

STATE AND FEDERAL CIVIL RIGHTS ENFORCEMENT IN MISSOURI--  
NONDISCRIMINATION IN THE NEW HEALTH AND HUMAN SERVICES BLOCK GRANT PROGRAMS  
October 1982

A monograph of the Missouri Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This monograph will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the contents of this monograph should not be attributed to the Commission but only to the Missouri Advisory Committee.

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Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this monograph are those of the Missouri Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This monograph has been prepared by the State Advisory Committee for submission to the Commission and will be considered by the Commission in formulating its recommendations to the President and Congress.

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## ACKNOWLEDGMENTS

This monograph was produced with the assistance of the Commission's Central States Regional Office. The investigation and monograph were the principal staff assignment of Etta Lou Wilkinson. The monograph was written by Malcolm Barnett. Legal sufficiency review was conducted by Elaine M. Esparza. Support services were provided by Jo Ann Daniels and Gloria O'Leary. The project was undertaken under the overall supervision of Melvin L. Jenkins, Esq., Director, Central States Regional Office.

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Dear Commissioners:

The Missouri Advisory Committee submits this monograph of its investigation of Federal and Missouri enforcement of nondiscrimination in the new health and human services block grant programs.

During our investigation we examined the roles of the U.S. Department of Health and Human Services/Office for Civil Rights, the State attorney general, the State auditor and the State departments of mental health and social services in assuring compliance with Federal antidiscrimination laws in the administration of Federal funds provided pursuant to Pub.L. 97-35, the Omnibus Budget Reconciliation Act of 1981, under the new block grant programs administered by the Department of Health and Human Services.

The Advisory Committee concludes that review by the Federal Government is slight and may be insufficient. It concludes that while reviews by the State departments are more extensive than the Federal effort, they too may be insufficient but that they are as much as can be done, given the available funding. The Committee determined that neither the State auditor or the State attorney general had any role in determining compliance with Federal antidiscrimination laws by State agencies.

The Committee suggests that the role of the State auditor be increased so that his office can monitor compliance as part of its normal audit function. The Committee also suggests that responsibility for assuring compliance be centralized in a single State agency, such as the State human rights commission, rather than remain with the operating agencies as it does at present.

The Committee notes that Federal enforcement efforts have been insufficient and urges the Commission undertake further studies regarding Federal enforcement of the antidiscrimination laws.

The Committee urges you to concur in its findings and recommendations, consider them in your program planning and assist it in its follow-up efforts.

Respectfully,

JOANNE M. COLLINS, Chairperson  
Missouri Advisory Committee

## INTRODUCTION

In 1981 the Reagan administration decided to consolidate a large number of Federal grants to both State and local governments that provided Federal money for specific services (categorical grants) into a few consolidated grant programs (block grants) for States that would allow the recipients wide discretion over how funds were expended and make the States responsible for local allocations. The administration stated:

The widely acknowledged benefits of block grants are that they allow the reduction of overhead because there are fewer people processing papers, and that they permit State and local officials to allocate funds to the most urgent areas of need. Thus, a block grant program funded at a lower level can provide as many benefits for the State and local recipients as a higher level of funding for a multiplicity of narrow categorical grants.<sup>1</sup>

Ultimately, under the provisions of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35)<sup>2</sup> nine of these block grants were created to replace 57 categorical programs: social services; home energy assistance; community development; elementary and secondary education; alcohol, drug abuse and mental health; maternal and child health; community services; primary health care; preventive health and health services.

The consolidated programs administered by the U.S. Department of Health and Human Services encompassed one or more predecessor categorical programs. These programs and the FY 1982 nationwide funding levels were:

Health Prevention Services	\$ 95,000,000
Rodent Control	
Fluoridation	
High Blood Pressure	
Health Incentive	
Emergency Medical Services	
Risk Reduction/Health Education	
Rape Crisis	
Alcohol, Drug Abuse, and Mental Health	\$ 491,000,000
Alcoholism State Formula Grants	
Alcoholism Project Grants	
Drug Abuse State Formula Grants	
Drug Abuse Project Grants	
Mental Health Services	
Primary Care	\$ 280,000,000
Community Health Centers	
Maternal and Child Health	\$ 373,000,000
Maternal and Child Health	
Supplemental Social Security Insurance Program for Disabled Children	
Hemophilia	
Sudden Infant Death Syndrome	
Lead-Based Paint	
Genetic Diseases	
Adolescent Health	
Social Services	\$2,400,000,000
Social Services Formula Grant	
Day Care	
State/Local Training	
Community Services	\$ 389,400,000
Community Action/Local Initiative	

