



**DEPARTMENT OF HEALTH & HUMAN SERVICES**

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**OFFICE OF THE SECRETARY**

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SEP 24 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Our Reference: 02-00311 (previously 03027003)

Mr. Maurice Jones  
Commissioner  
Virginia Department of Social Services  
730 East Broad Street  
Richmond, VA 23219-1849

Dear Mr. Jones,

This letter is to advise you that the Office for Civil Rights (OCR) of the Department of Health and Human Services (DHHS) has completed its reviews of the Commonwealth of Virginia's Temporary Assistance to Nedy Families (TANF) program (referred to as the Virginia Independence Program [VIP]) as it is administered in three local offices. We notified the Department of these reviews in a letter dated March 25, 2002. The purpose of the reviews was to ensure that no disabled person is excluded from participation, denied benefits, or otherwise subjected to discrimination in the implementation of the TANF program because he or she is disabled. We had also notified you of your reviews under Title VI of the Civil Rights Act of 1964. We will notify you of the results of those reviews separately.

**Legal Authority**

The reviews were conducted under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. sections 12131-12134, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. section 794, and their respective implementing regulations found at 28 C.F.R. pt. 35 (2000) and 45 C.F.R. pt. 84 (2000). The ADA and Section 504 prohibit discrimination on the basis of disability by public entities and by recipients of Federal financial assistance, respectively.

Title II of the ADA provides that "[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. <sup>1</sup> Section 504 provides that "[n]o otherwise qualified individual with a

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<sup>1</sup> See also 28 C.F.R. § 35.130(a)

disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>2</sup>

The Virginia Department of Social Services (DSS) and local Departments of Social Services, which administer the TANF program, are both public entities and recipients of Federal financial assistance, and are, therefore covered by the above laws and regulations. While the ADA and Section 504 state the general prohibition against discrimination based on disability, the regulations set forth a number of specific requirements with which public entities and recipients must comply. The following ADA regulatory provisions are particularly relevant to our review.<sup>3</sup>

Public entities may not: “[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others” (28 C.F.R. §35.130(b)(1)(ii));<sup>4</sup> “[p]rovide a qualified individual with a disability with an aid, benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others” (28 C.F.R. § 35.130(b)(1)(iii));<sup>5</sup> “...impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program or activity, unless such criteria can be shown to be necessary for the provision of the service, program or activity being offered” (28 C.F.R. § 35.130(b)(8)); or “utilize criteria or methods of administration . . . [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability . . . [or] [t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities” (28 C.F.R. § 35.130(b)(3)).<sup>6</sup> A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity” (28 C.F.R. § 35.130(b)(7).

On August 27, 1999, OCR issued policy guidance clarifying the obligations Title II of the ADA

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<sup>2</sup> See also 45 C.F.R. § 84.4(a).

<sup>3</sup> The Section 504 regulations generally parallel the ADA regulations. We will cite the Section 504 companion provision, where one exists, for each ADA regulatory provision we discuss. The ADA regulatory standards “are generally the same as those required under Section 504 . . . . The inclusion of specific language in [the ADA regulations] . . . should not be interpreted as an indication that a requirement is not included under a regulation implementing Section 504.” 28 C.F.R. Part 35, Appendix A, p. 438 (2000).

<sup>4</sup> See also 45 C.F.R. § 84.4(b)(1)(ii).

<sup>5</sup> See also 45 C.F.R. § 84.4(b)(1)(iii).

<sup>6</sup> See also 45 C.F.R. 84.4(b)(4).

and Section 504 impose on State and local government entities conducting TANF activities. In summary, OCR views a TANF program in compliance with Section 504 and Title II of the ADA when it ensures individualized treatment and affords effective and meaningful opportunity for disabled persons. Specifically, individuals with disabilities must be afforded an opportunity to benefit from TANF programs in the same manner the TANF agency affords such opportunity to individuals who do not have disabilities. This can be accomplished through the use of individualized assessments, provision of appropriate job placement, education, skills training, employment and other TANF services.

TANF agencies must also provide reasonable accommodations, auxiliary aids and services, and communication and program accessibility, unless the agency can demonstrate that such provision would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. TANF agencies must also ensure that individuals with disabilities have access to the entire range of TANF programs and services for which they are qualified, with or without reasonable accommodation. Agencies must provide TANF programs in the most integrated setting appropriate to the needs of individuals with disabilities. Thus, agencies should take steps to ensure that individuals with disabilities can participate in all programs and services for TANF beneficiaries, not just those programs and services that are designed solely for individuals with disabilities.

### **Background**

In March 2002, OCR initiated compliance reviews of Departments of Social Services offices in the cities of Roanoke, Hampton and Richmond. The issue addressed in the reviews was whether these agencies implement appropriate policies, practices and procedures to ensure that TANF customers with disabilities are provided equal opportunities to participate in, and/or, benefit from, employment training, referral, and placement programs and activities and otherwise provided reasonable accommodations/auxiliary aids (including but not limited to modification of policies), as required under Section 504 and the ADA. These reviews were initiated as part of our routine compliance activities and not as a result of any specific complaint(s) received by this office. We gathered data through interviews with the caseworkers and supervisors, Office for Vocational Rehabilitation (OVR) caseworkers, advocates and vendors.

