Attachment A

Appropriate section of each statute and of each regulation mandating or authorizing this collection of information

1. Title VI of the Civil Rights Act of 1964
2. Section 504 of the Rehabilitation Act of 1973
3. Age Discrimination Act of 1975
4. Title II of the Americans with Disabilities Act
5. Title IX of the Education Amendments of 1972
6. Titles VI and XVI of the Public Health Service Act (Hill-Burton Community Service Assurance)
7. Section 160.306 of the Standards for Privacy of Individually Identifiable Health Information, issued under authority of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

42 U.S.C § 2000d et seq.

1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d -- prohibits discrimination on the grounds of race, color or national origin in federally assisted programs or activities (Implementing regulation can be found at 45 C.F.R. Part 80)

42 USCS § 2000d (2000)

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground 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.

42 USCS § 2000d-1 (2000)

§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 [**42 USCS § 2000d**] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

42 USCS § 2000d-2 (2000)

§ 2000d-2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 602 [**42 USCS § 2000d**-1], shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602 [**42 USCS § 2000d**-1], any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

42 USCS § 2000d-3 (2000)

§ 2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this title [42 USCS §§ 2000d-2000d-4a] shall be construed to authorize action under this title [42 USCS §§ 2000d-2000d-4a] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(Secs. 601, 602, Civil Rights Act of 1964, 78 Stat. 252 (42 U.S.C. 2000d, 2000d–1))

[29 FR 16298, Dec. 4, 1964; 29 FR 16988, Dec. 11, 1964, as amended at 38 FR 17980, 17982, July 5, 1973]

80.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

(Secs. 601, 602, Civil Rights Act of 1964, 78 Stat. 252 (42 U.S.C. 2000d, 2000d–1))

[29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

§ 80.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 80.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Secs. 601, 602, Civil Rights Act of 1964, 78 Stat. 252 (42 U.S.C. 2000d, 2000d–1))

[29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17981, 17982, July 5, 1973]

§ 80.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 80.4.* If an applicant fails or refuses to furnish an assurance required under § 80.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or

29 U.S.C. § 794

2. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 -- prohibits discrimination against otherwise qualified individuals with a disability solely on the basis of disability in federally assisted or federally conducted programs or activities (Implementing regulations can be found at 45 C.F.R. Part 84 (applicable to federally assisted programs or activities) and Part 85 (applicable to programs or activities conducted by HHS)

29 USCS § 794 (2000)

§ 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations. No otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 USCS § 706(20)], shall, solely by reason of her or his disability, 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. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined. For the purposes of this section, the term "program or activity" means all of the operations of--

(1) (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 14101 of the Elementary and Secondary Education Act of 1965 [20 USCS § 8801]), system of vocational education, or other school system;

(3) (A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers. Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of

(d) Standards used in determining violation of section. The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

recommending these policies
delines, the ICRC will consult
edical and other authorities on
nvolving disabled individuals
natologists, pediatric surgeons
and city agencies which provide
for the disabled, and disability
y organizations. It will also
with appropriate committees of
ical staff, to ensure that the
licies and guidelines build on
staff by-laws, rules and regula-
oncerning consultations and
embership requirements. The
ll also inform and educate hos-
ff on the policies and guide-
evelops.

iew of specific cases. In addi-
regularly scheduled meetings,
CRC meetings will take place
ecified circumstances to per-
ew of individual cases. The
will, to the extent possible, re-
each case that life-sustaining
t be continued, until the ICRC
w the case and provide advice.
erim ICRC meetings will be
within 24 hours (or less if in-
when there is disagreement
he family of an infant and the
physician as to the with-
r withdrawal of treatment;
reliminary decision to with-
ithdraw life-sustaining treat-
been made in certain cat-
cases identified by the ICRC;
re is disagreement between
of the hospital's medical and/
staffs, or when otherwise ap-

interim ICRC meetings will
e upon the request of any
the ICRC or hospital staff or
guardian of the infant. The
have procedures to preserve
entiality of the identity of
making such requests, and
ns shall be protected from
When appropriate, the ICRC
ated member will inform the
individual of the ICRC's rec-
on.

ICRC may provide for tele-
other forms of review when
and nature of the case, as
n policies developed by the
e the convening of an in-
ing impracticable.

(D) Interim meetings will be open to the affected parties. The ICRC will ensure that the interests of the parents, the physician, and the child are fully considered; that family members have been fully informed of the patient's condition and prognosis; that they have been provided with a listing which describes the services furnished by parent support groups and public and private agencies in the geographic vicinity to infants with conditions such as that before the ICRC; and that the ICRC will facilitate their access to such services and groups.

(E) To ensure a comprehensive evaluation of all options and factors pertinent to the committee's deliberations, the chairperson will designate one member of the ICRC to act, in connection with that specific case, as special advocate for the infant. The special advocate will seek to ensure that all considerations in favor of the provision of life-sustaining treatment are fully evaluated and considered by the ICRC.

(F) In cases in which there is disagreement on treatment between a physician and an infant's family, and the family wishes to continue life-sustaining treatment, the family's wishes will be carried out, for as long as the family wishes, unless such treatment is medically contraindicated. When there is physician/family disagreement and the family refuses consent to life-sustaining treatment, and the ICRC, after due deliberation, agrees with the family, the ICRC will recommend that the treatment be withheld. When there is physician/family disagreement and the family refuses consent, but the ICRC disagrees with the family, the ICRC will recommend to the hospital board or appropriate official that the case be referred immediately to an appropriate court or child protective agency, and every effort shall be made to continue treatment, preserve the status quo, and prevent worsening of the infant's condition until such time as the court or agency renders a decision or takes other appropriate action. The ICRC will also follow this procedure in cases in which the family and physician agree that life-sustaining treatment should be withheld or withdrawn, but the ICRC disagrees.

(iii) *Retrospective record review.* The ICRC, at its regularly-scheduled meeting, will review all records involving withholding or termination of medical or surgical treatment to infants consistent with hospital policies developed by the ICRC, unless the case was previously before the ICRC pursuant to paragraph (f)(3)(ii) of this section. If the ICRC finds that a deviation was made from the institutional policies in a given case, it shall conduct a review and report the findings to appropriate hospital personnel for appropriate action.

(4) *Records.* The ICRC will maintain records of all of its deliberations and summary descriptions of specific cases considered and the disposition of those cases. Such records will be kept in accordance with institutional policies on confidentiality of medical information. They will be made available to appropriate government agencies, or upon court order, or as otherwise required by law.

NOTE: The mandatory provisions set forth in paragraphs (b)—(e) inclusive of this section are subject to an injunction prohibiting their enforcement. In *Bowen* v. *American Hospital Association*, _____ U.S. _____, 106 S. Ct. 2101 (1986), the Supreme Court upheld the action of a United States District Court, 585 F. Supp. 541 (S.D.N.Y. 1984), declaring invalid and enjoining enforcement of provisions under this section, promulgated January 12, 1984.

