

U.S. COMMISSION ON CIVIL RIGHTS

EQUAL OPPORTUNITY IN HOSPITALS AND HEALTH FACILITIES

Civil Rights Policies Under the Hill-Burton Program

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"There is no remaining question about the determination of the American people to eliminate the injustices and the waste of human resources that have resulted from discrimination in this country."

*President Lyndon B. Johnson
February 5, 1965*

The Civil Rights Act of 1957, as amended in 1960 and 1964, authorizes the U.S. Commission on Civil Rights to review Federal laws and policies with respect to denials of equal protection of the laws under the Constitution. The 1964 Civil Rights Act also directs the Commission to serve as a national clearinghouse for civil rights information. Pursuant to these directives this Commission publication is designed to explain civil rights policies under the Hill-Burton program, and includes an explanation of recent changes resulting from the Civil Rights Act of 1964.

This publication was prepared with the cooperation of the Public Health Service, Department of Health, Education, and Welfare.

SUMMARY OF HILL-BURTON REQUIREMENTS AFFECTING EQUAL ACCESS TO HEALTH FACILITIES

- * "Separate but equal" facilities will no longer be approved for federal financial assistance.
- * Patients must be admitted to facilities without regard to their race, creed, color, or national origin.
- * Once admitted, patients must have access to all portions of the facility and to all services without discrimination. They may not be segregated within any portion of the facility, provided a different service, restricted in their enjoyment of any privilege, or treated differently because of their race, creed, color, or national origin.
- * Professionally qualified persons may not be denied the privilege of practice in the facility on account of race, creed, color, or national origin.
- * Residents, internes, nurses and medical technicians may not be denied training opportunities in the facility on account of their race, creed, color, or national origin.
- * No Hill-Burton facility may, directly or indirectly, use criteria or methods of administration which would defeat or impair the accomplishment of the program objectives for individuals of a particular race, creed, color, or national origin.

These requirements apply to facilities which currently receive or will be receiving Hill-Burton funds. They apply even though the application may have been approved or construction commenced before the 1964 Civil Rights Act regulations became effective.

Although Hill-Burton aid may be sought only for an addition to or a portion of a facility, these requirements apply to the entire health facility. They also apply to repeat applications from facilities which had previously received funds either as "separate but equal" or as "nondiscriminatory" facilities.

THE HILL-BURTON ACT

Basic Objectives

In 1946 Congress enacted the Hospital Survey and Construction Act, permitting State-Federal cooperation in providing needed community health facilities. This law, sponsored by Senators Lister Hill and Harold H. Burton, came to be known as the Hill-Burton Act. It authorized matching Federal grants, ranging from one-third to two-thirds of the total cost of construction and equipment, to public and nonprofit private health facilities.

By February 1965, more than two billion dollars in Federal funds had been allocated to assist in making health facilities available in 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Facilities and programs which may be financed under the Hill-Burton Act include

- * general hospitals
- * mental hospitals
- * tuberculosis and other chronic disease hospitals
- * public health centers
- * nursing homes
- * diagnostic and treatment centers
- * rehabilitation centers
- * modernization or replacement of health facilities (new provision, effective July 1, 1965)
- * experimental or demonstration projects designed to improve hospital services, facilities and resources

Administration of the Program

In order to receive Hill-Burton funds, each State designated an agency to administer the program and develop a State plan acceptable to the Federal Government. The State agencies surveyed all existing health facilities, whether public or private, nonprofit or proprietary, Hill-Burton or non-Hill-Burton, to determine what facilities and services were needed. On the basis of these surveys, State plans which programmed the needed health facilities for the States were prepared and submitted for the approval of the Public Health Service. The law requires that these plans be revised every two years.

The Surgeon General, director of the Public Health Service of the Department of Health, Education, and Welfare, administers the Hill-Burton Act and is charged with the responsibility of issuing regulations which establish standards for State plans. These regulations are subject to the approval of the Secretary of HEW and the Federal Hospital Council. The Council, consisting of both lay and professional leaders having knowledge of the provision and use of health facilities, serves in an official advisory capacity to the Surgeon General.

The Federal Government does not generally deal directly with individual hospitals in the planning stages. A local application for a new health facility or an addition to an existing establishment is processed through the State agency, which must ensure that the application complies with the State plan and Federal requirements.

If the State-approved application is subsequently approved by the Surgeon General, periodic Federal payments are made to the State agency for disbursement to the facility as the construction or modernization progresses or as equipment is obtained.

CIVIL RIGHTS POLICY: 1946-1963

Separate but Equal Facilities

The Hill-Burton Act originally directed the Surgeon General to require an assurance from all applicants that the facility or any addition would be available to all persons residing in the area without discrimination on account of race, creed, or color. However, the law permitted an exception to this requirement in localities where separate health facilities were planned for separate population groups if the facilities and services were of like quality for each group.