Low-Income Home Energy Assistance  
Low-Income Energy Assistance<sup>3</sup>

\$1,875,000,000

In addition, \$1.082 million was allocated for the community development block grant for small cities, administered by the U.S. Department of Housing and Urban Development; and, \$0.589 million was allocated to the U.S. Department of Education for a block grant comprising a number of the smaller categorical school grant programs.<sup>4</sup> Most of these funds are distributed to the States based principally on the share of program funds they received in FY 1981.<sup>5</sup> However, the Social Services Block Grant funds are distributed based on population.<sup>6</sup>

Missouri received \$109 million under seven of the eight authorized health and human services block grants for FY 1982: \$6.5 million for maternal and child health; \$8.0 million for alcohol, drug abuse and mental health; \$2.4 million for preventive health services; \$6.4 million for community services; \$51.8 million for social services; and, \$32.4 million for low-income energy assistance.<sup>7</sup> It received \$26.2 million under the new community development block grant (there is another similarly named program under the Housing and Community Development Act)<sup>8</sup> and \$8.9 million under the elementary and secondary education block grant.<sup>9</sup> Missouri did not apply for planning funds under the primary care grant.<sup>10</sup>

Professor Richard Nathan, of the Woodrow Wilson School at Princeton University, has alleged that, for the most part, the change to block grants is cosmetic, since funding levels are not much reduced and many categorical requirements remain.<sup>11</sup> But Missouri is relatively unusual in using what authority has been provided to reallocate funds.<sup>12</sup> Because the beneficiaries of social programs are disproportionately minority,<sup>13</sup> the Missouri Advisory Committee sought to determine whether the changes would affect the civil rights protections available under Federal law--the civil rights provisions of Pub.L. 97-35 and earlier statutes including Title VI of the 1964 Civil Rights Act which prohibits discrimination based on race, color or national origin in federally funded programs, 42 U.S.C. sec. 2000d; Sec. 504 of the Rehabilitation Act of 1973, 29 U.S.C. sec. 794, which prohibits discrimination based on mental or physical handicap; Titles VII and VIII of the Public Health Service Act which bar sex discrimination in admissions to health training programs, 42 U.S.C. sec. 300w-7; the Age Discrimination Act of 1975, 42 U.S.C. sec. 6101, which prohibits discrimination based on age; and, the Hill-Burton Act, 42 U.S.C. sec. 291c, which requires hospitals to provide services without discrimination based on race, color, national origin or method of payment.<sup>14</sup> The study was limited to the seven block grant programs of the U.S. Department of Health and Human Services that were operating in Missouri during FY 1982.

The Advisory Committee wanted to know what enforcement authority regarding discrimination would be transferred to the State of Missouri, how Missouri would undertake to administer its responsibilities and what functions the Federal civil rights officials would continue to perform. To pursue its inquiries, the Advisory Committee obtained data from the U.S. Department of Health and Human Services, and the Department's Office for Civil Rights in Region VII. The Committee also obtained data from the Missouri Attorney General, the State Auditor, the Missouri Department of Social Services, the Missouri Department of Mental Health and the Missouri Commission on Human Rights. It asked these government agencies what they had done in the past to administer the antidiscrimination laws and what they would be doing in the future.

The answers supplied to the Advisory Committee, provided during the period January-July 1982, are summarized in this monograph. The various participants have had an opportunity to comment on a preliminary draft of this report and their comments or corrections have been incorporated into the final draft. The findings and recommendations to the U.S. Commission on Civil Rights, contained herein, are intended to assist the Commission in its duty of appraising Federal law and policy on civil rights questions.



## Notes

1. Quoted by Richard P. Nathan in "Clearing Up the Confusion Over Block Grants," The Wall Street Journal, Nov. 3, 1981.
2. Omnibus Budget Reconciliation Act of 1981, Pub.L. 97-35, 95 Stat. 357.
3. U.S.. Department of Health and Human Services, Summary of Programs Consolidated in HHS Block Grant (n.d.) The Primary Health Care Grant did not take effect until FY 1983. Only planning funds were authorized for 1982.
4. The Wall Street Journal, Nov. 3, 1981.
5. HHS, Summary of Block Grants Passed by the Congress (n.d.).
6. Pub.L. 97-35, sec. 2003(b), 95 Stat. 868 (1981).
7. HHS, HHS Block Grants--Status Report (n.d.).
8. Office of Regional Community Planning and Development, computer file.
9. Education Funding News, Aug. 3, 1982.
10. HHS, HHS Block Grant, Status Report (n.d.).
11. The Wall Street Journal, Nov. 3, 1981.
12. New York Times, Nov. 3, 1981.
13. The New Day, March 1982.
14. HHS/OCR, Fact Sheet, n.d. Title IX of the Education Act Amendments of 1972, 20 U.S.C. sec. 1681, prohibits discrimination based on sex in federally assisted education programs, but these are not reviewed in this study.