(Information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 0990–0114)

[49 FR 1651, Jan. 12, 1984, as amended at 52 FR 3012, Jan. 30, 1987]

§§ 84.56–84.60 [Reserved]

Subpart G—Procedures

§ 84.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 80.6 through 80.10 and Part 81 of this Title.

[42 FR 22677, May 4, 1977; 42 FR 22888, May 5, 1977]

submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for the implementation of the plan.

§ 85.43 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, or on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157) as established in 41 CFR 101–19.600 to 101–19.607 apply to buildings covered by this section.

§§ 85.44–85.50 [Reserved]

§ 85.51 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 85.51 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity in question and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 85.52–85.60 [Reserved]

§ 85.61 Compliance procedures.

(a) Except as provided in paragraph (c) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) Responsibility for the implementation and operation of this section shall be vested in the CCR Director/Special Assistant.

(c) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and HHS Instruction 1613–3. Part 1613 requires complainants to obtain pre-complaint counseling within 30 days of the alleged discriminatory act, and to file complaints within 15 days of the close of counseling. Responsibility for the acceptance, investigation, and the rendering of decisions with respect to employment complaints is vested in the Assistant Secretary for Personnel Administration.

(d) OCR shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. OCR may extend this time for good cause.

(e) If OCR receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Federal government entity.

(f) OCR shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, OCR shall notify the complainant of the results of the investigations in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 60 days of receipt from the agency of the letter required by § 85.61(g). OCR may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the OCR Director/Special Assistant. Decisions on such appeals shall not be heard by the person who made the initial decision.

(j) OCR shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If OCR determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to a component agency or other Federal agencies, except that the authority for making the final determination may not be delegated.

[53 FR 25603, July 8, 1988; 53 FR 26559, July 13, 1988]

§ 85.62 Coordination and compliance responsibilities.

(a) Each component agency shall be primarily responsible for compliance with this part in connection with the programs and activities it conducts.

(b) The OCR Director/Special Assistant shall have the overall responsibility to coordinate implementation of this part. The OCR Director/Special Assistant shall have authority to conduct investigations, to conduct compliance reviews, and to initiate such other actions as may be necessary to facilitate and ensure effective implementation of and compliance with, this part.

(c) If as a result of an investigation or in connection with any other compliance or implementation activity, the OCR Director/Special Assistant determines that a component agency appears to be in noncompliance with its responsibilities under this part, OCR

pation in the recipient's activity on the basis of age.

ial benefits for children elderly.

ient operating a program cial benefits to the elderly en, such use of age distinc- e presumed to be necessary mal operation of the pro- ithstanding the provisions

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distinctions contained in a lation issued by HHS shall ed to be necessary to the t of a statutory objective of n to which the rule or regu- lies, notwithstanding the of § 91.13.

art C—Duties of HHS Recipients

neral responsibilities.

S recipient has primary re- y to ensure that its pro- activities are in compliance ct and these regulations, and steps to eliminate violations A recipient also has respon- maintain records, provide n, and to afford HHS access rds to the extent HHS finds to determine whether the re- in compliance with the Act regulations.

tice to subrecipients and ciaries.

e a recipient passes on Fed- cial assistance from HHS to nts, the recipient shall pro- ubrecipients written notice of igations under the Act and lations.

h recipient shall make nec- formation about the Act and ulations available to its pro- eficiaries in order to inform ut the protections against dis- on provided by the Act and lations.

§ 91.33 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HHS shall sign a written assurance as specified by HHS that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 91.41 or complaint investigation under § 91.44, HHS may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from HHS to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the HHS regulations, the recipient shall take corrective action.

§ 91.34 Information requirements.

Each recipient shall:

(a) Keep records in a form and containing information which HHS determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to HHS, upon request, information and reports which HHS determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by HHS to the books, records, accounts, and other recipient facilities and sources of information to the extent HHS determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 91.41 Compliance reviews.

(a) HHS may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. HHS may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, HHS will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, HHS will arrange for enforcement as described in § 91.46.

§ 91.42 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with HHS, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, HHS may extend this time limit.

(b) HHS will consider the date a complaint is filed to be the date upon which the complaint is sufficent to be processed.

(c) HHS will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact HHS for information and assistance regarding the complaint resolution process.

42 U.S.C. §§ 12131 - 12134

4. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 -- prohibits discrimination on the basis of disability by public entities in the provision of services, programs, and activities. HHS has been designated the responsibility to investigate complaints against State and local health care and social service agencies. (Implementing regulation can be found at 28 C.F.R. Part 35)

§ 12131. Definition

As used in this title:

(1) Public entity. The term "public entity" means--

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act [45 USCS § 502(8)]).

(2) Qualified individual with a disability. The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 USCS § 12132 (2000)

§ 12132. Discrimination

Subject to the provisions of this title, no 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 USCS § 12133 (2000)

§ 12133. Enforcement

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202 [42 USCS § 12132].

42 USCS § 12134 (2000)

§ 12134. Regulations

(a) In general. Not later than 1 year after the date of enactment of this Act [enacted July 26, 1990], the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244 [42 USCS § 12143, 12149, or 12164].

(b) Relationship to other regulations. Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) Standards. Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act [42 USCS § 12204(a)].

(c) *Complete complaints.* (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.

(2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

§ 35.172 Resolution of complaints.

(a) The designated agency shall investigate each complete complaint, attempt informal resolution, and, if resolution is not achieved, issue to the complainant and the public entity a Letter of Findings that shall include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) Notice of the rights available under paragraph (b) of this section.

(b) If the designated agency finds noncompliance, the procedures in §§ 35.173 and 35.174 shall be followed. At any time, the complainant may file a private suit pursuant to section 203 of the Act, whether or not the designated agency finds a violation.

§ 35.173 Voluntary compliance agreements.

(a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—

(1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and

(2) Initiate negotiations with the public entity to secure compliance by voluntary means.

(b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—

(1) Be in writing and signed by the parties;

(2) Address each cited violation;

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;

(4) Provide assurance that discrimination will not recur; and

(5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are

20 U.S.C. §§ 1681 - 1688

5. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 -- prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance (Implementing regulation can be found at 45 C.F.R. Part 86)

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance. Nothing contained in subsection (a) of this section shal be interpreted to require any educational institution to grant preferential or disparate treatment t the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsectio shall not be construed to prevent the consideration in any hearing or proceeding under this title o statistical evidence tending to show that such an imbalance exists with respect to the participatio in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) "Educational institution" defined. For purposes of this title an educational institution means ar public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed more than one school, college, or department which are administratively separate units, such ter means each such school, college, or department.

