



**DEPARTMENT
of HEALTH
and HUMAN
SERVICES**

Fiscal Year

2007

Office for Civil Rights

*Justification of
Estimates for
Appropriations Committees*



DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY

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Director
Office for Civil Rights
200 Independence Ave., SW Rm 506F
Washington, DC 20201

Dear Reader:

I am pleased to present the Office for Civil Rights' (OCR) performance-based Fiscal Year 2007 Congressional Justification. Consistent with the Secretary's policy guidance, this budget request continues support for the President's and Secretary's priority initiatives and reflects the goals and objectives in the Department's FY 2005-2010 Strategic Plan. This justification includes the FY 2007 Annual Performance Plan and FY 2005 Annual Performance Report as required by the Government Performance and Results Act of 1993, along with a direct link of the budget discussion with program performance.

OCR's requested budget will ensure our ability to protect the public's right to equal access and opportunity to participate in and receive services in all the Department of Health and Human Services' (HHS) programs without facing unlawful discrimination, and to protect the privacy of individuals with respect to their personal health information. OCR's performance objectives are in line with HHS's objectives for transforming the healthcare system and protecting life, family, and human dignity, including: increasing access to high quality, effective health care; promoting the economic self-sufficiency and well-being of vulnerable families, children and individuals; and reducing disparities in ethnic and racial health outcomes.

Lastly, our Program Assessment Rating Tool (PART) submission to the Office of Management and Budget demonstrates our continued commitment to effectively and efficiently use our human capital to achieve results in support of our nondiscrimination and privacy compliance mission. OCR has made considerable progress in achieving results to support HHS-wide initiatives to improve the health and well-being of the public. To keep up this momentum during FY 2006 and FY 2007, as in FY 2005, individual performance plans at all levels of OCR's leadership and staff will be focused on achieving the goals and objectives set out in our performance plan and PART submission. In this way, everyone in OCR will be working together to achieve our shared objectives in protecting civil rights and the privacy of health information.

Winston Wilkinson, J.D.
Director

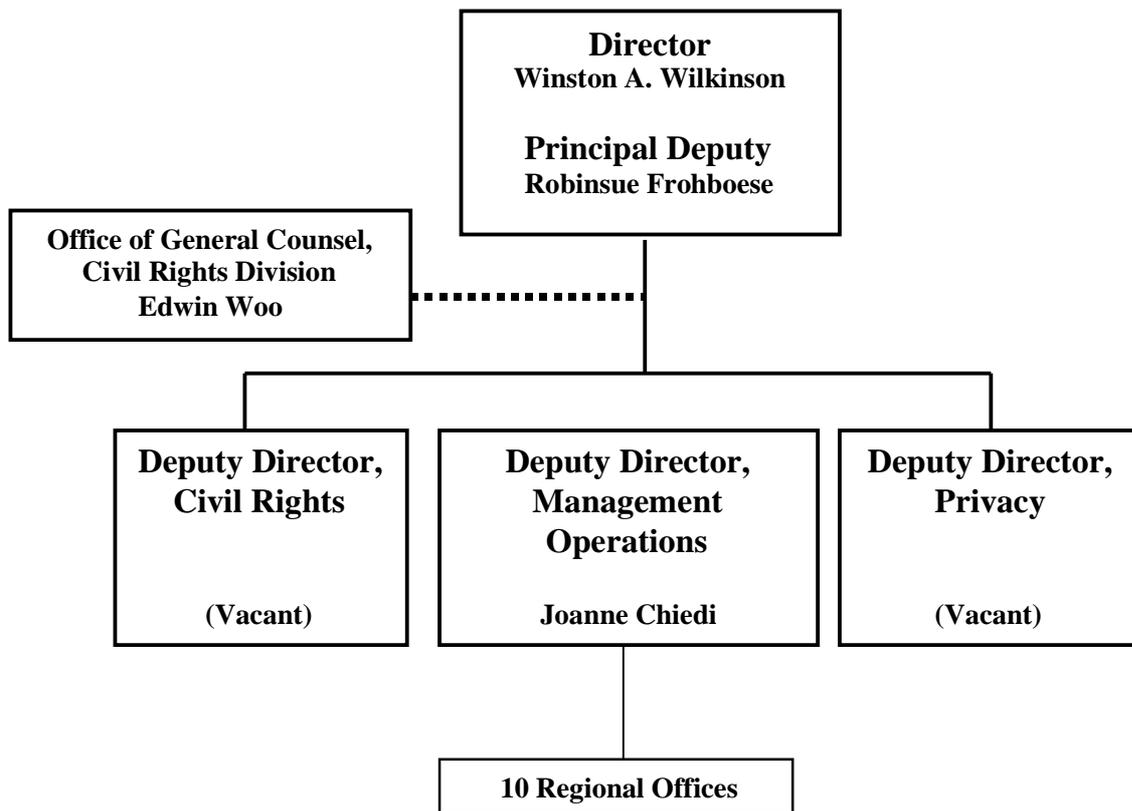
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**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS**