## BLOCK GRANT CIVIL RIGHTS COMPLIANCE

The exact current status of the civil rights requirements administered by the Department of Health and Human Services under the provisions of the Omnibus Budget Reconciliation Act of 1981<sup>1</sup> has been clarified in the Final Rules issued on July 6, 1982.<sup>2</sup> With some exceptions these rules merely reference earlier regulations governing compliance with laws prohibiting discrimination on the bases of race, color, national origin, handicap and age. These rules continue in effect and, to the extent that they were deficient, they remain so.<sup>3</sup>

The statutory language establishing each of the block grants, except social services, references other statutes that prohibit discrimination based on age, handicap, race, color, and national origin.<sup>4</sup> In addition, the provisions establishing the block grants for preventive health care; alcohol, drug abuse and mental health; primary health care; and, maternal and child health services contain prohibitions of discrimination based on religion or sex.<sup>5</sup> Although there are no antidiscrimination clauses in the legislation covering the social services block grant, the Department of Health and Human Services, in its final regulations commentary, states:

Congress has made clear that States and their grantees have the responsibility to prohibit discrimination on the basis of race, color, national origin, age and handicap. In addition, several of the block grants require that religious and sex discrimination be prohibited as well. The Secretary interprets existing laws against discrimination in federally assisted programs as applying to the social services block grant.<sup>6</sup>

All State applicants must provide an assurance of compliance with the provisions of Pub.L. 97-35 and therefore with the nondiscrimination clauses in the various sections cited above.<sup>7</sup> Pursuant to regulation, they also must provide assurances of compliance with Title VI of the Civil Rights Act and Sec. 504 of the Rehabilitation Act.<sup>8</sup> In the interim regulations these had been waived for some of the block grant applications.<sup>9</sup> That waiver has been withdrawn.<sup>10</sup>

The final regulations specify that the complaint procedures to be utilized for discrimination complaints are the same that were utilized in the past--viz those established under the various antidiscrimination laws--and that complaint procedures specified in Pub.L. 97-35 do not apply to these situations.<sup>11</sup> The Department of Health and Human Services states that "regulations implementing novel aspects of the block grant nondiscrimination provisions are being developed and will be published in the future."<sup>12</sup> These would relate to prohibitions of discrimination based on religion or sex. The Department of Health and Human Services apparently will continue to monitor compliance with antidiscrimination laws using the same processes, including periodic compliance reviews, specified in regulations for the administration of the Civil Rights Act, Rehabilitation Act and other antidiscrimination regulations.

In this study, the Advisory Committee has sought to determine what Federal and State agencies had done prior to 1982 to comply with the nondiscrimination laws and regulations and whether they expected to make any changes to comply with the new nondiscrimination clauses.

## Notes

1. Pub.L. 97-35.
2. 47 Fed.Reg. 29472-29493 (1982).
3. 45 C.F.R. Parts 80 and 81 implement Title VI of the Civil Rights Act of 1964, as amended, by prohibiting discrimination on the bases of race, color and national origin in many programs of Federal financial assistance. 45 C.F.R. Part 84 prohibits discrimination on the basis of handicap and 45 C.F.R. Part 90 prohibits discrimination on the basis of age in such programs.
4. Pub.L. 97-35, secs. 508(a)(1), 677(a), 1908(a)(1), 1918(a)(1), 1930(a)(1), 2606(a).
5. Pub.L. 97-35, secs. 508(a)(2), 1908(a)(2), 1918(a)(2), 1930(a)(2).
6. 47 Fed.Reg. 29480 (1982).
7. For example see Pub.L. 97-35, sec. 1905(a)(c)(1).
8. 45 C.F.R. sec. 80.4 and 45 C.F.R. sec. 84.5.
9. 46 Fed.Reg. 48585 (1981).
10. No specific section notes this change. See 47 Fed.Reg. 29480 (1982).
11. 47 Fed.Reg. 29480 (1982).
12. Ibid.

ROLE OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Advisory Committee requested information on the role of the Department of Health and Human Services (HHS). Responses were provided by the Regional Office for Civil Rights (HHS/OCR).

