

## **TennCare Discrimination Complaint Procedures**

### **I. Overview**

Federal and State laws do not allow the Division of TennCare (“TennCare”) or any of its recipients of federal financial assistance to act in a discriminatory manner based on a person’s:

- **Race,**
- **Color,**
- **National Origin,**
- **Disability,**
- **Age,**
- **Sex,**
- **Religion, or**
- **Any other Status/Group protected by law**

These laws allow individuals, like members, representatives, or providers (called “complainants”) to file a complaint with TennCare’s Office of Civil Rights Compliance (“OCRC”) if they think they have been treated in a discriminatory manner (like denied a service or benefit) based on one of the above listed factors. OCRC can investigate certain claims of discrimination and refer claims that it does not have authority to investigate to the appropriate agency. Under the civil rights laws an organization cannot retaliate against a person for filing a complaint.

When an organization accepts federal funds from TennCare, it agrees to comply with the applicable civil rights laws. By agreeing to comply with the applicable federal civil rights laws the organization became a duty-bearer that is legally bound to:

- Respect,
- Protect, and
- Fulfil civil rights requirements

These laws require organizations to implement discrimination complaint procedures and workflows that help individuals report acts of discrimination. To carry out its civil rights compliance responsibilities organizations must designate an individual as a civil rights/nondiscrimination coordinator (“NCC”). This coordinator is responsible for carrying out nondiscrimination compliance efforts, which include handling discrimination complaints. OCRC is the civil rights coordinator for TennCare.

## II. Discrimination Complaint Process<sup>1</sup>

A complainant has six (6) months (180 calendar days) from the date of the alleged act of discrimination to file a written complaint with OCRC. A discrimination complaint is not considered filed until it is received by OCRC; the U.S. Department of Health and Human Services, Office of Civil Rights (“OCR”); the U.S. Department of Justice (“DOJ”); the U.S. Equal Employment Opportunity Commission; or the Tennessee Human Rights Commission.

The following methods are the most common ways for reporting discrimination complaints to OCRC. The first reporting method consists of a complainant filing a complaint in real-time on TennCare’s website, emailing or mailing a complaint to OCRC, calling TennCare Connect, or working with his/her managed care organization (“MCO”) or another TennCare contractor to complete a complaint form that is sent to OCRC. The second method consist of a complainant mailing or emailing a complaint to a TennCare contractor like a MCO. In such a case, the contractor has two (2) business days to send that discrimination complaint to OCRC.

TennCare contractors or other recipients of federal financial assistance are required to accept and help TennCare members and other individuals report acts that could be discriminatory. TennCare discrimination complaint forms are located on:

- TennCare’s civil rights webpage at: <https://www.tn.gov/tenncare/members-applicants/civil-rights-compliance.html> (Real-time and PDF forms are available);
- In TennCare’s Member Handbook;
- In TennCare Provider Manual;
- On certain contractor’s websites (like MCO); and
- TennCare Connect (can assist with completing forms over the phone) 855-259-0701

In order to achieve compliance, organizations may need to work with OCRC to provide individuals with the TennCare discrimination complaint form and agreement to release information form or help the individual complete the complaint form. The procedure below describes the TennCare discrimination complaint review and resolution process.

### a. Complaint Reviews

When OCRC receives a complaint, OCRC determines whether it is a complaint claiming that the person was discriminated against by TennCare or one of its contractors, providers, or subcontractors (including these organizations’ employees). In addition, OCRC reviews the complaint for several issues including:

- Was the complaint filed within the six (6) month (180 calendar days) deadline?
- Is the required information present on the form (i.e. is the complaint complete<sup>2</sup>)?

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<sup>1</sup> OCRC’s investigation procedures are based on the following federal guidance: U.S. Department of Justice’s Title VI and Title IX Legal Manuals; U.S. Department of Justice’s Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and other Nondiscrimination Statutes; and U.S. Department of Health and Human Services, Office of Civil Rights’ Case Resolution Manual for Civil Rights Investigations

<sup>2</sup> For a complaint to be considered complete it will include the following information:

- 1) A signed, written explanation of what has happened;

- Is the complainant's issue within OCRC's authority for review?
- Is the complaint a civil rights claim that involves a quality of care/service issue?
- Did the complainant submit an Agreement to Release Information form? and
- Is the complaint frivolous?