20 USCS § 1682 (2000)

§ 1682. Federal administrative enforcement; report to Congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 [20 USCS § 1681] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

20 USCS § 1683 (2000)

§ 1683. Judicial review

Any department or agency action taken pursuant to section 1002 [section 902] shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902 [20 USCS § 1682], any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code [5 USCS §§ 701 et seq.], and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§86.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§86.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§86.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§86.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§86.62–86.70 [Reserved]

Subpart F—Procedures [Interim]

§86.71 Interim procedures.

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80–6 through 80–11 and 45 CFR Part 81.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION[1]

A

Access to Course Offerings [43, 55, 56, 57, 58]; 86.34
Access to Schools Operated by LEA's, [44]; 86.35
Admissions, [5, 6, 30]; 86.15, 86.21

[1] Preamble paragraph numbers are in brackets [ ].

42 U.S.C. §§ 291 and 300s

6. Titles VI (42 U.S.C. § 291c) and XVI (42 U.S.C. § 300s) of the Public Health Service Act (Hill-Burton Community Service Assurance) (Facilities must make the services provided in facilities or portions thereof constructed or modernized with Federal assistance under Titles VI and XVI available to all persons residing (and, in the case of facilities assisted under Title XVI of the Act, employed), in the facility's service area without discrimination on the ground of race, color, national origin, creed, or any other ground unrelated to an individual's need for the service or the availability of the needed service in the facility) (Implementing regulation can be found at 42 C.F.R. Part 124, Subpart G)

§ 291c. General regulations

The Surgeon General, with the approval of the Federal Hospital Council and the Secretary of Health, Education, and Welfare [Secretary of Health and Human Services], shall by general regulations prescribe--

(e) State plan requirements; assurances necessary for approval of application. that the State plan shall provide for adequate hospitals, and other facilities for which aid under this part [42 USCS §§ 291a et seq.] is available, for all persons residing in the State, and adequate hospitals (and such other facilities) to furnish needed services for persons unable to pay therefor. Such regulations may also require that before approval of an application for a project is recommended by a State agency to the Surgeon General for approval under this part [42 USCS §§ 291a et seq.], assurance shall be received by the State from the applicant that (1) the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.

42 USCS § 300s (2000)

§ 300s. General regulations

The Secretary shall by regulation--

(3) prescribe the general manner in which each entity which receives financial assistance under part A or B [42 USCS §§ 300q et seq. or 300r] or has received financial assistance under part A or B [42 USCS §§ 300q et seq. or 300r] or title VI [42 USCS §§ 291 et seq.] shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

An entity subject to the requirements prescribed pursuant to paragraph (3) respecting compliance with assurances made in connection with receipt of financial assistance shall submit periodically to the Secretary data and information which reasonably supports the entity's compliance with such assurances. The Secretary may not waive the requirement of the preceding sentence.

42 USCS § 300s-1 (2000)

§ 300s-1. Medical facility project applications

(b) Form; required provisions; waiver; projects subject to requirements.

(1) An application for a medical facilities project shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall, except as provided in paragraph (2), set forth--

(K) reasonable assurance that at all times after such application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

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§ 124.604 Posted notice.

(a) The facility shall post notices, which the Secretary supplies in English and Spanish, in appropriate areas of the facility, including but not limited to the admissions area, the business office and the emergency room.

(b) If in the service area of the facility the "usual language of households" of ten percent or more of the population, according to the most recent figures published by the Bureau of the Census, is other than English or Spanish, the facility shall translate the notice into that language and post the translated notice on signs substantially similar in size and legibility to, and posted with, those supplied under paragraph (a) of this section.

(c) The facility shall make reasonable efforts to communicate the contents of the posted notice to persons who it has reason to believe cannot read the notice.

§ 124.605 Reporting and record maintenance requirements.

(a) *Reporting requirements*—(1) *Timing of reports.*(i) A facility shall submit to the Secretary a report to assist the Secretary in determining compliance with this subpart once every three fiscal years, on a schedule to be prescribed by the Secretary. The report required by this section shall be submitted not later than 90 days after the end of the fiscal year, unless a longer period is approved by the Secretary for good cause shown.

(ii) A facility shall also submit the required report whenever the Secretary determines, and so notifies the facility in writing, that a report is needed for proper administration of the program. In this situation the facility shall submit the report specified in this section for the filing of reports, within 90 days after receiving notice from the Secretary, or within 90 days after the close of the fiscal year, whichever is later.

(2) *Content of report.* The report must be submitted on a form prescribed by the Secretary and must include information that the Secretary prescribes to permit a determination of whether a facility has met its obligations under this subpart.

(3) The facility shall provide a copy of any report to the HSA for the area when submitting it to the Secretary.

(4) *Institution of suit.* Not later than 10 days after being served with a summons or complaint, the applicant shall notify the Regional Health Administrator for the Region of HHS in which it is located of any legal action brought against it alleging that it has failed to comply with the requirements of this subpart.[1]

(b) *Record maintenance requirements.* (1) A facility shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance requirements of this subpart in any fiscal year, including documents from which information required to be reported under paragraph (a) of this section was obtained. A facility shall maintain these records until 180 days following the close of the Secretary's investigation under § 124.606(a).

§ 124.606 Investigation and enforcement.

(a) *Investigations.* (1) The Secretary periodically investigates the compliance of facilities with the requirements of this subpart, and investigates complaints.

(2)(i) A complaint is filed with the Secretary on the date on which the following information is received in the Office of the Regional Health Administrator for the Region of HHS in which the facility is located:

(A) The name and address of the person making the complaint or on whose behalf the complaint is made;

(B) The name and location of the facility;

(C) The date or approximate date on which the event complained of occurred, and

[1] The addresses of the Regional Office of HHS are set out in 45 CFR 5.31.

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45 CFR Parts 160 and 164

7. Standards for Privacy of Individually Identifiable Health Information; Final Rule. This rule includes standards to protect the privacy of individually identifiable health information. The rules below, which apply to health plans, health care clearinghouses, and certain health care providers, present standards with respect to the rights of individuals who are the subjects of this information, procedures for the exercise of those rights, and the authorized and required uses and disclosures of this information.

(6) With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

Relates to the privacy of individually identifiable health information means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way.

State law means a constitution, statute, regulation, rule, common law, or other State action having the force and effect of law.

§ 160.203 General rule and exceptions.

A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:

(a) A determination is made by the Secretary under § 160.204 that the provision of State law:

(1) Is necessary:

(i) To prevent fraud and abuse related to the provision of or payment for health care;

(ii) To ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation;

(iii) For State reporting on health care delivery or costs; or

(iv) For purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or

(2) Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.

(b) The provision of State law relates to the privacy of health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.

(c) The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(d) The provision of State law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals.

§ 160.204 Process for requesting exception determinations.