As of Apr. 2, 1982, the role of the regional office in monitoring compliance with the various antidiscrimination laws as regards the block grants was still under review by HHS. The regional office noted that "a combined OCR Headquarters/Regional Task Force is working to complete the guidelines to be followed for enforcement of Title VI and our other statutes under Pub.L. 97-35 block grants."<sup>1</sup> The task force had not completed its work, although it had been in operation since January 1982.<sup>2</sup> HHS/OCR stated further that "Our Office's current responsibilities are still being discharged in accord with the established regulatory authorities."<sup>3</sup> During FY 1982, HHS/OCR planned 14 compliance reviews based on either Title VI, the community services assurance of the Hill-Burton Act or Sec. 504 of the Rehabilitation Act. Of these 14 reviews, eight were targeted to facilities in Missouri. Six of the eight compliance reviews planned were based on Section 504 of the Rehabilitation Act and two were Title VI reviews. HHS/OCR did not know and could not determine the number of facilities in Missouri or Region VII subject to review.<sup>4</sup>

In addition HHS/OCR provided the Committee with statistics on the number of complaints it received about Missouri facilities during FY 1979-1982: FY 1979-37; FY 1980-25; FY 1981-23; and FY 1982 (as of May 31)-12.<sup>5</sup> Ten of the FY 1979 complaints were investigated, the rest were "referred to other agencies due to lack of jurisdiction or the charging party did not respond to our request for further information." In FY 1980, 14 of the 25 cases were investigated and in FY 1981 one of the 23 was investigated. Of the 12 cases received as of May 31, 1982, eight were referred to other agencies because HHS/OCR lacked jurisdiction or failed to get cooperation from charging parties.<sup>6</sup>

To help achieve voluntary compliance with civil rights laws, HHS/OCR provided technical assistance to recipients of Federal funds and beneficiaries of those recipients. The agency reported 1,105 contacts regionwide in FY 1980, all of which related to Section 504 of the Rehabilitation Act; 749 technical assistance contacts in FY 1981 also related to Section 504. For those two fiscal years "the technical assistance program was conducted by the Department of Education (DOEd), Regional Technical Assistance Staff (RTAs), under an agreement between DOEd, Office for Civil Rights (OCR), and the Department of Health and Human Services OCR until September 30, 1981."<sup>7</sup> Beginning in FY 1982, HHS/OCR developed its own regional technical assistance program, but noted that "due to budget constraints, the Regional Technical Assistance staff (RTAS) has been severely limited."<sup>8</sup> It was stated that "present policy is to provide technical assistance as needed for all jurisdictions enforced by HHS/OCR." For the first nine months of FY 1982, HHS/OCR reported technical assistance to 176 recipients and advocacy organizations.<sup>9</sup>

The agency stated that from FY 1979 to the end of the third quarter of FY 1982, it had conducted 104 Title VI clearance reviews in Missouri on facilities wishing to participate in the Medicare/Medicaid program. It also planned to investigate between 18 and 25 complaints regionwide based on Title VI, the Hill-Burton Act assurances or Section 504.<sup>10</sup>

Under the regulations it was enforcing prior to Pub.L. 97-35, HHS/OCR was investigating complaints and conducting routine compliance reviews to determine compliance with Title VI of the 1964 Civil Rights Act, Sec. 504 of the Rehabilitation Act, Title IX of the Education Amendments, Titles VII and VIII of the Public Health Service Act, the Age Discrimination Act, and the Hill-Burton Community Services Assurance.<sup>11</sup> The compliance reviews focused on discriminatory admissions practices, failure of institutions or agencies to make their programs accessible to the handicapped, denial of equal services to people or groups of people who do not speak or understand English, differential treatment based on race, national origin, age or handicap.<sup>12</sup> In addition, HHS/OCR provides technical assistance to enable recipients of Federal funds to comply with the civil rights requirements attached to them.<sup>13</sup>

Under the provisions of some of the Pub.L. 97-35 block grants, if the Secretary of Health and Human Services finds a recipient has failed to comply with the various civil right provisions, the matter is referred to the chief executive officer of the State involved, who is allowed sixty days to achieve compliance. If compliance is not achieved, or no effort is made, the Secretary is authorized to refer the matter to the Attorney General for civil action, to exercise the powers and functions provided by the various civil rights laws, or take such other action as may be provided by law.<sup>14</sup>

The Advisory Committee was unable to assess the quality and quantity of past and current efforts to assure compliance with Federal antidiscrimination laws and regulations. Current efforts to assure compliance with the antidiscrimination provisions of Pub.L. 97-35, the Regional Office of the Office for Civil Rights of the Department of Health and Human Services noted, would be based on guidelines being developed by its headquarters. As of completion of this monograph, new guidelines for civil rights compliance had yet to be published.

## Notes

1. Lois Carter, Acting Regional Director, Office for Civil Rights, letter to staff, Jan. 8, 1982.
2. Lois Carter, letter to staff, Apr. 2, 1982.
3. Ibid.
4. Ibid. and Lois Carter, letter to staff, Aug. 19, 1982.
5. Lois Carter, letter to staff, June 18, 1982.
6. Ibid.
7. Lois Carter, letter to staff, June 18, 1982.
8. Ibid.
9. Ibid.
10. Ibid. and Lois Carter, letter to staff, Apr. 2, 1982, Annual Operating Plan: FY 1982, amended, attached.
11. Lois Carter, letter to staff, Jan. 8, 1982.
12. Ibid.
13. Lois Carter, letter to staff, Apr. 2, 1982.
14. For example see Pub.L. 97-35, sec. 2606(b).