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Department of Health and Human Services

Office for Civil Rights



PERFORMANCE BUDGET OVERVIEW

Statement of Mission

The Department of Health and Human Services (HHS), through the Office for Civil Rights (OCR), promotes and ensures that people have equal access to and opportunity to participate in and receive services from all HHS programs without facing unlawful discrimination, and that the privacy of their health information is protected while ensuring access to care. Through prevention and elimination of unlawful discrimination and by protecting the privacy of individually identifiable health information, OCR helps HHS carry out its overall mission of improving the health and well-being of all people affected by its many programs.

By statute and regulation, OCR has the responsibility to be a key steward of the integrity of any HHS program for which Federal financial assistance has been authorized, to ensure that such funds do not support unlawful discrimination. HHS administers a nearly \$640 billion budget from which Federal financial assistance is provided to a vast array of health and human service programs. HHS programs are administered by and through a wide array of government, non-profit, and private entities. These programs and services affect the quality of life and well-being of virtually everyone in the United States. In addition, under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, OCR has responsibility for ensuring the privacy practices of several million health care providers, plans, and clearinghouses, including those that receive Federal financial assistance through HHS, adhere to federal privacy requirements. Within this context, OCR's mission and responsibilities are broad and inclusive and, necessarily, its activities involve many dimensions and challenges given the number of authorities for which OCR has enforcement responsibility.

Discussion of Strategic Plan

OCR's civil rights and health information privacy compliance objectives and cooperative activities within the Department play a crucial role in support of all eight goals of the HHS Strategic Plan, which has, as a core value, "to focus on health promotion and the prevention of disease and social problems, including the prevention and correction of unlawful discrimination in the provision of health and human services." The protection of civil rights and individually identifiable health information advances, and is integral to, the achievement of a wide spectrum of the HHS strategic goals including, but not limited to: assisting families to achieve economic self-sufficiency and independence; improving long-term care; improving the stability and development of the Nation's children and youth; protecting and empowering specific populations (*e.g.*, community integration and self-sufficiency for persons with disabilities); and realizing the possibilities of 21st century health care. OCR also supports a majority of the HHS Twenty Department-wide Objectives including, but not limited to: increasing access to high quality, effective health care; promoting the economic self-sufficiency and well-being of vulnerable families, children and individuals; and reducing disparities in ethnic and racial health outcomes.

As stated in OCR's Program Assessment Rating Tool (PART) submission to the Office of Management and Budget (OMB), OCR has two strategic goals to accomplish its mission. OCR's first strategic goal is to ensure compliance and to increase awareness and understanding

of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information. This goal has two long-term measures and targets: (1) to increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100 percent of cases received per year by end of FY 2012 and (2) to increase the number of covered entities that make substantive policy changes as a result of OCR intervention. This goal also has an annual target: to provide information and training to 31,250 individuals per year. OCR's second goal addresses efficiency by increasing the number of cases / reviews resolved per FTE assigned. The table entitled "Links to HHS Strategic Plan" on page eight shows how the two goals and four program objectives and one management objective in OCR's Performance Plan support all eight "One HHS" program goals focused on protecting and improving the health and well-being of the American public.