(a) A request to except a provision of State law from preemption under § 160.203(a) may be submitted to the Secretary. A request by a State must be submitted through its chief elected official, or his or her designee. The request must be in writing and include the following information:

(1) The State law for which the exception is requested;

(2) The particular standard, requirement, or implementation specification for which the exception is requested;

(3) The part of the standard or other provision that will not be implemented based on the exception or the additional data to be collected based on the exception, as appropriate;

(4) How health care providers, health plans, and other entities would be affected by the exception;

(5) The reasons why the State law should not be preempted by the federal standard, requirement, or implementation specification, including how the State law meets one or more of the criteria at § 160.203(a); and

(6) Any other information the Secretary may request in order to make the determination.

(b) Requests for exception under this section must be submitted to the Secretary at an address that will be published in the **Federal Register**. Until the Secretary's determination is made, the standard, requirement, or implementation specification under this subchapter remains in effect.

(c) The Secretary's determination under this section will be made on the basis of the extent to which the information provided and other factors demonstrate that one or more of the criteria at § 160.203(a) has been met.

§ 160.205 Duration of effectiveness of exception determinations.

An exception granted under this subpart remains in effect until:

(a) Either the State law or the federal standard, requirement, or implementation specification that provided the basis for the exception is materially changed such that the ground for the exception no longer exists; or

(b) The Secretary revokes the exception, based on a determination that the ground supporting the need for the exception no longer exists.

Subpart C—Compliance and Enforcement

§ 160.300 Applicability.

This subpart applies to actions by the Secretary, covered entities, and others with respect to ascertaining the compliance by covered entities with and the enforcement of the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

§ 160.302 Definitions.

As used in this subpart, terms defined in § 164.501 of this subchapter have the same meanings given to them in that section.

§ 160.304 Principles for achieving compliance.

(a) *Cooperation.* The Secretary will, to the extent practicable, seek the cooperation of covered entities in obtaining compliance with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(b) *Assistance.* The Secretary may provide technical assistance to covered entities to help them comply voluntarily with the applicable requirements of this part 160 or the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

§ 160.306 Complaints to the Secretary.

(a) *Right to file a complaint.* A person who believes a covered entity is not complying with the applicable requirements of this part 160 or the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter may file a complaint with the Secretary.

(b) *Requirements for filing complaints.* Complaints under this section must meet the following requirements:

(1) A complaint must be filed in writing, either on paper or electronically.

(2) A complaint must name the entity that is the subject of the complaint and describe the acts or omissions believed to be in violation of the applicable requirements of this part 160 or the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(3) A complaint must be filed within 180 days of when the complainant knew or should have known that the act or omission complained of occurred, unless this time limit is waived by the Secretary for good cause shown.

(4) The Secretary may prescribe additional procedures for the filing of complaints, as well as the place and manner of filing, by notice in the **Federal Register**.

(c) *Investigation.* The Secretary may investigate complaints filed under this section. Such investigation may include a review of the pertinent policies, procedures, or practices of the covered entity and of the circumstances regarding any alleged acts or omissions concerning compliance.

§ 160.308 Compliance reviews.

The Secretary may conduct compliance reviews to determine whether covered entities are complying with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

§ 160.310 Responsibilities of covered entities.

(a) *Provide records and compliance reports.* A covered entity must keep such records and submit such compliance reports, in such time and manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to ascertain whether the covered entity has complied or is complying with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(b) *Cooperate with complaint investigations and compliance reviews.* A covered entity must cooperate with the Secretary, if the Secretary undertakes an investigation or compliance review of the policies, procedures, or practices of a covered entity to determine whether it is complying with the applicable requirements of this part 160 and the standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(c) *Permit access to information.* (1) A covered entity must permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including protected health information, that are pertinent to ascertaining compliance with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter. If the Secretary determines that exigent circumstances exist, such as when documents may be hidden or destroyed, a covered entity must permit access by the Secretary at any time and without notice.

(2) If any information required of a covered entity under this section is in the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails or refuses to furnish the information, the covered entity must so certify and set forth what efforts it has made to obtain the information.

(3) Protected health information obtained by the Secretary in connection with an investigation or compliance review under this subpart will not be disclosed by the Secretary, except if necessary for ascertaining or enforcing compliance with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter, or if otherwise required by law.

§ 160.312 Secretarial action regarding complaints and compliance reviews.

(a) *Resolution where noncompliance is indicated.* (1) If an investigation pursuant to § 160.306 or a compliance review pursuant to § 160.308 indicates a failure to comply, the Secretary will so inform the covered entity and, if the matter arose from a complaint, the complainant, in writing and attempt to resolve the matter by informal means whenever possible.

(2) If the Secretary finds the covered entity is not in compliance and determines that the matter cannot be resolved by informal means, the Secretary may issue to the covered entity and, if the matter arose from a complaint, to the complainant written findings documenting the non-compliance.

(b) *Resolution when no violation is found.* If, after an investigation or compliance review, the Secretary determines that further action is not warranted, the Secretary will so inform the covered entity and, if the matter arose from a complaint, the complainant in writing.

2. A new Part 164 is added to read as follows:

PART 164—SECURITY AND PRIVACY

Subpart A—General Provisions

Sec.
164.102 Statutory basis.
164.104 Applicability.
164.106 Relationship to other parts.

Subparts B–D—[Reserved]

Subpart E—Privacy of Individually Identifiable Health Information

164.500 Applicability.
164.501 Definitions.
164.502 Uses and disclosures of protected health information: General rules.
164.504 Uses and disclosures: Organizational requirements.
164.506 Consent for uses or disclosures to carry out treatment, payment, and health care operations.
164.508 Uses and disclosures for which an authorization is required.
164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.
164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.
164.514 Other requirements relating to uses and disclosures of protected health information.
164.520 Notice of privacy practices for protected health information.
164.522 Rights to request privacy protection for protected health information.
164.524 Access of individuals to protected health information.
164.526 Amendment of protected health information.
164.528 Accounting of disclosures of protected health information.
164.530 Administrative requirements.
164.532 Transition requirements.
164.534 Compliance dates for initial implementation of the privacy standards.

Authority: 42 U.S.C. 1320d–2 and 1320d–4, sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320(d–2(note)).

Subpart A—General Provisions

§ 164.102 Statutory basis.

The provisions of this part are adopted pursuant to the Secretary's authority to prescribe standards, requirements, and implementation standards under part C of title XI of the Act and section 264 of Public Law 104–191.

§ 164.104 Applicability.

Except as otherwise provided, the provisions of this part apply to covered entities: health plans, health care clearinghouses, and health care providers who transmit health information in electronic form in connection with any transaction referred to in section 1173(a)(1) of the Act.

§ 164.106 Relationship to other parts.

In complying with the requirements of this part, covered entities are required to comply with the applicable provisions of parts 160 and 162 of this subchapter.

Subpart B–D—[Reserved]

Subpart E—Privacy of Individually Identifiable Health Information

§ 164.500 Applicability.