Should the complaint involve one of TennCare's programs or activities, OCRC logs the complaint and assigns it a case number. Pursuant to 28 C.F.R. § 42.408, OCRC maintains a log<sup>3</sup> of the filed discrimination complaints. The federal agency responsible for enforcement of a particular complaint (i.e. the EEOC or OCR) may request a report of that log and retains review responsibility over the investigation and disposition of each complaint under its jurisdiction.

Within ten (10) calendar days of OCRC's receipt of a complaint, an acknowledgement letter is sent to the complainant. This letter may include an agreement to release information form with the acknowledgement letter, along with a request that the complainant return the signed form to OCRC within twenty (20) calendar days of the date of the acknowledgement letter. When the release is included the complainant is informed the completed forms must be returned to OCRC within the twenty (20) calendar day timeframe or their complaint may be closed.

The agreement to release information form allows OCRC and the person's health plan to look at or ask about protected health information (PHI). PHI includes any information used to identify you, your health, and medical history. OCRC only looks at or asks for PHI if it needs it to investigate a discrimination report.

Although a signed agreement to release information form is not always needed to investigate a complaint, many complaints cannot be fully investigated without a signed release form. However, before the case is closed for this reason, OCRC will contact the complainant to find out if he/she would like to fill out a release form.

During the investigation and resolution of the complaint, documents and other information may be shared only when such information is necessary to further the investigation of the complaint. Disclosures of information may hinder or compromise an investigation and may violate certain laws (i.e. privacy, security, or confidentiality) and attorney-client privilege. OCRC's policy and practice is not to reveal information about complaints, active or closed.

Additionally, the acknowledgement letter may request that the complainant provide any missing information to OCRC within twenty (20) calendar days from the date of the acknowledgement letter. For example, the letter may request that the complainant explain their reasons for filing a complaint after the six (6) month (180 calendar days) deadline. If the missing information is not provided to OCRC within the

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- 2) A way to contact the complainant;
  - 3) The basis of the complaint (i.e. identification of the person or group injured by the alleged discrimination);
  - 4) Identification of the person or entity alleged to have discriminated; and
  - 5) Sufficient information to understand the facts that led the complainant to believe discrimination has occurred and when it happened.

<sup>3</sup> In addition to the items set forth in the initial investigation report, the log includes the complainant's race, color, or national origin; the date the investigation was completed; the final resolution of the complaint, and any other important information.

twenty (20) calendar day timeframe, the case is closed. However, if the information is provided within the timeframe OCRC will continue the completion of its initial review.

### **b. Complaint Investigations**

When OCRC determines that the complaint warrants further investigation, OCRC will decide whether to investigate the complaint by itself or if a contractor will assist in the initial investigation. In the majority of the cases, OCRC is the sole investigator.

In cases where OCRC is the sole investigator, it will issue a Request for Information (“RFI”) to the named respondent (the party who the complaint is against/or who committed the alleged discriminatory act), which contains a deadline for submitting the response. The RFI gathers information about the issues in the complaint, lets the respondent tell their side of the story, and collects compliance information.

Once OCRC finishes reviewing the information and evidence submitted by parties and witnesses, it may request follow-up information from the parties or witnesses and conduct interviews. These interviews are conducted over the phone and WebEx options may be available. Interviews may be recorded. Not all complaints need interviews and can be resolved based on submitted evidence or voluntary agreements (section c below explains this process).

If OCRC requests the assistance of a contractor with conducting the initial investigation, the contractor has five (5) business days from the date of the request to start its initial investigation. Due to the timeframe for resolving a complaint within 180 days from the date of receipt of a complete complaint, OCRC may assign a deadline for completion of the initial investigation.

