

**VOLUNTARY RESOLUTION AGREEMENT**

Between the

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS

And the

MARYLAND DEPARTMENT OF HUMAN SERVICES

OCR Transaction Numbers:

11-129035  
11-129034  
11-174668  
12-133711  
12-146122  
12-142649  
15-202809  
16-235125  
17-252230  
17-261395  
22-478337  
22-488994

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## **I. INTRODUCTION**

This Voluntary Resolution Agreement (Agreement) is entered into by the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), and the Maryland Department of Human Services (MDHS), to resolve disability based discrimination complaints alleging the Maryland Temporary Assistance to Needy Families (TANF) program (known in Maryland as Temporary Cash Assistance (TCA)), as administered by MDHS, violates Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

### **A. Parties to the Agreement**

1. United States Department of Health and Human Services' (HHS), Office for Civil Rights (OCR), and
2. Maryland Department of Human Services (MDHS), the State agency responsible for administering Maryland's TCA, a program funded in part by the TANF block grant, 42 U.S.C. § 601, *et seq.*

### **B. Jurisdiction**

1. OCR has jurisdiction over the MDHS pursuant to Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35 (ADA). The ADA prohibits discrimination on the basis of disability in State and local government programs and activities. HHS OCR is the designated agency responsible for investigating ADA complaints against State and local governments with regard to the administration of health care and social services programs or activities.
2. OCR also has jurisdiction pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 45 C.F.R. Part 84 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA). Entities that receive FFA from HHS are obligated to comply with Section 504.
3. MDHS is a public entity under Title II of the ADA and it receives FFA in the form of a block grant from the HHS, Administration of Children and Families (ACF) in order to operate its TANF program. Additionally, MDHS receives FFA from HHS under Title XIX of the Social Security Act (Medicaid) to operate its Medical Assistance program (MA).

### **C. Purpose of the Agreement**

To resolve these matters expeditiously and without further burden or expense of investigation or litigation, MDHS agrees to the terms stipulated in this Agreement, and affirms its assurance of compliance with all provisions of the ADA, Section 504 and their respective implementing regulations. The promises, obligations or other

terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between MDHS and OCR.

## **II. DEFINITIONS**

For purposes of this Agreement, the terms listed below shall have the following meaning:

- A. “ADA Coordinator” or “Customer Access Coordinator” (CAC)** means the MDHS worker responsible for assisting customers with reasonable accommodation requests.
- B. “Assessment”** means the initial procedure for screening a customer’s appropriate work activities based on educational level, literacy, health, mental or physical impairments, housing stability, child care needs, transportation needs, history of domestic or family violence, job skills and readiness and interests.
- C. “Customers,” “individuals” and “participants”** are terms that are used interchangeably to refer to “applicants” and/or “recipients” as appropriate, under all programs administered by MDHS.
- D. “COMAR”** means the Code of Maryland Regulations.
- E. “Disability” or “individuals with disabilities”** refers to the definition of disability within the meaning of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and/or Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794.
- F. “DSS” or “LDSS”** means the local Department of Social Services which is under the supervision, direction and control of MDHS, and includes the offices in Baltimore City and each of the 23 counties in Maryland which administer the Family Investment Program, including the Montgomery County Department of Health and Human Services.
- G. “E & E”** means Eligibility and Enrollment system which refers to the new automated system used by MDHS to maintain eligibility information for program participants.
- H. “ECMS”** means Electronic Content Management System which refers to the automated system used by MDHS to store documentation pertaining to eligibility in its E&E system.
- I. “Intensive case management”** means referral or consultation with supervisory staff and/or an ADA Coordinator/CAC to assess if an evaluation or disability-related accommodation(s) should be provided prior to taking adverse action.

- J. “IP”** means Independence Plan which refers to the agreement between MDHS and the customer that identifies, *inter alia*, the work activities in which the customer will participate, the supportive services the LDSS will assist in providing, and the reasonable accommodations that are necessary for a customer to meet their obligations under the plan.
- K. “Qualified and appropriate persons or entities”** may include a medical or mental health professional, social worker, psychologist, vocational rehabilitation specialist, MDHS vendors who are trained in assessing adults with disabilities related to work activity programs, and any Maryland Division of Rehabilitative Services (DORS) approved assessing agency or individual.
- L. “Reasonable modification” or “reasonable accommodation”** are terms often used interchangeably in practice and therefore, are used interchangeably in this document to mean modifications to policies, practices, or procedures when necessary to avoid discrimination based on disability, unless making such modification would fundamentally alter the nature of the service, program or activity.
- M. “Secretary”** means the Secretary of the Maryland Department of Human Services (MDHS), their successors or assigns, including any Acting Secretary.
- N. “TCA”** means Temporary Cash Assistance. In Maryland, the Temporary Assistance to Needy Families program is called Temporary Cash Assistance or TCA.