## BLOCK GRANT COMPLIANCE PROCEDURES IN THE STATE OF MISSOURI

To determine what was being done in the State of Missouri to ensure that the State complies with the civil rights requirements of the block grant programs and other Federal antidiscrimination laws, the Advisory Committee asked the Attorney General of the State of Missouri, the State Auditor and the directors of the State departments of social services and mental health to report on their perceptions of their current and future roles and their current efforts.

The attorney general responded that:

The Missouri Attorney General cannot provide definitive interpretations of the civil rights responsibilities of State agencies under the provisions of the Federal Omnibus Reconciliation Act. If this question is directed toward definitiveness in terms of administrative policy, then only the Chief Executive Officer of the State agency concerned or the Governor can provide such an interpretation. Our office's interpretations do not bind State officials and for that reason cannot be considered definitive.<sup>1</sup>

Thus he does not have the coordinative role assigned at the Federal level to the Attorney General of the United States. He further stated:

This office has provided no formal opinions regarding how State recipients of block grants under the Omnibus Reconciliation Act are to interpret their different obligations under the civil rights provisions of that law, Title VI of the 1964 Civil Rights Act, the Age Discrimination Act and the Rehabilitation Act. Any other opinions or advice given to our agencies by this office would be privileged under the attorney-client relationship and cannot be divulged.<sup>2</sup>

The attorney general reported that his office had not reviewed the procedures used by the Missouri Departments of Mental Health and Social Services to monitor the civil rights compliance of their subgrantees.<sup>3</sup>

In the past audits conducted by the State Auditor had been governed by the audit guidelines provided by Federal agencies. Under these, the auditor noted, "the scope of audit work would not normally identify instances of discrimination or denial of equal protection."<sup>4</sup> Audits of the block grant programs will not begin until after the State fiscal year ends on June 30, 1982. Since Federal guidelines had yet to be provided, the auditor was unable to state exactly what would be done. However, he was willing to speculate, based on past experience in auditing the General Revenue Sharing program. He stated:

You will note from this program that the auditor is not asked to do any work which would likely lead him to detect previously unidentified discrimination.

The auditor, in effect, only reviews the recipient's policies and procedures for ensuring nondiscrimination. So the auditor can evaluate whether the recipient's policies and procedures are in compliance. But identifying specific noncompliance is apparently left to the individuals who feel they have been discriminated against. In these cases, I assume EEOC or the courts ultimately determine compliance.<sup>5</sup>

This will render his audits considerably less rigorous than those conducted by Federal banking examiners, especially the Home Loan Bank Board which conducts a detailed review of civil rights compliance as part of its regular savings and loan institutions audit.<sup>6</sup>

The Missouri Department of Mental Health is responsible for the administration of the Federal block grant for Alcohol and Drug Abuse Mental Health Services. Its director stated that "no additional legal or enforcement responsibilities had been acquired as a result of Pub.L. 97-35."<sup>7</sup>

The department noted that because it already has an extensive contract compliance system, in effect since July 1, 1978, no changes in its activities would be required.<sup>8</sup> The compliance system is based on a form filled out by grantees regarding human rights progress. The grantee must specify:

- whether it has received any complaints of discrimination based on race, color, religion, creed, sex, national origin, ancestry, handicap or other bases either from clients or employees or applicants for employment. If the grantee has received such complaints, it must explain what it has done to resolve each.

- the race, sex and age of patients or clients and of employees.

- whether a self-evaluation concerning the care and/or employment of handicapped persons has been conducted;

- whether an affirmative action plan has been prepared; and

- whether the goals of that plan have been reached and whether any unplanned accomplishments had resulted.

- the impact of a merit system if one is utilized;

- whether jobs were advertised with the State employment service;

- whether anyone was hired and if so provide a copy of the job advertisement;

- whether there is a union contract and if so provide a copy of the human rights clauses; and,

- whether the grantee uses any subcontractors, who they are, their employees, and what human rights provisions bind their activities.<sup>9</sup>

In addition, contractors or grantees with 15 or more employees must make reasonable accommodation to provide services for handicapped clients and must designate a person to coordinate efforts to prevent discrimination against the handicapped. Contractors with 20 or more employees must provide an assurance they will not discriminate against older workers. Contracts of at least \$10,000 must include an assurance of nondiscrimination on the basis of disability or Vietnam-era veteran status. Contracts of \$50,000 or more require the contractor to conduct work force and utilization analyses and implement an affirmative action employment program within 60 days of the start of the contract.<sup>10</sup>