Thus Congress, by statute, incorporated the "separate but equal" concept into the Hill-Burton Act. Eight years later, in 1954, the Supreme Court issued the first of a series of decisions declaring "separate but equal" public facilities unconstitutional. The racial policies governing the administration of the program, however, did not change until late 1963.

During the first 17 years of the Hill-Burton program, approximately 70 separate health facilities (less than 1% of all Hill-Burton projects) were constructed either for white or for Negro patients. All of the other Hill-Burton projects were classified as "nondiscriminatory" facilities.

"Nondiscriminatory" Facilities

Sponsors of health facilities not constructed as "separate but equal" were required by statute to assure that the facilities would be made available to all persons without discrimination on account of race, creed, or color. Nearly all of some 7,000 Hill-Burton projects were of this so-called "nondiscriminatory" type.

The nondiscriminatory requirement of the Act, as interpreted by the General Counsel of HEW, meant that:

No person could be denied admission as a patient because of race, creed, or color to that portion of the facility constructed with Federal funds. However, he could be denied admission to other portions of the facility

No patient could be denied any service essential to his medical care

Patients could be segregated within the facility by race, creed, or color

Professionally qualified persons could be denied staff privileges, and internes and residents could be denied training on account of race, creed, or color

The General Counsel based his ruling on the language of the Hill-Burton Act, his interpretation of the legislative history, and the statutory provision prohibiting the Surgeon General from interfering in the internal administration of any facility receiving grants.

This policy governed the operation of the Hill-Burton program until the court decision in the *Simkins* case in 1963 and the passage of the 1964 Civil Rights Act. When Congress enacted the 1964 Hospital Survey and Construction Act it did not include the "separate but equal" language or the original statutory prohibition against discrimination. It does require that aided health facilities "be available for all persons residing in the State."

DEVELOPMENT OF CURRENT POLICIES

"Our urgent responsibility is to assure adequate health care to all Americans. I think that none would deny that consideration of race or color has no place with regard to the ailing body or the healing hand."

Anthony J. Celebrezze, Secretary of Health, Education, and Welfare, March 9, 1964

The current standards of equal access to federally-aided health facilities developed in stages through a combination of court decisions, legislation, and affirmative action by the executive branch of the Federal Government.

Simkins v Cone — A Landmark Decision

In 1963, the doctrine of equal access to health facilities was significantly advanced by the *Simkins* decision which resulted from a case brought in the Federal District Court in North Carolina by Negro physicians, dentists and patients—all of whom alleged discriminatory practices by two Greensboro

hospitals. Both hospitals had been constructed with Hill-Burton funds under the "separate but equal" provision. However, while one hospital excluded Negroes altogether, the other admitted a few Negro patients but imposed special restrictions not applicable to whites. The Negro plaintiffs asked the Court to:

Order the hospitals to cease denying Negro physicians and dentists the use of staff facilities on the ground of race

Restrain the hospitals from denying and abridging admission of patients on the basis of race

Restrain the hospitals from refusing on the basis of race to permit patients to be treated by their own physicians and dentists in the hospitals

Declare the "separate but equal" provision of the Hill-Burton Act and implementing regulations of the Surgeon General unconstitutional under the Fifth and Fourteenth Amendments

The Department of Justice intervened in the proceeding and joined with the plaintiffs in asking that the "separate but equal" provision of the Hill-Burton Act be declared unconstitutional.

The District Court decided against the Negro plaintiffs, but on appeal the Fourth Circuit Court reversed this decision and granted the relief sought by the plaintiffs. The U.S. Supreme Court refused to review the case, and thus left intact the ruling of the Fourth Circuit.

After the Circuit Court handed down its decision in the case on November 1, 1963, the Public Health Service (PHS) suspended approval of all new applications for "separate but equal" facilities. Following the Supreme Court's refusal to review the case in March 1964, Secretary of Health, Education, and Welfare Anthony Celebrezze announced new nondiscrimination requirements to implement that *Simkins* decision. Regulations implementing these new requirements were announced by PHS on March 9, 1964 affecting all pending and future applications and providing that:

The previous suspension in processing "separate but equal" applications be made permanent

Patients be admitted and have access to all portions of the facility not simply those built with Federal funds

Patients no longer be segregated within the facility

Qualified physicians and dentists be admitted to the privilege of professional practice within the facility without discrimination on the ground of race, creed or color

Sponsors of eight "separate but equal" facilities, whose projects were still in varying stages of construction, were required to execute nondiscriminatory admission assurances as a condition for continuing to receive Federal funds. However, projects already completed and the 835 "nondiscriminatory" facilities under construction and receiving Federal funds at that time were unaffected by this ruling. The PHS asked sponsors of the facilities under construction to execute voluntary nondiscrimination assurances that staff privileges would be available to all professionally qualified persons. Sponsors of almost 700 of these facilities agreed to do so.