### **III. GENERAL PROVISIONS**

- A. Effective Date and Duration of Agreement:** This agreement shall become effective on the date it is signed by MDHS (“Effective Date”) and shall remain in effect for three (3) years or until OCR’s written acceptance of the final Quarterly Report described in the Agreement, whichever date is later. At such time, the Agreement will terminate, provided MDHS is in substantial compliance with the Agreement as determined by OCR. Notwithstanding the three (3) year period of obligations under this Agreement, MDHS acknowledges it continues to be obligated to comply with the requirements of the ADA, Section 504 and other applicable Federal nondiscrimination statutes, for so long as it remains a public entity or continues to receive Federal financial assistance.
- B. Entire Agreement:** This Agreement constitutes the entire understanding between OCR and MDHS in resolution of OCR Transaction Numbers: 11-129035, 11-129034, 11-174668, 12-133711, 12-146122, 12-142649, 15-202809, 16-235125, 17-252230, 17-261395, 22-478337, 22-488994. Any statement, promise, or agreement not contained herein shall not be enforceable through this Agreement.

- C. Suspension of Administrative Actions:** Subject to MDHS's continued performance of the stated obligations and required actions contained in this Agreement and in conformity with Section III-K, Failure to Comply with the Agreement, OCR shall suspend administrative action on OCR Transaction Numbers: 11-129035, 11-129034, 11-174668, 12-133711, 12-146122, 12-142649, 15-202809, 16-235125, 17-252230, 17-261395, 22-478337, 22-488994.
- D. Effect on Other Compliance Matters:** The terms of this Agreement do not apply to any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be currently pending before OCR, any other Federal agency or court. Any unrelated compliance matters arising from subsequent reviews or investigations may be resolved separately. Nothing in this Agreement will be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to MDHS and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action under Federal laws by other Federal agencies, including any action or investigation under Section 504 or Title II of the ADA.
- E. Continuing Obligation:** Nothing in this Agreement is intended to relieve MDHS of its obligation to comply with other applicable non-discrimination statutes and their implementing regulations.
- F. Programs Covered by the Agreement:** This agreement covers all MDHS programs that receive Federal financial assistance from HHS, including the Family Investment Administration (FIA) social services and public assistance activities and all its offices and facilities that receive Federal financial assistance from HHS, including the 24 local Departments of Social Services (DSS) it supervises, directs and controls.
- G. Admission of Liability:** MDHS' execution of this Agreement shall not be construed as an admission of liability by MDHS, or as evidence that it has not complied with Section 504 or the ADA; and further shall not constitute a waiver of any defense MDHS may assert in any judicial or administrative proceedings.
- H. Technical Assistance:** OCR agrees to provide technical assistance to MDHS regarding compliance with this Agreement, as requested and as reasonably necessary.
- I. Prohibition of Retaliation and Intimidation:** MDHS shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, or assisted or participated in any manner in the review that gave rise to this Agreement or with the matters addressed in this Agreement.

**J. OCR's Review of MDHS's Compliance with the Agreement:** OCR may review MDHS's compliance with this Agreement at any time while the Agreement is in effect. As part of such review, OCR may require written reports, access to witnesses, copies of documents, and/or inspection of MDHS's offices. Throughout the duration of this Agreement, MDHS agrees to retain the records required by OCR to assess its compliance. OCR will maintain the confidentiality of all information, including documents, files and records received from MDHS and will not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.

**K. Failure to Comply with Terms of Agreement:** If at any time OCR determines that MDHS has failed to substantially comply with any provision of this Agreement, OCR shall notify MDHS in writing. The notice shall include a statement of the basis for OCR's determination and shall allow MDHS fifteen (15) calendar days to either: 1) explain in writing the reasons for its actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement; or 2) dispute the accuracy of OCR's findings.

The time frame allowed for the response may be less than fifteen (15) days whenever OCR determines in writing that a delay would result in irreparable harm to any person. If MDHS does not respond to the notice, or if upon review of MDHS' response, OCR determines that MDHS has not complied with the terms of the Agreement, OCR may terminate this Agreement within thirty (30) calendar days' written notice and take appropriate measures to effectuate MDHS' compliance with Section 504 and Title II of the ADA. Such measures may include OCR reopening its investigations of MDHS' compliance with Section 504 and Title II of the ADA. OCR may incorporate into its reopened investigation any relevant evidence of noncompliance with the Agreement and any relevant evidence obtained by OCR prior to signing of the Agreement. OCR may also exercise all rights available under Section 504 and Title II of the ADA, including, but not limited to issuing noncompliance findings and the initiation of enforcement proceedings to terminate Federal financial assistance to MDHS.

**L. Non-Waiver Provision:** OCR's failure to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision therein shall not be construed as a waiver of OCR's right to enforce other deadlines and provisions of the Agreement.

