such time as Federal auditing purposes have been served.

(3) Correspondence relating to the complaint, its investigation and the action on it, will be maintained in readily accessible form for review purposes as may be necessary.

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