(a) Except as otherwise provided herein, the standards, requirements, and

Attachment A

Appropriate section of each statute and of each regulation mandating or authorizing this collection of information

1. Title VI of the Civil Rights Act of 1964
2. Section 504 of the Rehabilitation Act of 1973
3. Age Discrimination Act of 1975
4. Title II of the Americans with Disabilities Act
5. Title IX of the Education Amendments of 1972
6. Titles VI and XVI of the Public Health Service Act (Hill-Burton Community Service Assurance)
7. Section 160.306 of the Standards for Privacy of Individually Identifiable Health Information, issued under authority of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

42 U.S.C § 2000d et seq.

1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d -- prohibits discrimination on the grounds of race, color or national origin in federally assisted programs or activities (Implementing regulation can be found at 45 C.F.R. Part 80)

42 USCS § 2000d (2000)

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground 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.

42 USCS § 2000d-1 (2000)

§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 [**42 USCS § 2000d**] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

42 USCS § 2000d-2 (2000)

§ 2000d-2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 602 [**42 USCS § 2000d-1**], shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602 [**42 USCS § 2000d-1**], any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

42 USCS § 2000d-3 (2000)

§ 2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this title [42 USCS §§ 2000d-2000d-4a] shall be construed to authorize action under this title [42 USCS §§ 2000d-2000d-4a] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

[Secs. 601, 602, Civil Rights Act of 1964, 78 Stat. 252 (42 U.S.C. 2000d, 2000d–1))

[29 FR 16298, Dec. 4, 1964; 29 FR 16988, Dec. 11, 1964, as amended at 38 FR 17980, 17982, July 5, 1973]

80.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

(Secs. 601, 602, Civil Rights Act of 1964, 78 Stat. 252 (42 U.S.C. 2000d, 2000d–1))

[29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

§ 80.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 80.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Secs. 601, 602, Civil Rights Act of 1964, 78 Stat. 252 (42 U.S.C. 2000d, 2000d–1))

[29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17981, 17982, July 5, 1973]

§ 80.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 80.4.* If an applicant fails or refuses to furnish an assurance required under § 80.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or

29 U.S.C. § 794

2. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 -- prohibits discrimination against otherwise qualified individuals with a disability solely on the basis of disability in federally assisted or federally conducted programs or activities (Implementing regulations can be found at 45 C.F.R. Part 84 (applicable to federally assisted programs or activities) and Part 85 (applicable to programs or activities conducted by HHS)

29 USCS § 794 (2000)

§ 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations. No otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 USCS § 706(20)], shall, solely by reason of her or his disability, 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. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined. For the purposes of this section, the term "program or activity" means all of the operations of--

(1) (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 14101 of the Elementary and Secondary Education Act of 1965 [20 USCS § 8801]), system of vocational education, or other school system;

(3) (A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers. Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of

(d) Standards used in determining violation of section. The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

(D) Interim meetings will be open to the affected parties. The ICRC will ensure that the interests of the parents, the physician, and the child are fully considered; that family members have been fully informed of the patient's condition and prognosis; that they have been provided with a listing which describes the services furnished by parent support groups and public and private agencies in the geographic vicinity to infants with conditions such as that before the ICRC; and that the ICRC will facilitate their access to such services and groups.

(E) To ensure a comprehensive evaluation of all options and factors pertinent to the committee's deliberations, the chairperson will designate one member of the ICRC to act, in connection with that specific case, as special advocate for the infant. The special advocate will seek to ensure that all considerations in favor of the provision of life-sustaining treatment are fully evaluated and considered by the ICRC.

(F) In cases in which there is disagreement on treatment between a physician and an infant's family, and the family wishes to continue life-sustaining treatment, the family's wishes will be carried out, for as long as the family wishes, unless such treatment is medically contraindicated. When there is physician/family disagreement and the family refuses consent to life-sustaining treatment, and the ICRC, after due deliberation, agrees with the family, the ICRC will recommend that the treatment be withheld. When there is physician/family disagreement and the family refuses consent, but the ICRC disagrees with the family, the ICRC will recommend to the hospital board or appropriate official that the case be referred immediately to an appropriate court or child protective agency, and every effort shall be made to continue treatment, preserve the status quo, and prevent worsening of the infant's condition until such time as the court or agency renders a decision or takes other appropriate action. The ICRC will also follow this procedure in cases in which the family and physician agree that life-sustaining treatment should be withheld or withdrawn, but the ICRC disagrees.

(iii) *Retrospective record review.* The ICRC, at its regularly-scheduled meeting, will review all records involving withholding or termination of medical or surgical treatment to infants consistent with hospital policies developed by the ICRC, unless the case was previously before the ICRC pursuant to paragraph (f)(3)(ii) of this section. If the ICRC finds that a deviation was made from the institutional policies in a given case, it shall conduct a review and report the findings to appropriate hospital personnel for appropriate action.

(4) *Records.* The ICRC will maintain records of all of its deliberations and summary descriptions of specific cases considered and the disposition of those cases. Such records will be kept in accordance with institutional policies on confidentiality of medical information. They will be made available to appropriate government agencies, or upon court order, or as otherwise required by law.

NOTE: The mandatory provisions set forth in paragraphs (b)—(e) inclusive of this section are subject to an injunction prohibiting their enforcement. In *Bowen* v. *American Hospital Association*, _____ U.S. _____, 106 S. Ct. 2101 (1986), the Supreme Court upheld the action of a United States District Court, 585 F. Supp. 541 (S.D.N.Y. 1984), declaring invalid and enjoining enforcement of provisions under this section, promulgated January 12, 1984.

(Information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 0990–0114)

[49 FR 1651, Jan. 12, 1984, as amended at 52 FR 3012, Jan. 30, 1987]

§§ 84.56–84.60 [Reserved]

Subpart G—Procedures

§ 84.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 80.6 through 80.10 and Part 81 of this Title.

[42 FR 22677, May 4, 1977; 42 FR 22888, May 5, 1977]

submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for the implementation of the plan.

§ 85.43 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, or on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157) as established in 41 CFR 101–19.600 to 101–19.607 apply to buildings covered by this section.

§§ 85.44–85.50 [Reserved]

§ 85.51 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 85.51 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity in question and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 85.52–85.60 [Reserved]

§ 85.61 Compliance procedures.

(a) Except as provided in paragraph (c) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) Responsibility for the implementation and operation of this section shall be vested in the CCR Director/Special Assistant.

(c) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and HHS Instruction 1613–3. Part 1613 requires complainants to obtain pre-complaint counseling within 30 days of the alleged discriminatory act, and to file complaints within 15 days of the close of counseling. Responsibility for the acceptance, investigation, and the rendering of decisions with respect to employment complaints is vested in the Assistant Secretary for Personnel Administration.

(d) OCR shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. OCR may extend this time for good cause.

(e) If OCR receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Federal government entity.

(f) OCR shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, OCR shall notify the complainant of the results of the investigations in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 60 days of receipt from the agency of the letter required by § 85.61(g). OCR may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the OCR Director/Special Assistant. Decisions on such appeals shall not be heard by the person who made the initial decision.