**M. Severability:** In the event that a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain valid and enforceable; provided, however, that if the severance of any such provision materially alters the rights or obligations of MDHS and OCR they shall, through reasonable, good faith negotiations, agree upon such other amendments hereto as may be necessary

to restore as closely as possible to the relative rights and obligations initially intended by them hereunder.

- N. Successor in Interest:** This Agreement is binding on the Parties, and their successors in interest, and MDHS shall have a duty to so notify all such successors in interest of the existence and terms of this Agreement.
- O. Modification of Agreement:** This Agreement may be modified by mutual agreement between OCR and MDHS in writing.
- P. Publication or Release of Agreement:** OCR places no restrictions on the publication of this Agreement or its terms. In addition, OCR may be required to release this Agreement, and all related materials, in response to appropriate requests made pursuant to the Freedom of Information Act, 5 U.S.C. § 552 and its implementing regulations, 45 C.F.R. Part 5.
- Q. Third Party Rights:** This Agreement can only be enforced by the parties specified in this Agreement, or their legal representatives and/or assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.
- R. Authority of Signer:** The individual who signs this Agreement on behalf of MDHS represents and warrants that he or she is authorized to execute this Agreement on behalf of MDHS and that the terms of this Agreement shall be legally binding on MDHS.
- S. Miscellaneous:** When OCR verifies that MDHS has completed all actions contained in this Agreement, OCR shall consider all matters related to this investigation resolved and so notify MDHS in writing.

#### **IV. SPECIFIC OBLIGATIONS**

- A. Recognition:** MDHS recognizes that it is prohibited from discriminating against qualified individuals with disabilities by excluding such individuals from participation in or denying them the benefits of the services, programs, or activities it provides, on the basis of disability. MDHS recognizes that in furtherance of this goal, MDHS must operate all of its HHS-funded programs in a manner that affords individuals with disabilities an equal opportunity to participate in and benefit from all its programs, provide individuals with disabilities reasonable modifications to its policies, practices, and procedures that are not fundamental alterations to its programs, services, or activities, and implement methods of administration that do not subject individuals with disabilities to discrimination on the basis of disability.



**B. Provision of Reasonable Modifications to Affected Parties:** Within ninety (90) calendar days of implementation of the assessment tool described in Section IV.G. of this Agreement, MDHS will take the following actions:

1. Assess the individual Affected Parties who were the subject of OCR Transaction Numbers 11-129035, 11-129034, 11-174668, 12-133711, 12-146122, 12-142649, 15-202809, 16-235125, 17-252230, 17-261395, 22-478337, and 22-488994 to determine what, if any, reasonable modifications to policies, practices, and procedures the individuals need to obtain an equal opportunity to participate in and benefit from MDHS' programs. If applicable, MDHS will clearly document the Affected Parties' granted reasonable modifications in their case files and independence plans and provide the Affected Parties with a written decision concerning the request for accommodation. If MDHS denies any of the requested accommodations, in whole or in part, MDHS will provide the Affected Party with the reason for the denial in writing, identify any alternative accommodations that can be provided to the individual so that they have an equal opportunity to participate in and benefit from MDHS' programs, and inform the individual of their right to appeal or to file a grievance; and
2. Review whether any of the Affected Parties experienced a loss of TCA or the imposition of sanctions, at any time the Affected Party was applying for or receiving TCA, as a result of MDHS' failure to properly respond to a request for a reasonable accommodation and/or provide a reasonable accommodation once approved. If improper TCA reductions and sanctioning is found, MDHS will provide the TCA that was underpaid to the Affected Parties, if it has not been provided previously through an administrative appeal or by MDHS initiating corrective action, and will remove all applicable sanctions from the customer's case record.

**C. Notification of the Provisions of this Agreement**

1. Within sixty (60) calendar days of the Effective Date, MDHS shall provide notification of the terms of this Agreement to all the social services and public assistance activities it supervises, directs and controls, including the 24 local Departments of Social Services.
2. Within ninety (90) calendar days of the Effective Date, MDHS shall provide general notice to the public, in plain language and alternative formats, of the terms of the Agreement and the availability of free assessments and evaluations of the need for reasonable modifications of current and future program participants, including former participants who reapply. This notice will be provided in appropriate languages to limited English proficient (LEP) persons to allow for full accessibility in MDHS programs, activities and services. Said general notice will be provided:
  - i. by posting on the MDHS website and social media for the duration of the monitoring period;

- ii. by posting in all MDHS central and local offices for the duration of the monitoring period;
- iii. by mailing to all participants whose TCA cases were closed since July 1, 2021, under the code “566,” or who received sanctions pursuant to COMAR § 07.03.03.19.