During the course of the years 1980-1982, the department conducted compliance reviews or audits on 902 vendors: 277 in FY 1980; 422 in FY 1981 and 203 in FY 1982. It reported that no substantial civil rights violations were uncovered in these reviews.<sup>11</sup> It reported that seven vendors in FY 1980, 14 in FY 1981 and 18 in FY 1982 had contracts for \$50,000 or more. These prepared affirmative action plans as required. It noted, however,

There were some reports of complaints filed against vendors as evidenced by information on our progress reports. These were filed with EEOC, alleging violation of Federal antidiscrimination laws. Since EEOC had the responsibility to investigate these alleged violations, there were no reasons for this agency to get involved.<sup>12</sup>



The department reported that while no Federal civil rights, age or handicap discrimination compliance reviews of subgrantees were conducted during FY 1980-1982, the State had conducted such reviews.<sup>13</sup> These reviews take two forms. Units of the department are field audited, usually about one-third (seven of 23) are reached each year by a team consisting of staff from the departments of mental health and social services. Some grantees, nursing homes that are also under the jurisdiction of the department of social services, are also field audited by the department of social services, whose report is accepted by the department of mental health. All remaining grantees/vendors are desk audited annually using the information provided in DMH form 7808. The desk audit would ensure that all the requirements are satisfied, that there is no apparent discrimination in the numbers of clients served or employees, and that the affirmative action plan, if required, is being implemented. The department also assists contractors who are preparing an affirmative action plan for the first time to prepare one that will satisfy the State's requirements and be acceptable to the department.<sup>14</sup>

Commenting on the activities of the department of mental health, the department of social services noted that:

When the Department of Mental Health is fulfilling their responsibility as a Social Service vendor, we find they do an adequate job. We are also a vendor for the Department of Mental Health and find their efforts to ensure our compliance consistent with all applicable laws and regulations.<sup>15</sup>

The procedures of the department of social services are essentially similar to those of the department of mental health. Like mental health vendors, social service vendors must provide a variety of assurances of compliance with the various provisions of the Federal antidiscrimination statutes. Similarly, social services has a form similar in content to DMH's Form 7808 that asks about complaints, client services, employment by race and sex, compliance with affirmative action planning and implementation requirements and employment practices.<sup>16</sup>

Under the department of social services' contract compliance program, compliance officers of the department are required to "conduct regular systematic inspections of a recipient's operations to establish the fact of full compliance or equally clearly document the nature and degree of non-compliance."<sup>17</sup> The review is to include a determination of compliance with Title VI and Title VII of the 1964 Civil Rights Act, Title IX of the Education Amendments Act, Sec. 504 of the Rehabilitation Act and the Age Discrimination Act. It is also to include evaluation of admission and eligibility standards and practices, treatment of beneficiaries, access and availability of services and facilities, personnel policies, composition of advisory boards, training programs, referral practices, publicity to attract minority and handicapped persons, and complaint processing.<sup>18</sup>

The process includes both desk audit and on-site review. The department's instructions state:

All contractors will complete a self-appraisal. This process meets the minimal compliance review procedures required by Federal agencies.

The compliance officer uses the completed self-review forms submitted by the vendor to determine if the vendor is substantially in compliance. If there are one or more areas of deficiency, the vendor will be notified of the deficiency(ies) and requested to take corrective actions.

If the form reflects the vendor is substantially not in compliance, the contracting division will be notified of the vendor's non-compliance status and a plan for achieving compliance will be developed including on-site review and monitoring. The vendor will be notified of the areas of non-compliance and technical assistance will be provided by the Compliance Section to assist the vendor in attaining an acceptable level of compliance.<sup>19</sup>

The instructions state that sites for on-site audits will be chosen based on such factors as:

a complaint of discrimination has been received, community patterns of discrimination in other areas, failure of recipient/vendor to file or to file adequate compliance reports and the vendor appears in the Employee Relations/Compliance Section's random sample for compliance review.<sup>20</sup>

Such reviews cover all the elements specified above.<sup>21</sup>

The department states that:

We do not construe our single State agency status to mean that we act as an agent for all other State agencies in reviewing and reporting the compliance status of vendors. Each State agency that received Federal funds is responsible for implementing a compliance plan for their respective agency.<sup>22</sup>

However, the department of social services does maintain an exchange of information agreement with the department of mental health.<sup>23</sup>

In the past, on-site reviews have been limited to department of social services' facilities. However, during the current fiscal year the department began to review vendors with \$50,000 or more in contracts. The resources allocated were expected to be sufficient to review 10 percent of such vendors (and a few more if scheduling makes possible savings on travel costs). The remaining 90 percent of these larger vendors will continue to be desk audited. The department has never been able to do on-site reviews of smaller vendors and does not expect to do so.<sup>24</sup>