Moreover, OCR's strategic goals, and its performance budget, also support all major priorities outlined in the Secretary's 500-Day Plan. In particular, by ensuring that people have equal access to and the opportunity to participate in and receive services from all HHS programs without facing unlawful discrimination, and that the privacy of their health information is protected while ensuring access to care, OCR supports the Secretary's goals of: transforming the health care system; modernizing Medicare and Medicaid; advancing medical research; securing the homeland; protecting life, family and human dignity; and improving the human condition around the world. The table titled "Links to Secretary Leavitt's 500-Day Plan" on page nine shows how the two goals and four program objectives and one management objective in OCR's Results Act Plan contribute to the above-stated goals in the Secretary's 500-Day Plan.

In FY 2007, within the broad and inclusive objectives of the Government Performance and Results Act (GPRA), OCR will continue to address "One HHS" program goals and high priority areas – nondiscrimination in health services programs, adoption, Temporary Assistance for Needy Families (TANF), nondiscriminatory quality health care, enhancing provision of appropriate services in the most integrated setting for individuals with disabilities, and ensuring understanding of and compliance with the HIPAA Privacy Rule. These issues have been consistently at the forefront of heightened Congressional, Departmental, and public interest during the past several years. In addition, Presidential and Secretarial priorities, continuing changes in health care delivery systems, recent research findings, media reporting, information from community-based organizations, and ongoing OCR compliance activities confirm that it is important that OCR continue, within a broadly-based compliance program, to address these key areas where substantial information indicates a high incidence of possible discrimination or the need for technical assistance on the Privacy Rule.

Further, OCR's activities concentrate on ensuring integrity in the expenditure of Federal funds by making certain that such funds support programs that ensure access by intended recipients of services free from discrimination on the basis of race, national origin, disability, age, and gender; and maintain public trust and confidence that the health care system will maintain the privacy of individually identifiable health information while ensuring access to care. In doing so, OCR's activities enhance the quality of services funded by the Department and the benefit of those services, by working with covered entities to identify barriers and implement practices that can avoid potentially discriminatory impediments to quality services and privacy breaches. The Department's goal of providing quality health and human services cannot be met when

individuals in need of services do not receive them as a result of practices that violate their fundamental rights of nondiscrimination or privacy.

OCR's activities support initiatives focusing on expanding opportunities and freedom for all Americans, ensuring the privacy of individually identifiable health information, and improving the health of the public through the HHS Strategic Plan and Secretary Leavitt's 500-Day Plan. In relation to the latter initiative, OCR's non-discrimination and Privacy Rule activities aim to maintain and increase access to health care, improve the quality of life, and eliminate health disparities among different segments of the population.

Links to HHS Strategic Plan

OCR's performance plan and PART are aligned with and support the HHS Strategic Plan (see chart below).

HHS STRATEGIC GOAL	OCR PERFORMANCE GOALS/OBJECTIVES				
	Goal 1: To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information.				Goal 2: To enhance operational efficiency
	Objective A: To increase access to and receipt of nondiscriminatory quality health and human services while protecting the integrity of HHS Federal financial assistance.	Objective B: To protect the privacy of personally identifiable health information for healthcare consumers.	Objective C: To provide information and training to representatives of health and human service providers, other interest groups, and consumers.	Objective D: To increase the number of covered entities which make substantive policy change as a result of intervention and / or review.	Objective: To increase the number of cases / reviews resolved per FTE assigned. (See note at the top of the following page.)
Goal 1: Reduce the major threats to the health and well-being of Americans.	X	X	X		X
Goal 2: Enhance the ability of the Nation's health care system to effectively respond to bioterrorism and other public health challenges.	X	X	X		X
Goal 3: Increase the percentage of the Nation's children and adults who have access to health care services, and expand consumer choices.	X	X	X	X	X
Goal 4: Enhance the capacity and productivity of the Nation's health science research enterprise.	X	X	X		X
Goal 5: Improve the quality of health care services.	X	X	X	X	X
Goal 6: Improve the economic and social well-being of individuals, families and communities, especially those most in need.	X	X	X	X	X
Goal 7: Improve the stability and healthy development of our Nation's children and youth.	X	X	X	X	X
Goal 8: Achieve excellence in management practices.	X	X	X	X	X