**D. Compliance Coordinator:** Within ninety (90) calendar days of the Effective Date, the Secretary will designate a coordinator for compliance with the terms of the Agreement. The Compliance Coordinator will work with the Directors of all HHS-funded divisions of MDHS, and any other staff designated by the Secretary. This individual will have the necessary skills, experience, and training to address systemic deficiencies in the operation of government public assistance programs that impede equal opportunity to access for individuals with disabilities. MDHS will notify OCR of the designee within ninety (90) calendar days of the Effective Date of this Agreement and provide OCR with a copy of that individual’s resume, or other written documentation of the individual’s qualifications.

The duties of the Compliance Coordinator include but are not limited to:

- Serving as the liaison between MDHS and OCR.
- Developing an implementation plan to accomplish the specific obligations as described herein. The implementation plan will set benchmarks for achieving the requirements of the Agreement, timeframes with target dates for completion of the benchmarks, and will identify staff responsible for carrying out the benchmarks.
- Providing support, coordination and guidance to MDHS program leadership, for programs that receive HHS funding, while overseeing the implementation plan.
- Providing reports to OCR and the Secretary on the progress implementing the terms of the Agreement and identifying any substantial impediments to achieving compliance pursuant to Section V of this Agreement.
- Providing drafts of new or revised regulations, policies, procedures and guidance to OCR for review and comment as completed in accordance with timelines established in the Agreement.
- Coordinating a process for referring, investigating and resolving new complaints alleging disability-based discrimination received during the three-year term of the Agreement.

**E. Regulatory & Policy Implementations:**

The Secretary agrees it is necessary to amend regulations of the MDHS as well as revise pertinent corresponding sections of all MDHS policy manuals in order to be consistent with this Agreement and in furtherance of the requirements of the ADA and Section 504, as outlined in Appendix A. Within one-hundred fifty (150) calendar days of the Effective Date, the Secretary agrees to initiate the procedures for adoption

of regulatory amendments in accordance with the Maryland Administrative Procedure Act and complete the changes to the regulatory amendments within three years of the Effective Date. The Secretary will provide written updates to OCR regarding the status and content of the regulatory amendments every six months during the term of this Agreement. If additional amendments are required during the term of this Agreement due to changes in State or Federal law or other federal agency enforcement actions, or necessitated by internal operational improvements, the Secretary provides assurances that MDHS will not amend its regulations in a manner that will substantially change the rights of individuals with disabilities as outlined in this Agreement.

- F. Modifications to Automated Case Record:** The Secretary will complete the following modifications to the MDHS E&E system within one-hundred eighty (180) calendar days after the Effective Date:
1. A field indicating the presence of a disability requiring reasonable accommodation will be added to the client's first observable screen and will be made prominent by an alert system to make a worker entering the case record aware an accommodation may be needed.
  2. A field or fields will be added to identify the nature of the disability and the details of an accommodation to be provided, if any.
  3. An alert will be generated and sent to the MDHS worker or appear in a banner on the client's address screen whenever a written notice is issued, prompting the worker to call a customer who requires oral notification due to a disability, and to verify if appropriate language services were provided to LEP persons.
  4. A method for tracking types of disabilities and reasonable accommodations will be developed. MDHS will use an interim system to collect and report this data while waiting for modifications to the E&E system to be completed.
  5. An alert will be generated when benefits for a customer with a disability who requires an accommodation are scheduled to be reduced or terminated. The alert will issue before the modification of benefits so a worker can contact the customer to ascertain whether an accommodation is needed to complete the process of determining eligibility, redetermination, or compliance with any program requirements.
- G. Assessment and IP Development in the TCA Program:** MDHS will revise TCA Manuals to incorporate a uniform system for TCA assessment and referral for further evaluation. Within one-hundred twenty (120) calendar days of the Effective Date, the Secretary will identify one universal assessment tool to be used by all LDSS. The assessment tool must be validated as a tool capable of determining a customer's strengths and weaknesses, educational level, work history, job skills and readiness, interests, health, including if the customer has a disability (including a learning disability, cognitive disability or behavioral health disorder) or other barriers to participation in TCA program requirements. The new assessment and evaluation process, including the use of any algorithm in said process, shall be tested to identify

bias on the basis of race, color, national origin, sex, age, or disability and steps shall be taken to remove any identified bias. The new assessment and evaluation process, will include, at a minimum, the provisions listed below, and will be implemented within one-hundred eighty (180) days of the Effective Date. Provisions to be included in the new TCA screening system:

1. Written procedures requiring the use of the universal assessment tool by all local DSS offices during the initial application process prior to a customer being found exempt or approved for good cause exception, prior to completion of a Medical Report Form 500, prior to the development of the IP, and during subsequent redeterminations and revisions of the IP.
2. Written procedures requiring utilization of “qualified and appropriate persons or entities,” approved by MDHS, for evaluating customers when so indicated by the initial assessment. Qualified and appropriate persons or entities must have demonstrated competency or training in their respective fields. MDHS must maintain a list of approved qualified and appropriate persons or entities to be able to evaluate for a variety of conditions including but not limited to learning disability, behavioral health disorders, substance abuse disorders, and cognitive disabilities.
3. Written procedures, with timelines, for offering an evaluation to customers when:
  - a. the results of the assessment indicate a need for further evaluation for identification of disability or other barriers to participation in TCA required activities;
  - b. a MDHS worker or vendor staff observe behavior that indicates the need for further evaluation;
  - c. a customer presents medical or other information (including verbally), that they may have a disability or other barrier to participation in TCA required activities
  - d. before a customer’s case file is closed for failure to cooperate or noncompliance with program requirements, unless an evaluation has been completed within the previous 12 months.
4. Written procedures for when a customer declines an evaluation and there are unresolved factual issues as to a customer’s disability or other barriers to participation in required TCA activities including:
  - a. Documenting the customer’s reason(s) for declining an evaluation;
  - b. Providing assurance that the evaluation is at no cost to the customer and will be paid for by MDHS if the cost is not covered by a third-party source, such as Medicaid;
  - c. Informing the customer of the potential advantages and benefits of the evaluation;
5. Instructions for requiring evaluation reports to include, at a minimum:
  - a. diagnostic results (if applicable);
  - b. functional abilities and limitations of the customer related to employment, as well as the customer’s ability to engage in training and education prior to employment;

- c. description of the accommodations/modifications necessary for the individual to participate in and benefit from TCA programs/activities.
6. Instructions for uploading and storing individual assessments and evaluation reports in the customer's automated case record and paper files so that they are easily distinguishable from other documentation, and instructions for permitting copies to be provided to customers upon request.
7. Instructions concerning how information from assessments and evaluations must be considered when formulating and revising the IP. Including incorporating all the recommended accommodations or modifications into the IP or, documenting reasons for not incorporating them, within thirty (30) calendar days of receiving an evaluation. Also addressing how work placement decisions must be based on the best information available to the worker, including the information from the assessments and/or evaluations, inter alia.
8. Instructions for the sharing of IP accommodations with vendors and work activity assignments prior to assignment to an education, training or work activity, and the monitoring of the customer's performance to ensure IP specified services and accommodations are being provided after assignments are made.
9. Guidelines that emphasize the act of assessing and evaluating is ongoing, not a one-time event, and instructions for when to collect additional information. Guidance should also address when to provide "intensive case management" before taking action that would result in the reduction or termination of benefits or the imposition of sanctions. The process of information gathering should also include coordination with outside agencies that may be providing services to the customer such as the Maryland Division of Rehabilitative Services (DORS) and the Maryland Department of Labor.
10. Instructions clarifying the purpose and use of the Medical Report Form 500. MDHS shall not use the Medical Report Form 500 as a substitute for the universal assessment tool or the evaluation process. For example, if the initial assessment does not provide sufficient information for determining whether the customer meets the definition of individual with a disability under the ADA or Section 504, a Medical Report Form 500 may be used to gather additional information relative to the customer's disclosed condition. Alternatively, MDHS may allow customers to provide their own documentation substantiating disability. If the Medical Report Form 500 or the alternative documentation does not provide adequate information to establish disability, customers must be offered the opportunity to participate in the evaluation process for diagnostic purposes.

MDHS shall submit all proposed policy revisions concerning the new uniform system for TCA assessment and referral for further evaluation to OCR for review and approval within one-hundred fifty (150) calendar days of the Effective Date. Upon

completion of its review of MDHS' proposed new TCA screening system, OCR shall inform MDHS in writing of its approval or disapproval of the materials. If OCR disapproves of the new TCA screening materials, OCR shall provide MDHS detailed comments and recommendations regarding them. If OCR rejects the materials, MDHS shall have forty-five (45) calendar days from OCR's issuance of its rejection letter in which to make necessary changes and submit the revised materials to OCR for further review.

**H. Monitoring in the TCA Program:** MDHS will develop a tracking system within one-hundred eighty (180) calendar days of the Effective Date. The tracking system will collect and analyze data annually from local DSS offices on:

1. the number of customers who were assessed, found to have potential disabilities and offered an evaluation; agreed to an evaluation; and completed an evaluation (MDHS will use an interim system to collect and report this data while waiting for modifications to the E&E system to be completed);
2. the number of customers identified with disabilities; the TCA activity to which the customer was referred; accommodations implemented for the customer; whether the customer was successful in the program to which they were referred; and if available, the employment outcome for the customer (MDHS will use an interim system to collect and report this data while waiting for modifications to the E&E system to be completed);
3. whether the universal assessment tool and evaluation reports are being used consistently and are adequate for the purposes they were intended;
4. whether the universal assessment tool is resulting in any bias on the basis of race, color, national origin, sex, age, or disability with regard to assistance provided by MDHS;
5. whether assistance provided by MDHS is meeting the needs of customers with disabilities so that they are in compliance with their independence plans;
6. which customers are being sanctioned and why to determine if the customer has a disability and whether the disability substantially contributed to noncompliance with TCA program requirements;
7. vendor compliance, including obtaining vendors' notices of nondiscrimination and the availability of accommodations; copies of vendors' procedures for providing reasonable modifications; evidence of vendor workforce training on federal civil rights, and, reports from vendors concerning the number of participants with disabilities being served, the accommodations being implemented (if applicable), and their status in a TCA work activity.