(j) OCR shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If OCR determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to a component agency or other Federal agencies, except that the authority for making the final determination may not be delegated.

[53 FR 25603, July 8, 1988; 53 FR 26559, July 13, 1988]

§ 85.62 Coordination and compliance responsibilities.

(a) Each component agency shall be primarily responsible for compliance with this part in connection with the programs and activities it conducts.

(b) The OCR Director/Special Assistant shall have the overall responsibility to coordinate implementation of this part. The OCR Director/Special Assistant shall have authority to conduct investigations, to conduct compliance reviews, and to initiate such other actions as may be necessary to facilitate and ensure effective implementation of and compliance with, this part.

(c) If as a result of an investigation or in connection with any other compliance or implementation activity, the OCR Director/Special Assistant determines that a component agency appears to be in noncompliance with its responsibilities under this part, OCR

42 U.S.C. §§ 6101 - 6106

3. Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 -- prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance (Implementing regulation can be found at 45 C.F.R. Part 91)

§ 6101. Statement of purpose

It is the purpose of this title [42 USCS §§ 6101 et seq.] to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

42 USCS § 6102 (2000)

§ 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 304 [42 USCS 6103], and except as provided by section 304(b) [42 USCS § 6103(b)] and section 304(c) [42 USCS § 6103(c)], 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.

42 USCS § 6103 (2000)

§ 6103. Regulations

(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date.

(1) Not later than one year after the transmission of the report required by section 307(b) [42 USCS § 6106(b)], or two and one-half years after the date of the enactment of this Act [Nov. 28, 1975], whichever occurs first, the Secretary of Health, Education, and Welfare [Secretary of Health and Human Services] shall publish in the Federal Register proposed general regulations to carry out the provisions of section 303 [42 USCS § 6012].

(2) (A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of--

(i) the forty-five day period specified in section 307(e) [42 USCS § 6106(e)]; and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 307(d) [42 USCS § 6106(d)], and with respect to the comments and recommendations submitted by Federal departments and agencies under section 307(e) [42 USCS § 6106(e)].

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 303 [42 USCS § 6102], after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 303 [42 USCS § 6102] and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b) Nonviolative actions; program or activity exemption.

(1) It shall not be a violation of any provision of this title [42 USCS §§ 6101 et seq.], or of any regulation issued under this title, for any person to take any action otherwise prohibited by the provisions of section 303 [42 USCS § 6102] if, in the program or activity involved--

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this title [42 USCS §§ 6101 et seq.] shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in

pation in the recipient's activity on the basis of age.

ial benefits for children elderly.

ient operating a program cial benefits to the elderly en, such use of age distinc- e presumed to be necessary nal operation of the pro- ithstanding the provisions

distinctions contained in gulations.

distinctions contained in a ulation issued by HHS shall ed to be necessary to the it of a statutory objective of n to which the rule or regu- lies, notwithstanding the of § 91.13.

art C—Duties of HHS Recipients

neral responsibilities.

S recipient has primary re- y to ensure that its pro- activities are in compliance ct and these regulations, and steps to eliminate violations A recipient also has respon- maintain records, provide n, and to afford HHS access rds to the extent HHS finds to determine whether the re- in compliance with the Act regulations.

tice to subrecipients and ciaries.

re a recipient passes on Fed- cial assistance from HHS to nts, the recipient shall pro- ubrecipients written notice of igations under the Act and ulations.

h recipient shall make nec- formation about the Act and ulations available to its pro- eficiaries in order to inform ut the protections against dis- on provided by the Act and ulations.

§ 91.33 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HHS shall sign a written assurance as specified by HHS that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 91.41 or complaint investigation under § 91.44, HHS may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from HHS to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the HHS regulations, the recipient shall take corrective action.

§ 91.34 Information requirements.

Each recipient shall:

(a) Keep records in a form and containing information which HHS determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to HHS, upon request, information and reports which HHS determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by HHS to the books, records, accounts, and other recipient facilities and sources of information to the extent HHS determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 91.41 Compliance reviews.

(a) HHS may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. HHS may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, HHS will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, HHS will arrange for enforcement as described in § 91.46.

§ 91.42 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with HHS, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, HHS may extend this time limit.

(b) HHS will consider the date a complaint is filed to be the date upon which the complaint is sufficent to be processed.

(c) HHS will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact HHS for information and assistance regarding the complaint resolution process.

42 U.S.C. §§ 12131 - 12134

4. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 -- prohibits discrimination on the basis of disability by public entities in the provision of services, programs, and activities. HHS has been designated the responsibility to investigate complaints against State and local health care and social service agencies. (Implementing regulation can be found at 28 C.F.R. Part 35)

§ 12131. Definition

As used in this title:

(1) Public entity. The term "public entity" means--

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act [45 USCS § 502(8)]).

(2) Qualified individual with a disability. The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 USCS § 12132 (2000)

§ 12132. Discrimination

Subject to the provisions of this title, no 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 USCS § 12133 (2000)

§ 12133. Enforcement

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202 [42 USCS § 12132].

42 USCS § 12134 (2000)

§ 12134. Regulations

(a) In general. Not later than 1 year after the date of enactment of this Act [enacted July 26, 1990], the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244 [42 USCS § 12143, 12149, or 12164].

(b) Relationship to other regulations. Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) Standards. Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act [42 USCS § 12204(a)].

(c) *Complete complaints.* (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.

(2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

§ 35.172 Resolution of complaints.

(a) The designated agency shall investigate each complete complaint, attempt informal resolution, and, if resolution is not achieved, issue to the complainant and the public entity a Letter of Findings that shall include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) Notice of the rights available under paragraph (b) of this section.

(b) If the designated agency finds noncompliance, the procedures in §§ 35.173 and 35.174 shall be followed. At any time, the complainant may file a private suit pursuant to section 203 of the Act, whether or not the designated agency finds a violation.

§ 35.173 Voluntary compliance agreements.

(a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—

(1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and

(2) Initiate negotiations with the public entity to secure compliance by voluntary means.

(b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—

(1) Be in writing and signed by the parties;

(2) Address each cited violation;

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;

(4) Provide assurance that discrimination will not recur; and

(5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are

20 U.S.C. §§ 1681 - 1688

5. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 -- prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance (Implementing regulation can be found at 45 C.F.R. Part 86)

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance. Nothing contained in subsection (a) of this section shal be interpreted to require any educational institution to grant preferential or disparate treatment t the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsectio shall not be construed to prevent the consideration in any hearing or proceeding under this title o statistical evidence tending to show that such an imbalance exists with respect to the participatio in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) "Educational institution" defined. For purposes of this title an educational institution means ar public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed more than one school, college, or department which are administratively separate units, such ter means each such school, college, or department.

