

MEDICAID PROGRAM MANUAL
TRANSMITTAL LETTER

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MEMORANDUM

TO: CUSTODIANS OF MEDICAID OPERATIONS MANUALS
FROM: JOHN A. LIVERATTI, CHIEF, COMPLIANCE
SUBJECT: MEDICAID OPERATIONS MANUAL CHANGES

MATERIAL TRANSMITTED

MTL 04/04

MANUAL 300– CIVIL RIGHTS OVERSIGHT
AND RESPONSIBILITY

MATERIAL SUPERSEDED

*N/A

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1. BACKGROUND AND EXPLANATIONS

Chapter 300 of the Medicaid Operations Manual is a new chapter that details the policies and procedures necessary for the DHCFP to fulfill its federal mandate to monitor Civil Rights compliance among Medicaid and Medicare facilities designated by the Department of Health and Human Services, Office for Civil Rights and the Centers for Medicaid and Medicare Services.

The chapter focuses on the need for designated facilities to comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age of Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990 and the Patient Self-Determination Act of 1990 (PSDA). Facilities include hospitals, nursing homes, intermediate care facilities for the mentally retarded, hospice programs and home health care agencies.

DIVISION OF HEALTH CARE FINANCING AND POLICY

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CIVIL RIGHTS OVERSIGHT RESPONSIBILITY

300 INTRODUCTION

As a recipient of federal financial assistance, the Nevada Division of Health Care Financing and Policy (DHCFP) serves as a Civil Rights oversight agency on behalf of the U.S. Department of Health and Human Services, Office for Civil Rights (OCR) and the Centers for Medicare and Medicaid Services (CMS). In this capacity, DHCFP assures that certain entities designated by OCR and CMS shall comply with specified Civil Rights laws and regulations.

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301 AUTHORITY

The DHCFP's responsibility includes oversight of the following laws and regulations.

- 301.1 Title VI of the Civil Rights Act of 1964, which mandates that no person in the United States shall, on the grounds of race, color, national origin, sex or religion, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving federal financial assistance.
- 301.2 Section 504 of the Rehabilitation Act of 1973, which mandates that no otherwise qualified disabled individual in the United States shall, solely by reason of disability (including AIDS and related conditions) be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving federal financial assistance.
- 301.3 The Age Discrimination Act of 1975, which mandates that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving federal financial assistance.
- 301.4 Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination against qualified disabled individuals in all programs, activities and services of public entities.
- 301.5 The Patient Self-Determination Act of 1990 (PSDA), which was derived from the Omnibus Reconciliation Act of 1990 (OBRA), and requires all Medicare and Medicaid hospitals, nursing facilities, home health agencies and hospices to give patients information about their right to make their own health care decisions, including the right accept or refuse medical or surgical treatment, and the right to formulate Advance Directives (Declarations and/or Durable Powers of Attorney for Health Care Decisions).

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302 APPLICABLE PROGRAMS AND SERVICES

- 302.1 Public hospitals, nursing facilities and intermediate care facilities for the mentally retarded that receive funding from Medicaid or Medicare must cooperate with the DHCFP to ensure compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990.
- 302.2 Private hospitals, nursing facilities and intermediate care facilities for the mentally retarded that receive funding from Medicaid or Medicare must cooperate with the DHCFP to ensure compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.
- 302.3 All hospitals, nursing facilities, hospice programs and home health agencies that receive funding from Medicaid or Medicare must cooperate with the DHCFP to ensure compliance with the Patient Self-Determination Act of 1990.

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303 POLICY

The DHCFP shall ensure that, at a minimum of every three years, each Nevada entity meeting the criteria listed in Section 302 (above) certifies that it is in compliance with applicable Civil Rights laws and regulations.

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304 PROCEDURAL RESPONSIBILITIES

- 304.1 The DHCFP shall require the administrator of each entity listed in Section 302 (above) to complete an appropriate Civil Rights Self-Evaluation Compliance and Certification form and, if applicable, an Advance Directives Self-Evaluation Compliance and Certification form.
- 304.2 The appropriate compliance/certification forms shall be sent via certified mail along with a cover letter explaining the DHCFP's oversight responsibility and identifying the applicable laws and regulations. The cover letter shall include the entity's name and address, list any pertinent details specific to the activity, and be signed by the Recipient Civil Rights Officer.
- 304.3 Administrators shall be required to complete, sign and return the appropriate checklist/certification form within 30 days of receipt.
- 304.4 Any deficiencies identified on the checklist/certification form must be corrected and documentation of same submitted to the DHCFP within 30 additional days, or by the date agreed to by the entity and the DHCFP.
- 304.5 Certification shall be valid for three years, unless the entity changes ownership. If a facility or agency changes ownership, a new checklist/certification form must be completed as soon as possible to ensure that compliance with Civil Rights laws and/or Advance Directives regulations is not compromised in the transition.
- 304.6 When a new entity that meets the monitoring criteria begins conducting business in Nevada (or an existing entity begins receiving Medicare or Medicaid funds), a letter and checklist/certification form shall be mailed as soon as possible.
- 304.7 Entities that do not respond to the DHCFP's initial request within 30 days shall first be reminded by telephone. If there is still no response within the revised time frame designated by the DHCFP, staff shall conduct an on-site audit using the DHCFP's Civil Rights Survey form and/or Advance Directives Survey form, as applicable.
- 304.8 The DHCFP shall train staff that visit targeted facilities or agencies to be cognizant of Civil Rights and Advance Directives standards as they conduct unrelated investigations or meet with clients. Staff shall be provided with a condensed, observation-oriented checklist (the Compliance Checklist for Civil Rights and Advance Directives) for use in the field.
- 304.9 The DHCFP shall coordinate with other agencies within the Nevada Department of Human Resources (DHR) to ensure that compliance with Civil Rights laws and Advance Directives regulations becomes a routine part of regularly scheduled surveys and assessments. These agencies include, but are not limited to, the Bureau of Licensure and Certification, the Division of Mental Health and Developmental Services and the Division for Aging Services. Staff shall be

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provided with a condensed, observation-oriented checklist (the DHCFP Compliance Check list for Civil Rights and Advance Directives) for use in the field.

304.10 Checklists completed by staff identified in Parts 304.8 and 304.9 (above) shall be returned to the DHCFP Recipient Civil Rights Officer for disposition.

304.11 The DHCFP staff shall conduct comprehensive, on-site Civil Rights and/or Advance Directives audits using the DHCFP's Civil Rights Survey form and/or Advance Directives Survey form (as applicable) if one of the following circumstances occurs.

- a. Failure of an entity to complete and submit a self-evaluation compliance/certification form within the time frame designated by the DHCFP.
- b. If deficiencies are identified during the self-evaluation, failure of an entity to complete and submit documentation of corrective action within the time frame designated by the DHCFP.
- c. Concerns are raised by various DHCFP/DHR staff that complete condensed checklists during field visits.
- d. A complaint is filed by a member of the public.

304.12 To support the entities covered under this chapter, the DHCFP shall post samples of policies, procedures, notices and documents related to Civil Rights and Advance Directives on the DHCFP website.

When necessary, the DHCFP shall report entities covered under this chapter to the appropriate federal agency (OCR or CMS) for investigation of complaints and/or resolution of issues.