Once an initial investigation has been completed by the contractor, it submits a report to OCRC. The initial investigation report should include, but is not limited to the following items:

- The identity of the party filing the complaint;
- The complainant’s relationship to the respondent (party who the complaint is against);
- The circumstances of the complaint;
- The date the complaint was filed; and
- The contractor’s suggested complaint resolution or voluntary resolution plan.

### **c. Complaint Resolutions**

As part of its duties for resolving and remedying discrimination in TennCare’s programs, OCRC will review the evidence and determine whether discrimination occurred. The complaint determination shall utilize the “preponderance of the evidence standard” (meaning enough evidence exists to create a reasonable belief that it is more likely true than not true).

Except for cases involving sexual harassment, OCRC may exercise its discretion to contact the parties and implement a voluntarily resolution agreement (“VRA”) to resolve the complaint. With the VRA process, OCRC will work with the party to implement the corrective action and resolve the complaint. Many VRAs consist of staff trainings and policy creation and implementation.

In cases where a VRA is not needed or appropriate, the complaint determination is provided to both parties in a Letter of Findings. The Letter of Findings informs both parties of their review rights and that the

complainant has a right to file a complaint with U.S. Department of Health and Human Services, Office of Civil Rights and the Tennessee Human Rights Commission (“THRC”)<sup>4</sup>.

If a complaint is not a valid case of discrimination, the complaint is closed. When a complaint is determined to be a valid act of discrimination, a correction action plan (“CAP”) is provided to the responsible party.

A discrimination complaint resolution CAP may include items like an approved nondiscrimination training on relevant discrimination topics. If the respondent submits deliverables like a nondiscrimination training material for use with a CAP, OCRC must review and approve the deliverable prior to implementation. Once a discrimination complaint resolution CAP has been approved and given to the respondent for implementation, the respondent will submit evidence that the CAP was completed. Upon the successful implementation of the CAP, OCRC shall close the case and notify the respondent of the closure.

#### **d. Review Rights**

The complainant or the respondent has sixty (60) days from the date of the Letter of Findings to request that OCRC review its decision. If a request for a review is made, OCRC can only review the original report of discrimination. The reasons for a review request must originate from:

- The report or
- The investigation made into that report.

The Requestor must set forth the mistakes OCRC made during the review of the discrimination complaint (i.e. failing to interview a key witness) or that OCRC misapplied the civil rights laws to the facts of the case (i.e. like an exception to the law or wrong evidence standard used). The Requestor must allege that the correction of these mistakes would change OCRC’s decision. A party that is only conveying that he/she is unhappy with or disagrees with the findings is not considered to making a request for a review.

The Requestor must provide OCRC with the following information:

- The part of the decision he/she disagrees with and why OCRC’s decision goes against the facts in found in the discrimination complaint or the laws;
- The fact(s) in the discrimination complaint investigation that OCRC did not review or misinterpreted that led to the decision and how the correction of these mistakes would change OCRC’s decision;
- The names and contact information of any important witnesses that the Requestor identified in the complaint or during the analysis/investigation who were not contacted. The Requestor believes that the admission of this witness information would change OCRC’s decision; and
- Set forth the law that was not reviewed or correctly applied by OCRC.

Should OCRC accept the request for review, OCRC will analyze the laws and any evidence submitted by the parties. This decision shall be issued in a Letter of Reconsideration and mailed to the parties.

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<sup>4</sup> THRC only reviews Title VI of the Civil Rights of 1964 issues- race, color, national origin complaints

### **III. Contact Information:**

To file a complaint or get help contact OCRC at:

TennCare, Office of Civil Rights Compliance  
310 Great Circle Road; Floor 3W • Nashville, TN 37243  
615-507-6474 or for free at 855-857-1673 (TRS 711)  
HCFA.fairtreatment@tn.gov

### **IV. Resources:**

OCRC's investigation procedures are based on the following federal guidance:

- U.S. Department of Justice's Title VI and Title IX Legal Manuals;
- U.S. Department of Justice's Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and other Nondiscrimination Statutes; and
- U.S. Department of Health and Human Services, Office of Civil Rights' Case Resolution Manual for Civil Rights Investigations