**I. Oversight of HHS Funded Programs:** MDHS will develop a system of oversight within one-hundred fifty (150) calendar days of the Effective Date that:

1. Uses data analyzed from its civil rights monitoring to identify and address internal process deficiencies on an annual basis.
2. Conducts annual reviews of:

- a. civil rights policies and procedures of LDSS and vendors annually to determine if they are current and/or revisions are necessary;
  - b. nondiscrimination notices, posters and materials of LDSS and vendors to determine if they are written at appropriate levels, include effective communication information, and contain instructions for how to request accommodations and file grievances;
  - c. notices of adverse actions transmitted to customers to determine if revisions are needed to make them accessible to individuals with low literacy levels and/or disabilities so that they may understand the information provided and actions required;
  - d. training materials used by LDSS;
  - e. contracts with vendors to ensure compliance with civil rights language concerning reasonable accommodations and training requirements.
  - f. Complaints, grievances and inquiries filed by customers.
3. Takes corrective actions if warranted such as revising policies, providing additional training, increasing monitoring, and imposing sanctions and/or corrective actions on workforce members or vendors for violations noted during a review.

**J. Self-evaluation:** MDHS will use the results of its monitoring, oversight and tracking systems to conduct a self-evaluation by the Secretary or designee of MDHS' compliance with the ADA, Section 504 and the Agreement.

1. The self-evaluation, including findings and recommendations, will be completed annually during the term of the Agreement.
2. If the self-evaluation identifies adverse actions against customers with disabilities that indicates they were treated differently on the basis of disability, MDHS shall take appropriate steps to remedy any discrimination that is substantiated.
3. An example of this self-evaluation obligation includes investigating criteria of eligibility placed solely on customers with disabilities, that is not required by law or regulation, such as the use of Verification of Participation (VOP) forms by some LDSS.

**K. Grievance Procedure:** Within thirty (30) calendar days of the Effective Date, MDHS will revise its existing grievance procedure to include:

1. Investigating federal civil rights complaints and grievances.
2. Implementing corrective action measures such as requiring additional staff training or imposing staff sanctions, or terminating vendor contracts when appropriate.
3. Maintaining records of ADA-Section 504 investigations and their resolutions for a minimum of three years.

**L. Staff Training:** Ongoing training on the ADA, Section 504 and the VRA will be provided at least annually. All training materials will be revised to incorporate the following, *inter alia*:

1. Terms of the Agreement.
2. How and when to give notice of rights to customers across all programs, including orally explaining and offering to read the notice, when there is customer contact with the local DSS, regardless of who initiated the contact.
3. How to provide reasonable accommodations to customers across all programs, and how to document customers' disabilities and any approved accommodations in the electronic and paper case files.
4. How and when to use the universal assessment tool in the TCA program, including instruction that even those with exemptions or good cause exceptions from work activity programs must be assessed by MDHS.
5. How to refer a customer for an evaluation when indicated by the initial assessment, including how to discuss evaluations so that customers understand confidentiality protections and are not offended by the referral. Or in the alternative, how and where in the case record to document when a customer declines an offer for an evaluation.
6. How to incorporate the findings of the assessment or evaluation in the IP when identifying the customer's appropriate work activities and any other goals and objectives of the IP.
7. When to review the IP, how to determine if accommodations are working, and when to revise or conduct additional assessments or evaluations.
8. How to monitor and ensure vendors are providing equal opportunity to services for customers with disabilities, including how to inform vendors of customers' accommodations, and what to do if vendors are not providing equal opportunity or accommodations to customers.

MDHS shall submit all of the training materials to OCR for review and approval within sixty (60) calendar days of OCR's approval of the policies and procedures which are described in Section IV.G. above. OCR shall have 15 calendar days to complete its review and issue a written response to MDHS. Upon completion of its review of MDHS training materials, OCR shall inform MDHS in writing of its approval or disapproval of the training materials. If OCR disapproves of the training materials, OCR shall provide MDHS detailed comments and recommendations regarding the training materials. If OCR rejects the training materials, MDHS shall have thirty (30) calendar days from OCR's issuance of its rejection letter in which to make necessary changes and submit the training materials to OCR for further review. Within thirty (30) calendar days of OCR's approval of the training materials, MDHS shall provide the training to the staff identified above. Within ten (10) calendar days of completing the training, MDHS shall deliver to OCR evidence of such training and attendance by the attendees.

Training shall, thereafter, be conducted annually and at orientation for new employees, or at least within sixty (60) calendar days of employment.