20 USCS § 1682 (2000)

§ 1682. Federal administrative enforcement; report to Congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 [20 USCS § 1681] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

20 USCS § 1683 (2000)

§ 1683. Judicial review

Any department or agency action taken pursuant to section 1002 [section 902] shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902 [20 USCS § 1682], any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code [5 USCS §§ 701 et seq.], and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.62–86.70 [Reserved]

Subpart F—Procedures [Interim]

§ 86.71 Interim procedures.

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80–6 through 80–11 and 45 CFR Part 81.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION[1]

A

Access to Course Offerings [43, 55, 56, 57, 58]; 86.34
Access to Schools Operated by LEA's, [44]; 86.35
Admissions, [5, 6, 30]; 86.15, 86.21

[1] Preamble paragraph numbers are in brackets [ ].

42 U.S.C. §§ 291 and 300s

6. Titles VI (42 U.S.C. § 291c) and XVI (42 U.S.C. § 300s) of the Public Health Service Act (Hill-Burton Community Service Assurance) (Facilities must make the services provided in facilities or portions thereof constructed or modernized with Federal assistance under Titles VI and XVI available to all persons residing (and, in the case of facilities assisted under Title XVI of the Act, employed), in the facility's service area without discrimination on the ground of race, color, national origin, creed, or any other ground unrelated to an individual's need for the service or the availability of the needed service in the facility) (Implementing regulation can be found at 42 C.F.R. Part 124, Subpart G)

§ 291c. General regulations

The Surgeon General, with the approval of the Federal Hospital Council and the Secretary of Health, Education, and Welfare [Secretary of Health and Human Services], shall by general regulations prescribe--

(e) State plan requirements; assurances necessary for approval of application. that the State plan shall provide for adequate hospitals, and other facilities for which aid under this part [42 USCS §§ 291a et seq.] is available, for all persons residing in the State, and adequate hospitals (and such other facilities) to furnish needed services for persons unable to pay therefor. Such regulations may also require that before approval of an application for a project is recommended by a State agency to the Surgeon General for approval under this part [42 USCS §§ 291a et seq.], assurance shall be received by the State from the applicant that (1) the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.

42 USCS § 300s (2000)

§ 300s. General regulations

The Secretary shall by regulation--

(3) prescribe the general manner in which each entity which receives financial assistance under part A or B [42 USCS §§ 300q et seq. or 300r] or has received financial assistance under part A or B [42 USCS §§ 300q et seq. or 300r] or title VI [42 USCS §§ 291 et seq.] shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

An entity subject to the requirements prescribed pursuant to paragraph (3) respecting compliance with assurances made in connection with receipt of financial assistance shall submit periodically to the Secretary data and information which reasonably supports the entity's compliance with such assurances. The Secretary may not waive the requirement of the preceding sentence.

42 USCS § 300s-1 (2000)

§ 300s-1. Medical facility project applications

(b) Form; required provisions; waiver; projects subject to requirements.

(1) An application for a medical facilities project shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall, except as provided in paragraph (2), set forth--

(K) reasonable assurance that at all times after such application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

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§ 124.604 Posted notice.

(a) The facility shall post notices, which the Secretary supplies in English and Spanish, in appropriate areas of the facility, including but not limited to the admissions area, the business office and the emergency room.

(b) If in the service area of the facility the "usual language of households" of ten percent or more of the population, according to the most recent figures published by the Bureau of the Census, is other than English or Spanish, the facility shall translate the notice into that language and post the translated notice on signs substantially similar in size and legibility to, and posted with, those supplied under paragraph (a) of this section.

(c) The facility shall make reasonable efforts to communicate the contents of the posted notice to persons who it has reason to believe cannot read the notice.

§ 124.605 Reporting and record maintenance requirements.

(a) *Reporting requirements*—(1) *Timing of reports.*(i) A facility shall submit to the Secretary a report to assist the Secretary in determining compliance with this subpart once every three fiscal years, on a schedule to be prescribed by the Secretary. The report required by this section shall be submitted not later than 90 days after the end of the fiscal year, unless a longer period is approved by the Secretary for good cause shown.

(ii) A facility shall also submit the required report whenever the Secretary determines, and so notifies the facility in writing, that a report is needed for proper administration of the program. In this situation the facility shall submit the report specified in this section for the filing of reports, within 90 days after receiving notice from the Secretary, or within 90 days after the close of the fiscal year, whichever is later.

(2) *Content of report.* The report must be submitted on a form prescribed by the Secretary and must include information that the Secretary prescribes to permit a determination of whether a facility has met its obligations under this subpart.

(3) The facility shall provide a copy of any report to the HSA for the area when submitting it to the Secretary.

(4) *Institution of suit.* Not later than 10 days after being served with a summons or complaint, the applicant shall notify the Regional Health Administrator for the Region of HHS in which it is located of any legal action brought against it alleging that it has failed to comply with the requirements of this subpart.[1]

(b) *Record maintenance requirements.* (1) A facility shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance requirements of this subpart in any fiscal year, including documents from which information required to be reported under paragraph (a) of this section was obtained. A facility shall maintain these records until 180 days following the close of the Secretary's investigation under § 124.606(a).

§ 124.606 Investigation and enforcement.

(a) *Investigations.* (1) The Secretary periodically investigates the compliance of facilities with the requirements of this subpart, and investigates complaints.

(2)(i) A complaint is filed with the Secretary on the date on which the following information is received in the Office of the Regional Health Administrator for the Region of HHS in which the facility is located:

(A) The name and address of the person making the complaint or on whose behalf the complaint is made;

(B) The name and location of the facility;

(C) The date or approximate date on which the event complained of occurred, and

[1]The addresses of the Regional Office of HHS are set out in 45 CFR 5.31.

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45 CFR Parts 160 and 164

7. Standards for Privacy of Individually Identifiable Health Information; Final Rule. This rule includes standards to protect the privacy of individually identifiable health information. The rules below, which apply to health plans, health care clearinghouses, and certain health care providers, present standards with respect to the rights of individuals who are the subjects of this information, procedures for the exercise of those rights, and the authorized and required uses and disclosures of this information.

(6) With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

Relates to the privacy of individually identifiable health information means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way.

State law means a constitution, statute, regulation, rule, common law, or other State action having the force and effect of law.

§ 160.203 General rule and exceptions.

A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:

(a) A determination is made by the Secretary under § 160.204 that the provision of State law:

(1) Is necessary:

(i) To prevent fraud and abuse related to the provision of or payment for health care;

(ii) To ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation;

(iii) For State reporting on health care delivery or costs; or

(iv) For purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or

(2) Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.

(b) The provision of State law relates to the privacy of health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.

(c) The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(d) The provision of State law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals.

§ 160.204 Process for requesting exception determinations.