The PART Goal 2 objective focuses on improving operational efficiency and therefore increases the proportion of resources being devoted to all issues. As such, the operational efficiency goal supports the entire HHS Strategic Plan goals, noted above, because success under this goal will result in increased resources focused on priority issues that address the HHS goals and other initiatives such as: improved human capital management, improved financial management, and integrating budget and performance information.

Links to Secretary Leavitt’s 500-Day Plan

OCR’s performance plan and PART submission are aligned with and support Secretary Leavitt’s 500-Day Plan (see chart below).

SECRETARY’S 500 DAY PLAN OBJECTIVES	OCR’S PERFORMANCE GOALS/OBJECTIVES				
	Goal 1: To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information.				Goal 2: To enhance operational efficiency
	Objective A: To increase access to and receipt of non-discriminatory quality health and human services while protecting the integrity of HHS Federal financial assistance.	Objective B: To protect the privacy of personally identifiable health information for healthcare consumers.	Objective C: To provide information and training to representatives of health and human service providers, other interest groups, and consumers.	Objective D: To increase the number of covered entities which make substantive policy change as a result of intervention and / or review.	Objective: To increase the number of cases / reviews resolved per FTE assigned.
Transform the Healthcare System.	X	X	X	X	X
Modernize Medicare and Medicaid.	X	X	X	X	X
Advance Medical Research.	X	X	X		
Secure the Homeland.	X	X	X		
Protect Life, Family and Human Dignity.	X	X	X	X	X
Improve the Human Condition Around the World.	X	X	X	X	X

Overview of Performance

As a result of the PART process, OCR recast the agency's performance measures to enhance its focus on performance-oriented goals. This refinement of OCR's performance measures will allow OCR to more consistently measure the effectiveness of its program annually and over the long-term. OCR's internet-based Program Information Management System (PIMS), an automated case management system, captures data in real-time related to complaint processing, Medicare application reviews, outreach and technical assistance. Therefore, OCR can crosswalk measures reported previously, to its current, consolidated PART framework.

In FY 2004, OCR consolidated its reporting into three objectives (Health Care, Social Services, and Community-based Services/Disability). OCR now further refines these measures to capture results on the entirety of its complaint mission areas in a more comprehensive manner. This refinement reflects OCR's commitment to implement the President's Management Agenda, and particularly the priority for increased budget and performance integration.

OCR has organized its PART submission around two overarching strategic goals that directly support the HHS Strategic Plan and the Secretary's 500-Day Plan:

- Goal I To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information.

- Goal II To enhance operational efficiency

While this section highlights some prior measures, baselines, and targets, for a complete list of PART goals, measures, and targets see the Detail of Performance Analysis starting on page 53.

* * *

OCR's first strategic goal is to ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information. Under Goal I, there are four program objectives that support the broad and inclusive program goal of increasing nondiscriminatory access and participation in HHS programs and protecting the privacy of individually identifiable health information:

- Objective A To increase access to and receipt of nondiscriminatory quality health and human services while protecting the integrity of HHS Federal financial assistance

- Objective B To protect the privacy of personally identifiable health information for healthcare consumers

- Objective C To provide information and training to representatives of health and human service providers, other interest groups, and consumers

Objective D To increase the number of covered entities that make substantive policy changes or develop new policies as a result of intervention and / or review