The department reported that during Federal fiscal year 1980 there had been one Title VI and two Rehabilitation Act complaints about programs supported by Federal funds administered by the department. The Office for Civil Rights of HHS found no probable cause in all three. In Fiscal 1981, the department reported it received three complaints alleging Title VI violations. It found no probable cause for any of these allegations. During 1980, the department had 187 subgrantees, contractors or vendors that had contracts exceeding \$50,000, in 1981 it had 191 such contracts; and, in 1982 it had 89 such contracts.<sup>25</sup> During FY 1980, the department reported it audited 187 subgrantees, during FY 1981 it reported auditing 191 and in FY 1982 it reported auditing 89 (a total of 467 audits over the three year period).<sup>26</sup> Given the record, most of these apparently were desk audits of self-compliance reporting forms.

Both the departments of social services and mental health stated that they regarded their present compliance mechanisms as sufficient to meet the requirements of Pub.L. 97-35 and that they plan no change in those procedures as a consequence of Pub.L. 97-35.<sup>27</sup>

The Missouri Commission on Human Rights might be thought to have jurisdiction in the case of complaints based on administration of the programs by State agencies. However, the Commission's executive director stated:

Based on the State court's interpretation of contractors as applied to establishing an employee/employer relationship between the State and the contractor, the Commission's jurisdiction under Chapter 296 RSMo as amended is questionable.<sup>28</sup>

It would appear that each State department is authorized by the State to make its own interpretation of block grant rules and regulations and nondiscrimination requirements of Federal law--subject in the latter to Office for Civil Rights review.<sup>29</sup>

Notes

1. John Ashcroft, letter to staff, May 13, 1982.
2. Ibid.
3. Ibid.
4. James F. Antonio, letter to staff, Dec. 15, 1981.
5. James F. Antonio, letter to Chairperson, Missouri Advisory Committee, Mar. 16, 1982.
6. See U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort (March 1979), pp. 92-97.
7. Paul R. Ahr, Director, Missouri Department of Mental Health, letter to Chairperson, Missouri Advisory Committee, Mar. 29, 1982.
8. Ibid.
9. Missouri Department of Mental Health, Human Rights Compliance Progress Report, Form DMH 7808.
10. Missouri Department of Mental Health, Form DMH 7701.
11. Paul R. Ahr, letter to Chairperson, Missouri Advisory Committee, Mar. 29, 1982.
12. Ibid.
13. Ibid.
14. David L. Brent, Chief, Bureau of Employee Relations, Missouri Department of Mental Health, telephone interview, May 21, 1982.
15. Barrett Toan, Director, Department of Social Services, letter to Chairperson, Missouri Advisory Committee, Apr. 16, 1982.
16. Floy Scott, Chief Human Rights Officer, Department of Social Services, letter to staff and attachments, June 3, 1982.
17. Floy Scott, letter to staff, June 3, 1982, Department of Social Services, Contract Compliance Program, (n.d.) attached.
18. Ibid.
19. Ibid.
20. Ibid.
21. Ibid.
22. Floy Scott, letter to staff, June 3, 1982.
23. Ibid.

24. Floy Scott, telephone interview, May 21, 1982.

25. Barrett Toan, letter to Chairperson, Missouri Advisory Committee, Apr. 16, 1982.

26. Ibid.

27. Barrett Toan, letter to Chairperson, Missouri Advisory Committee, Apr. 16, 1982 and Paul Ahr, letter to Chairperson, Missouri Advisory Committee, Mar. 29, 1982.

28. Alvin Plummer, Executive Director, Missouri Commission on Human Rights, letter to staff, Jan. 7, 1982.

29. Floy M. Scott, letter to staff, June 3, 1982 and telephone interview, Oct. 6, 1982.

## ASSESSMENT OF COMPLIANCE EFFORTS

The Advisory Committee sees some disparities between what is done to assure compliance with the various Federal prohibitions against discrimination and what is needed for effective enforcement.