The Civil Rights Act of 1964

NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

Title VI

On July 2, 1964, the President of the United States signed the Civil Rights Act of 1964. Title VI of the Act prohibited discrimination in Federally-assisted programs and provided that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Act also directed each Federal agency administering a program to issue regulations effecting the requirements of Title VI. On January 3, 1965, the regulations of the Department of Health, Education, and Welfare implementing Title VI became effective. On approving these regulations the President stated:

"This Nation's commitment to the principle of equality of treatment and opportunity for all Americans will be well served by the new regulations assuring that Federal programs are available to all citizens without regard to their race, color or national origin."

The requirements effecting equal access to Hill-Burton aided facilities are summarized on page 3. Discriminatory practices by Hill-Burton aided facilities based on race, color, or national origin are forbidden by Title VI regulations. Discriminatory practices based on creed are forbidden by other departmental directives. The following are examples of those practices which are now prohibited:

- * A hospital refuses to admit a patient or after admission subjects the patient to segregation or separate or different treatment because of his race

- * A hospital discriminates in the selection of residents, interns, student nurses or other trainees
- * A nursing home admits all patients, but discourages use of the recreation room or specifies certain hours for use to patients of one race
- * A health facility denies to professionally qualified persons the privilege to practice in the facility or denies the privilege on the ground that the doctor is not a member of a medical association which refuses to accept him as a member on the ground of race, creed, color, or national origin.

The Title VI regulations do not effect health facilities completed and no longer receiving any Federal financial assistance on or after January 4, 1965. However, these completed facilities are still subject to the more limited 1946-63 regulations. Desegregation beyond the requirements of the 1946-63 departmental regulations may be accomplished through:

- a. voluntary desegregation of the facilities
- b. State or municipal action by statute, ordinance, or administrative rule
- c. Federal or State court action to apply the ruling of the *Simkins* case.

Medical facilities which have not received financial assistance under the Hill-Burton program may still be subject to Title VI requirements because of their participation in other Federal assistance programs. For example, a hospital providing medical care for indigent patients which is under contract with a county welfare agency receiving Federal financial assistance may not discriminate; the hospital is held to the same standard of equal opportunity as any Hill-Burton facility.

DESEGREGATION OF PUBLIC FACILITIES

Title III—Civil Rights Act of 1964

Title III implements the Federal ban against segregation in public facilities by authorizing the Attorney General, upon receipt of a proper complaint, to bring suit against a public facility for its desegregation. This title applies to all facilities, including hospitals and other medical facilities which are owned, operated, or managed by or on behalf of any State or political subdivision thereof. Title III applies to public hospitals whether or not they have received Federal funds.

EQUAL EMPLOYMENT OPPORTUNITY

Title VII—Civil Rights Act of 1964

Title VII prohibits discrimination by employers, labor unions, or employment agencies engaged in industry affecting commerce. This ban on discrimination in employment may be applied to prohibit employment discrimination by private hospitals and by labor organizations representing hospital employees. Title VII expressly excludes States and political subdivisions thereof from the definition of "employer" and accordingly public hospitals are apparently not covered by this Title. Final determination on the applicability of Title VII to hospitals and other health facilities, however, must await rulings by the Equal Employment Opportunity Commission which was established by the Civil Rights Act of 1964.

REFERENCES

Department of Health, Education and Welfare: departmental directive on creed: 42 C.F.R. 53.111(c), March 1964, December 1964.

Simpkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (4th.Cir., November 1, 1963), cert den. 376U.S.938 (March 2, 1964).

Department of Health, Education and Welfare: Title VI regulations: 45 C.F.R. 80.1, December 4, 1964.

Persons seeking additional information on civil rights policies affecting health facilities may contact:

Surgeon General
Public Health Service
Department of Health, Education, and Welfare
Washington, D.C. 20201

or

The U.S. Commission on Civil Rights
Washington, D.C. 20425

OTHER CCR SPECIAL PUBLICATIONS

Number 1—CIVIL RIGHTS UNDER FEDERAL PROGRAMS: A detailed explanation of Title VI regulations, particularly relating to compliance reports, periodic field reviews and investigations, enforcement proceedings, termination of Federal funds.



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The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;
- Appraise Federal laws and policies with respect to equal protection of the laws;
- Serve as a national clearinghouse for civil rights information;
- Investigate allegations of vote fraud; and
- Submit interim reports and a final and comprehensive report of its activities, findings, and recommendations to the President and the Congress.

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