### **Findings of Fact**

We have organized our findings for each of the three offices under the specific issues included in the review and they are as follows:

#### **Assessment**

The TANF statute and regulations require the TANF agency to assess the “skills, prior work experience and employability” of beneficiaries. It is critical that TANF beneficiaries with disabilities receive an assessment that allows them equal opportunity to benefit from TANF programs and the assessment process. This assessment should incorporate an individualized analysis of each person’s ability to meet the program requirements and not be based on

stereotypes or assumptions about the effect of a type of a disability. TANF agencies should tell applicants and beneficiaries that, although disclosure of a disability is not required, individuals can alert the agency to a disability. At a minimum, intake workers should be able to recognize potential disabilities. If there is an initial indication that an individual has a disability that may impact his/her ability to successfully complete or benefit from a current or proposed program assignment based on applicant or beneficiary disclosure, an initial screening or other information, the TANF agency should give the individual an opportunity for a more comprehensive evaluation or assessment.

In all offices we found that persons with disabilities are initially identified by information included in their application for TANF benefits. Customers who do not have a permanent disability may be referred to the Virginia Initiative for Employment, not Welfare (VIEW) program where they receive additional assessments to determine if other disabilities or barriers to employment exist.

Each of the offices utilizes a VIEW Assessment Form to assess customers' occupational skills, education levels, job interests, supportive services and language skills. The assessments address employment history, medical information (including substance abuse issues) and service needs. There is some variation in the elements included in the assessments for each office. At the time of our reviews, we found that caseworkers were not utilizing any specialized assessment or screening tools to ascertain whether customers have learning disabilities or mental health issues such as depression or anxiety disorders. These unidentified disabilities may pose a barrier to customers in meeting their self-sufficiency goals.

#### Access for persons with physical disabilities

TANF agencies may not exclude individuals with disabilities by providing TANF services in buildings that are inaccessible to people with mobility impairments. Agencies are obligated to operate each service, program or activity so that the service, program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.<sup>7</sup> Where necessary, entities must make structural modifications to facilities to the maximum extent feasible in order to achieve program accessibility. The TANF agency is not, however, required to make structural changes in existing facilities where other methods are effective in achieving equal access.

We found there were no physical barriers to access for persons with mobility-related disabilities. The entrance to each facility was functionally accessible to persons using wheelchairs. Most of these customers are seen on the first floor, but elevator access was not a problem. In cases where a cubicle is inaccessible, the caseworker will move to a private cubicle which is accessible. Most caseworkers in each office stated that home visits are conducted for disabled customers who are unable to visit the office.

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<sup>7</sup>28 C.F.R. §35.150(a)

Access for persons with hearing or visual disabilities

TANF agencies have the obligation to ensure effective communication with individuals who have hearing, speech, or visual impairments. TANF agencies must provide such persons with auxiliary aids (including such aids as interpreters, note-takers, and materials in alternative formats) if necessary to ensure effective communication, so long as providing these aids does not cause a fundamental alteration in the TANF program or result in undue financial or administrative burdens.<sup>8</sup>

We found that the Hampton and Richmond offices meet the needs of their customers who are deaf/hard of hearing or speech impaired by providing sign-language interpreters and utilizing the relay service. However, the Roanoke office did not have procedures in place for providing these services. Staff in all offices indicated that they would read and complete the application for those customers who are visually impaired. Evidence gathered during the review indicates that two of the offices do not have a written policy on providing services to customers with sensory impairments, while caseworkers in the third office indicated that they were unaware of any written policy.

Vendors/Contractors

TANF agencies frequently use contracts and vendors in the administration of their TANF programs. Agencies should be aware that these contractual and financial relationships do not eliminate the TANF agency's responsibility to ensure that TANF beneficiaries are not subjected to disability-based discrimination, even if such discrimination is more directly the result of unlawful treatment by TANF contractors and vendors. Implementing regulations for Section 504 and Title II of the ADA state clearly that a recipient of federal funds (in the context of Section 504) or a State or local government program (in the context of the ADA), may not directly or indirectly (e.g., "through contractual or other arrangements") put into place, or allow to be into place, a system or program which has the effect of subjecting qualified individuals with a disability to discrimination on the basis of disability.<sup>9</sup>

Each of the offices has established procedures for referring customers with disabilities to a wide range of vendors/contractors that provide employment, job training, job readiness and vocational services to individuals with disabilities. These include Goodwill Industries, the Department of Rehabilitative Services and Community Services Boards. Levels of participation by TANF customers varied in each local office.