With the limits of the data provided, the Advisory Committee wonders about the level of Federal review. HHS/OCR plans to investigate a very small number of complaints and conduct a small number of reviews throughout the region in proportion to the potential universe if only Missouri were considered (and in fact there are three other States in its region). There is no indication that the regional office has plans to review the findings or decisions made by State agencies based on State civil rights compliance reviews. It is possible that HHS/OCR's headquarters will undertake such evaluations, but if so this has yet to be communicated to the Advisory Committee. In short, it is impossible for the Advisory Committee to find evidence of sufficient Federal review of pre-existing requirements,<sup>1</sup> much less of Pub.L. 97-35 provisions.<sup>2</sup>

The data provided by the State agencies are far more complete. Apparently the State agencies have undertaken desk reviews of many agencies and on-site reviews of others. According to the Missouri Department of Social Services, the self-evaluation reviews constitute sufficient minimal compliance with the Federal antidiscrimination assurances. Compliance with the various Federal antidiscrimination laws is reviewable by Federal agencies. But HHS has not, in the past three years, formally reviewed the State's procedures for monitoring grantee compliance with such laws. Reasonable people might well question whether the State reviews are indeed sufficient. It is hard to imagine many administrators admitting to violations that were not already a matter of public record. But it is also true that, given the level of resources currently committed, the State may not be able to do more. Given the roles of the attorney general and auditor in Missouri, it appears that adequacy as well as sufficiency of compliance efforts are determined by the individual agencies, although complaints must be decided based on Federal agency interpretations of Federal law and regulations. Whether the State effort is reasonable in the context of what other States do and whether the current efforts do indeed satisfy the provisions for State review of grantees under existing antidiscrimination laws and the special provisions of Pub.L. 97-35 is open to question. Apparently, under Pub.L. 97-35, the Federal Government will continue to view current State efforts as sufficient, except in specific instances where the State may be found by Federal reviews of specific State facilities or vendors not to have remedied specific acts of discrimination.

This study did not include an analysis of the actual practices of State agencies or their subgrantees. Thus, the Advisory Committee is in no position to state that current practices of State agencies or their subgrantees are discriminatory. However, it does wonder whether current Federal or State practices would reveal discrimination in more than a fraction of the instances in which it might occur. The Advisory Committee does not believe that the intent of the Federal antidiscrimination laws is that discrimination be eliminated only when it is complained of. The Committee believes the law requires that opportunities for discrimination, such as unequal opportunities for participation (even if no one has yet actually suffered from such policies), must be rooted out before any actual event. It is not evident that mechanisms to do so exist in Missouri, whether by Federal or State action.

Notes

1. Regarding discrimination based on race, national origin, handicap and age.
2. Regarding discrimination based on religion and sex.

## FINDINGS AND RECOMMENDATIONS

The following findings and recommendations are submitted under the provisions of Sec. 703.2(e) of the Commission's regulations, empowering the Advisory Committee to "Initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied."

The Advisory Committee presents the findings and recommendations for consideration by the Commission in its national program planning and for its consideration in advising the President and Congress on matters within its jurisdiction.

Finding 1: The Advisory Committee notes that the principal test of State compliance with the various provisions, including those regarding civil rights, of Pub.L. 97-35 is whether funds have been properly and legally expended. Yet the State auditor's office has indicated that it expects to make only a cursory review of the implementation of the civil rights provisions to ensure the fiscal requirements are not being breached.

Recommendation 1: The Advisory Committee urges the State Auditor to adopt review standards similar to those used by the Federal Home Loan Bank Board, conducting a full and comprehensive audit of compliance with civil rights provisions as one part of its overall audit activities.

Finding 2: The Advisory Committee finds that the Missouri Commission on Human Rights lacks the legal authority to review the compliance of the State agencies or their vendors with State regulations, and thereby with the civil rights provisions of Pub.L. 97-35.

Recommendation 2: The Advisory Committee urges the Governor and the legislature to consider whether the authority of the Missouri Commission on Human Rights should be extended and additional funding provided or whether another review body should be established to assure a uniform State response on discrimination issues.

Finding 3: The Advisory Committee notes that the U.S. Department of Health and Human Services has not yet developed the guidelines it will use to enforce the religion and sex antidiscrimination provisions of Pub.L. 97-35, although over a year has passed since States received funding under this law.

Recommendation 3: The Advisory Committee urges the Commission to undertake further studies to determine whether it should recommend to the Congress that it ask the Comptroller General of the United States to assess past civil rights monitoring efforts of the Department of Health and Human Services, advise the Congress of their adequacy, and suggest ways to assure uniformity in the interpretation of Federal nondiscrimination laws by State and Federal agencies.

Finding 4: The Advisory Committee found that only a small proportion of the organizations that receive funds under the new block grant programs from the State departments of social services and mental health are subject to full civil rights compliance reviews during a given year. The Missouri Department of Social Services, which is responsible for some Title VI reviews, stated it



has insufficient funding to do more than is being done. The Missouri Department of Mental Health stated its compliance actions ensure compliance with Title VI. The Advisory Committee doubts that what is being done is sufficient to ensure that agencies or organizations receiving Federal funds are in compliance with Title VI.

Recommendation 4: The Advisory Committee urges the Governor and his department heads to determine whether when the State's financial condition improves additional funding could be made available to ensure State compliance with the civil rights laws governing use of both Federal and State funds.