(a) A request to except a provision of State law from preemption under § 160.203(a) may be submitted to the Secretary. A request by a State must be submitted through its chief elected official, or his or her designee. The request must be in writing and include the following information:

(1) The State law for which the exception is requested;

(2) The particular standard, requirement, or implementation specification for which the exception is requested;

(3) The part of the standard or other provision that will not be implemented based on the exception or the additional data to be collected based on the exception, as appropriate;

(4) How health care providers, health plans, and other entities would be affected by the exception;

(5) The reasons why the State law should not be preempted by the federal standard, requirement, or implementation specification, including how the State law meets one or more of the criteria at § 160.203(a); and

(6) Any other information the Secretary may request in order to make the determination.

(b) Requests for exception under this section must be submitted to the Secretary at an address that will be published in the **Federal Register**. Until the Secretary's determination is made, the standard, requirement, or implementation specification under this subchapter remains in effect.

(c) The Secretary's determination under this section will be made on the basis of the extent to which the information provided and other factors demonstrate that one or more of the criteria at § 160.203(a) has been met.

§ 160.205 Duration of effectiveness of exception determinations.

An exception granted under this subpart remains in effect until:

(a) Either the State law or the federal standard, requirement, or implementation specification that provided the basis for the exception is materially changed such that the ground for the exception no longer exists; or

(b) The Secretary revokes the exception, based on a determination that the ground supporting the need for the exception no longer exists.

Subpart C—Compliance and Enforcement

§ 160.300 Applicability.

This subpart applies to actions by the Secretary, covered entities, and others with respect to ascertaining the compliance by covered entities with and the enforcement of the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

§ 160.302 Definitions.

As used in this subpart, terms defined in § 164.501 of this subchapter have the same meanings given to them in that section.

§ 160.304 Principles for achieving compliance.

(a) *Cooperation.* The Secretary will, to the extent practicable, seek the cooperation of covered entities in obtaining compliance with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(b) *Assistance.* The Secretary may provide technical assistance to covered entities to help them comply voluntarily with the applicable requirements of this part 160 or the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

§ 160.306 Complaints to the Secretary.

(a) *Right to file a complaint.* A person who believes a covered entity is not complying with the applicable requirements of this part 160 or the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter may file a complaint with the Secretary.

(b) *Requirements for filing complaints.* Complaints under this section must meet the following requirements:

(1) A complaint must be filed in writing, either on paper or electronically.

(2) A complaint must name the entity that is the subject of the complaint and describe the acts or omissions believed to be in violation of the applicable requirements of this part 160 or the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(3) A complaint must be filed within 180 days of when the complainant knew or should have known that the act or omission complained of occurred, unless this time limit is waived by the Secretary for good cause shown.

(4) The Secretary may prescribe additional procedures for the filing of complaints, as well as the place and manner of filing, by notice in the **Federal Register**.

(c) *Investigation.* The Secretary may investigate complaints filed under this section. Such investigation may include a review of the pertinent policies, procedures, or practices of the covered entity and of the circumstances regarding any alleged acts or omissions concerning compliance.

§ 160.308 Compliance reviews.

The Secretary may conduct compliance reviews to determine whether covered entities are complying with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

§ 160.310 Responsibilities of covered entities.

(a) *Provide records and compliance reports.* A covered entity must keep such records and submit such compliance reports, in such time and manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to ascertain whether the covered entity has complied or is complying with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(b) *Cooperate with complaint investigations and compliance reviews.* A covered entity must cooperate with the Secretary, if the Secretary undertakes an investigation or compliance review of the policies, procedures, or practices of a covered entity to determine whether it is complying with the applicable requirements of this part 160 and the standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

(c) *Permit access to information.* (1) A covered entity must permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including protected health information, that are pertinent to ascertaining compliance with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter. If the Secretary determines that exigent circumstances exist, such as when documents may be hidden or destroyed, a covered entity must permit access by the Secretary at any time and without notice.

(2) If any information required of a covered entity under this section is in the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails or refuses to furnish the information, the covered entity must so certify and set forth what efforts it has made to obtain the information.

(3) Protected health information obtained by the Secretary in connection with an investigation or compliance review under this subpart will not be disclosed by the Secretary, except if necessary for ascertaining or enforcing compliance with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter, or if otherwise required by law.

§ 160.312 Secretarial action regarding complaints and compliance reviews.

(a) *Resolution where noncompliance is indicated.* (1) If an investigation pursuant to § 160.306 or a compliance review pursuant to § 160.308 indicates a failure to comply, the Secretary will so inform the covered entity and, if the matter arose from a complaint, the complainant, in writing and attempt to resolve the matter by informal means whenever possible.

(2) If the Secretary finds the covered entity is not in compliance and determines that the matter cannot be resolved by informal means, the Secretary may issue to the covered entity and, if the matter arose from a complaint, to the complainant written findings documenting the non-compliance.

(b) *Resolution when no violation is found.* If, after an investigation or compliance review, the Secretary determines that further action is not warranted, the Secretary will so inform the covered entity and, if the matter arose from a complaint, the complainant in writing.

2. A new Part 164 is added to read as follows:

PART 164—SECURITY AND PRIVACY

Subpart A—General Provisions

Sec.
164.102 Statutory basis.
164.104 Applicability.
164.106 Relationship to other parts.

Subparts B–D—[Reserved]

Subpart E—Privacy of Individually Identifiable Health Information

164.500 Applicability.
164.501 Definitions.
164.502 Uses and disclosures of protected health information: General rules.
164.504 Uses and disclosures: Organizational requirements.
164.506 Consent for uses or disclosures to carry out treatment, payment, and health care operations.
164.508 Uses and disclosures for which an authorization is required.
164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.
164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.
164.514 Other requirements relating to uses and disclosures of protected health information.
164.520 Notice of privacy practices for protected health information.
164.522 Rights to request privacy protection for protected health information.
164.524 Access of individuals to protected health information.
164.526 Amendment of protected health information.
164.528 Accounting of disclosures of protected health information.
164.530 Administrative requirements.
164.532 Transition requirements.
164.534 Compliance dates for initial implementation of the privacy standards.

Authority: 42 U.S.C. 1320d–2 and 1320d–4, sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320(d–2(note)).

Subpart A—General Provisions

§ 164.102 Statutory basis.

The provisions of this part are adopted pursuant to the Secretary's authority to prescribe standards, requirements, and implementation standards under part C of title XI of the Act and section 264 of Public Law 104–191.

§ 164.104 Applicability.

Except as otherwise provided, the provisions of this part apply to covered entities: health plans, health care clearinghouses, and health care providers who transmit health information in electronic form in connection with any transaction referred to in section 1173(a)(1) of the Act.

§ 164.106 Relationship to other parts.

In complying with the requirements of this part, covered entities are required to comply with the applicable provisions of parts 160 and 162 of this subchapter.

Subpart B–D—[Reserved]

Subpart E—Privacy of Individually Identifiable Health Information

§ 164.500 Applicability.

(a) Except as otherwise provided herein, the standards, requirements, and