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<sup>8</sup>See 28.C.F.R. §35.160(b)(1) and 45 C.F.R. §84.52 (d)(1)and(d)(3)

<sup>9</sup>See 28 C.F.R. §35.130(b)(3) and 45 C.F.R. §84.4(b)(3)

VA Department of Social Services Initiatives

Subsequent to our on-site reviews, we received information from the Administration for Children and Families (ACF), within DHHS, regarding a number of initiatives administered by the DSS and directed to those persons who are hard to place in employment because of disabilities or other barriers to employment. These programs include the Bridges to Practice program, which is designed for persons with learning disabilities and incorporates a multiple number of community partners, including a psychologist for diagnostic evaluations. In addition, the DSS has a Substance Abuse Initiative and a Workplace Essential Skills program to address the needs of the hard to place population. Each of the offices reviewed participate in, to varying degrees, the initiatives listed above.

**Conclusion**

Based on our analysis of the information gathered during the review, we have determined that the three local offices do not exclude the participation of, deny benefits to, or otherwise discriminate against persons with disabilities. It is clear from the evidence that each entity has demonstrated its ability and commitment to serve individuals with disabilities through established working relationships with other local agencies and private vendors. However, before we make a final determination of compliance we are requesting that a series of steps be taken by the local offices with regard to the issues addressed in this review. These include;

1. Evaluate the local VIEW assessment forms being utilized to ensure that a wide range of disabilities, including learning disabilities and mental health issues, that may result in barriers to employment are identified. We understand that DSS is encouraging local agencies to utilize the Washington State Screening Tool and we have referenced that tool in our letter to the local offices. We are available to identify other instruments which may be of assistance to the local offices.
2. Conduct training for all current staff which addresses the local DSS's obligations to disabled persons under and Title II of the ADA and at orientation for new employees. We are prepared to provide assistance to the local offices in this effort.
3. Provide written notice to all customers at the time of application of his/her rights under Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. This notice should provide information regarding the services that are available to customers with disabilities to assist them in their efforts to achieve self sufficiency and encourage them to self identify so that the local agency can respond to their needs. As a sample, we have enclosed a copy of a notice, used by the state of Georgia, in our letters to each of the local offices. A copy is also enclosed for your reference.
4. Develop written policies in the Richmond and Roanoke offices which address provision of auxiliary aids for customers with disabilities, including sign language interpreter services for individuals who are deaf, hard of hearing, or speech impaired and readers and printed

materials in alternative media for customers who are visually impaired.

5. To ensure notice is given to customers, local offices should display posters offering free sign language assistance to all individuals who are hearing/speech impaired..
6. Ensure that caseworkers in the Richmond and Roanoke offices are informed of how to utilize relay services for communication with customers who are hearing/speech-impaired . Provide notice to customers indicating the availability of such services and a telephone number at which the service may be accessed.
7. Immediately inform staff in the Richmond and Roanoke offices of the policy to provide auxiliary aids to customers with disabilities and provide its written procedures for obtaining auxiliary aids, i.e., TDD (telecommunications device for the deaf) service, readers, sign-language interpreters.

We will monitor the local agencies reviewed until these steps are completed.

During our review we found no evidence that DSS has any policies, procedures or practices that would discriminate or have the effect of discriminating against TANF customers on the basis of disability. To the contrary, we found that the DSS has established initiatives to afford persons with disabilities opportunities to achieve self sufficiency. However, as the funding agency for each of these local offices, DSS is responsible to ensure that the programs administered by all local Departments of Social Services in the Commonwealth of Virginia are conducted in a manner consistent with law and regulation, including those cited above in this letter. In that regard, and prior to OCR making a final determination of DSS's compliance with the pertinent parts of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, we ask that DSS take the following steps:

1. Update and reissue Departmental policies to local offices regarding services to persons with disabilities, including those persons who are deaf/hard of hearing or visually impaired. The policy should stipulate that local agencies have policies and procedures in place to afford persons with disabilities equal access to their programs and services. This includes the provision of auxiliary aids, the use of assessment tools to afford persons with disabilities an equal opportunity to participate in the VIEW program and achieve a goal of self sufficiency. If there are centralized resources for auxiliary aids, such as interpreters for the deaf and hard of hearing, they should be identified either within the body of the policy or as an attachment.

Please provide a copy of the reissued policies within 90 days of the date of this letter. In addition, OCR is prepared to offer technical assistance as you deem necessary to any local office in order to insure their compliance with the statutes and regulations referenced above. We are available to meet with you and/or your staff to discuss this offer further.

Copies of the letters sent to each of the local agencies are enclosed for your reference. In addition

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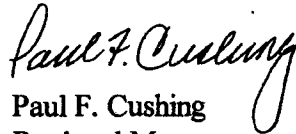
we are also enclosing copies of materials we provided to your local offices.

We wish to advise you that this review is not intended and should not be construed to cover any other issues regarding compliance of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 that may exist but were not specifically addressed during our review.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence in response to an inquiry. In the event that we receive such a request, we will make every effort to protect information, which identifies individuals, or that if released, would constitute an unwarranted invasion of privacy.

We want to express our appreciation to staff in the local offices and your office for their cooperation during the course of these reviews. If you have any questions, please feel free to contact me at 215.861.4441 or via email at [paul.cushing@hhs.gov](mailto:paul.cushing@hhs.gov)

Sincerely,

  
Paul F. Cushing  
Regional Manager

Enclosures

cc: Mary Jo Thomas, Division of Program Integrity and Review  
Lisa Pearson, ACF