## V. REPORTING REQUIREMENTS TO OCR

MDHS agrees to provide OCR with the following:

- A. Within thirty (30) calendar days of the Effective Date of this Agreement, a copy of the revised grievance procedure pursuant to Section IV.K.
- B. Within sixty (60) calendar days of the Effective Date of this Agreement, a copy of the notice of the terms of this Agreement that was sent to all of the social services and public assistance activities it supervises, directs, and controls, including the local Departments of Social Services, pursuant to Section IV.C.1 of this Agreement.
- C. Within ninety (90) calendar days of the Effective Date of this Agreement,
  1. Documentation of the notice of this Agreement provided to the public, pursuant to Section IV.C.2 of this Agreement.
  2. Copy of the Compliance Coordinator's resume or other written documentation of their qualifications, pursuant to Section IV.D of this Agreement.
- D. Within one-hundred twenty (120) calendar days of the Effective Date of this Agreement, a copy of the universal assessment tool identified pursuant to Section IV.G of this Agreement.
- E. Within one-hundred fifty (150) calendar days of the Effective Date of this Agreement,
  1. Copy of all proposed policy revisions concerning the new uniform system for TCA assessment and referral for further evaluation, pursuant to Section IV.G
  2. Evidence that the Secretary has initiated adoption of regulatory amendments in accordance with the Maryland Administrative Procedure Act pursuant to Section IV.E.
  3. Evidence of development of oversight system for HHS-funded programs pursuant to Section IV.I
- F. Within one-hundred eighty (180) calendar days of the Effective Date of this Agreement,
  1. Evidence of the implementation of the modifications to the MDHS E&E system pursuant to Section IV.F of the Agreement
  2. Documentation of the implementation of the new written policies and procedures regarding the universal assessment tool and the new TCA assessment and evaluation process pursuant to Section IV.G.
  3. Evidence of development of monitoring system in TCA program pursuant to Section IV.H.
- G. Within sixty (60) calendar days of OCR's approval of MDHS' policies and procedures described in Section IV.G, MDHS shall provide training materials that are described in Section IV.L.

- H. Within ninety (90) calendar days of implementation of the assessment tool described in Section IV.G., documentation of the assessment of the Affected Parties, evidence that any approved reasonable modifications were documented clearly in the Affected Parties' case files, and a copy of the documentation provided to the Affected Parties regarding any reasonable modification that was granted pursuant to Section IV.B of this Agreement.
- I. At twelve (12) months after the Effective Date of this Agreement, and at three-month intervals thereafter, MDHS shall submit to OCR
  - 1. Summaries of the data collected and analyzed by MDHS pursuant to Section IV.H of this Agreement.
  - 2. Copies of all grievances and their outcomes received pursuant to the Grievance Procedure identified in Section IV.K of this Agreement.
- J. At twelve (12) months after the Effective Date of this Agreement, and at six-month intervals thereafter, MDHS shall submit to OCR updates as to the status of the implementation of the regulatory changes pursuant to Section IV.E.
- K. At twelve (12) months after the Effective Date of this Agreement, and at twelve-month intervals thereafter MDHS shall submit to OCR
  - 1. Copy of MDHS's report of its annual review pursuant to Section IV.I.
  - 2. Copy of MDHS's self-evaluation pursuant to Section IV.J.
  - 3. Copy of training completion sheets/reports or certificates of completion pursuant to Section VI.L.

**VI. SIGNATURES**

 August 13, 2024

For the U.S. Department of Health and Human Services

Date: August \_\_, 2024  
 Melanie Fontes Rainer, Director  
 Office for Civil Rights

Luis Perez, Deputy Director  
 Enforcement Division  
 Office for Civil Rights

Jamie Rahn Ballay, Regional Manager  
 Region III (Mid-Atlantic)  
 Office for Civil Rights

 July 19, 2024  
 Rafael J. López  
 Secretary  
 Maryland Department of Human Services

## APPENDIX A

As discussed in Section IV.E of the Agreement, it is necessary to amend MDHS regulations and pertinent corresponding sections of MDHS policy manuals in order to be consistent with this Agreement and in furtherance of the requirements of the ADA and Section 504. The amendments should contemplate revisions to the following:

1. Office of the Secretary - Nondiscrimination:
  - a. 07.01.03.02 revise to include, at a minimum, definitions incorporating ADA and/or Section 504 language for the terms “disability,” “reasonable modifications” and “reasonable accommodations.”
  - b. 07.01.03.04D revise to include the Department may not deny reasonable requests for modifications from those with disabilities when modifications of the Department’s policies, practices, or procedures are needed to allow an equal opportunity to participate in and benefit from MDHS programs.
  - c. 07.01.03.08 clarify that individuals may file complaints of discrimination (as well as their representatives).
  - d. Promulgate new regulations to identify the “rights” MDHS affords customers in the delivery or performance of services to the public, including, *inter alia*,
    - i. right to notice of rights and protections afforded by the ADA and Section 504;
    - ii. right to be treated in a non-discriminatory manner, including the right to a reasonable accommodation for customers with disabilities;
    - iii. right to grievance procedures that provide prompt and equitable resolution of complaints of discrimination.
2. HHS-funded programs: Promulgate new policies to provide non-discrimination in the administration of these programs including, *inter alia*,
  - a. Affording notice to customers (including providing notice in appropriate languages to LEP persons) of the right to an accommodation for those with disabilities as follows:
    - i. at the time of application (in-person, electronically, or via paper form), redetermination, and notices of adverse action;
    - ii. when there is customer contact with the local DSS regardless of who initiated the contact;
    - iii. whenever it becomes apparent to the worker or MDHS that an individual with a disability may need a reasonable accommodation in order to allow the individual an equally effective and meaningful opportunity to participate in activities, services or programs provided by MDHS.
  - b. Describing the process for individuals with disabilities to request reasonable modifications to a rule, policy, practice or service required by

- MDHS, including how to make a request and what is needed to substantiate a request.
- c. Describing the timelines that apply to requests for modifications including acknowledging receipt of a request, approving or denying a request, when appeals must be filed, responding to requests for review of a determination, and when determinations are considered to be final agency decisions.
  - d. Describing the process for determining whether making the modification would fundamentally alter the nature of the service, program or activity, including identifying an alternative modification that does not result in a fundamental alteration. Including as follows:
    - i. Clarifying that workers can, without supervisor/managerial approval, approve reasonable accommodations that do not require agency resources beyond the worker's control such as:
      - A. Maintaining a list of visually or cognitively impaired customers requesting to be called prior to the mailing of notices;
      - B. Waiving in-person office interviews and using phone or home visits to interview and assist customers understand and complete forms;
      - C. Extending the deadlines for providing eligibility documentation;
      - D. Assisting with making medical appointments and collecting medical documentation to establish disability when determining eligibility;
      - E. Providing material in Braille, tape or large print;
      - F. Providing access to communication services for customers who are deaf or hearing impaired.
    - ii. Clarifying that accommodations requiring more significant agency resources require approval from a supervisor, manager or the ADA Coordinator.
  - e. Describing the process for informing individuals with disabilities in writing of decisions concerning their requests for accommodations and their right to appeal and/or file a grievance if denied.
  - f. Recording all requests for accommodation, and the granting or denial of such requests, in the customer's automated case record, and paper file if applicable. If granted, the nature of the accommodation must be recorded for future utilization and programmed to continue for as long as the customer has the disability-related need, i.e., not time-limited to redetermination periods. If denied, the reason must be recorded.
  - g. Identifying in the customer's automated case record on the first observable screen for the client, the client's disability and approved accommodation and marking any paper file with an obvious color or other alert mechanism affixed to the file signifying disability and approved accommodation.

3. Family Investment Administration

- a. Amend section 07.03.03.02 to include, at a minimum, a definition for “disability,” “reasonable modification” and “severe disability,” if “severe disability” continues to be used. Delete current definition for “Impairment” found at 07.03.03.02(25). See 28 C.F.R. § 35.108 for ADA/504 definition of disability and impairment.
- b. Amend 07.03.03.04.C to clarify that all applicants must be assessed using the universal assessment tool, prior to being found exempt or approved for good cause, prior to completing the Medical Report Form 500, and prior to the development of or revisions to the IP.
- c. Amend 07.03.03.04.F to include a specially designated field, observable on the first page of the client record, that alerts a worker entering the case record that the customer has a disability and an accommodation may be needed.
- d. Amend 07.03.03.07-1.D(2) to incorporate new definition of “severe disability” if appropriate, or consider deleting use of “severe disability” and substituting “disability” as defined under ADA/504.
- e. Delete or amend 07.03.03.08 to align with the new definition for “severe disability” or “disability” as defined under ADA/504.
- f. Amend 07.03.03.10.C to clarify that the requirement for a customer to appear “at the offices of the child support enforcement agency or the local department” may be waived in certain circumstances such as in order to provide a customer with a reasonable accommodation.
- g. Amend 07.03.03.18.C to include a statement of the customer’s right to a reasonable accommodation for disability-related needs and language assistance services as follows:
  - i. at the time of application (in-person, electronically, or via paper form), redetermination, notice of adverse action;
  - ii. when there is customer contact with the local DSS regardless of who initiated the contact;
  - iii. whenever it becomes apparent to the worker or MDHS that an individual with a disability may need a reasonable accommodation in order to allow the individual an equally effective and meaningful opportunity to participate in activities, services or programs provided by MDHS.
- h. Amend existing regulations and promulgate new regulations as necessary to comply with requirements of HB1313 (2020-Regular Legislative Session) and HB1041 (2022-Regular Legislative Session).