OCR's first strategic goal has a long-term consolidated output measure and target: to increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100 percent of cases received per year by the end of FY 2012. That is, OCR will resolve as many cases / reviews as received each year. The average age of all open cases will be less than one year, excluding those requiring long-term monitoring and those in litigation or administrative enforcement. The actual target is on a graduated scale, which means that the annual improvement rate will decrease over time. The baseline in FY 2003 was 68.2 percent of cases resolved. In FY 2004, OCR slightly exceeded the target for that year of 78 percent. In FY 2005, OCR achieved a rate of 100.4 percent, significantly above the target for that year of 82 percent. In FY 2005, OCR hired temporary employees to assist in the review of new Medicare applications, freeing OCR's Equal Opportunity Specialists to apply greater effort toward reducing the backlog of civil rights complaints. The backlog of new Medicare applications is now at a more manageable level.

OCR has two output measures that support this long-term goal and its related performance target. The first measure is the percentage of civil rights cases and new Medicare application reviews resolved to cases received. The baseline in FY 2003 was 85.1 percent of civil rights cases and reviews resolved. In FY 2004, OCR achieved a rate of 89.1 percent, 3.6 percentage points above the target of 85.5 percent for that year. In FY 2005, OCR achieved a rate of 125.7 percent, 35.8 percentage points above the target of 89.9 percent for that year. The second measure is the percentage of privacy cases resolved to cases received. The baseline is 68.8 percent of privacy cases resolved in FY 2004 because FY 2004 was the first full year since implementation of the Privacy Rule. In FY 2005, OCR achieved a rate of 79.7 percent, 5.5 percentage points above the target of 74.2 percent for that year.

Objective C has an annual output measure and target: to provide information and training to 31,250 individuals per year. The baseline in FY 2005 was 33,118.

OCR's long-term outcome measure tied to Objective D is the number of covered entities that make substantive policy changes or develop new policies as a result of OCR intervention. OCR's performance target for this measure is to increase this number by approximately 5.0 percent per year over the FY 2005 baseline of 1,019.

* * *

OCR's management goal, Goal II as submitted in PART, is to enhance operational efficiency. The long-term measure is to increase the number of cases resolved per assigned FTE. The annual effort towards achieving this measure is designed to meet the HHS Departmental goal of a 10 percent overall program improvement over three years. The target of OCR's management goal is to enhance operational efficiency and is directly tied to OCR's efficiency measure, to resolve 50 cases each year per FTE assigned by the end of FY 2012.

The table on “Links to HHS Strategic Plan” on page eight shows how the two goals and four program objectives and one management objective contribute to outcomes in support of all eight “One HHS” program goals focused on protecting and improving the health and well-being of the American public.

Further, for accountability purposes, OCR is taking steps to link individual performance directly to OCR’s established goals. OCR has incorporated organizational goals in all OCR leadership plans at the GS-15 level and above, and in FY 2006 will cascade these organizational goals into the performance plans for all staff.

The Detail of Performance Analysis on page 53 sets forth all the measures and targets for the relevant past, present, and future fiscal years.

Overview of Budget Request

The Office for Civil Rights requests \$36,283,000 in FY 2007. This is an increase of \$1,637,000 over the FY 2006 Appropriation of \$34,646,000. The requested funding will allow OCR to maintain staffing at approximately 259 FTE, the same level of staffing as provided in the FY 2006 Appropriation, or 8 FTE under OCR's FY 2005 authorized ceiling of 267 FTE. Other increases in the FY 2007 request over the FY 2006 Appropriation level are for rental cost increases and increases in shared costs; all other spending categories reflect no increases over the FY 2006 Appropriation level. This budget maintains the same programmatic focus as provided in the FY 2006 Appropriation.

Specifically, the FY 2007 requested amount of \$36,283,000 would enable OCR to:

- Continue to address key nondiscrimination issues, including the President's New Freedom Initiative, community-based services for persons with disabilities, racial and ethnic health disparities, and Title VI and language access, while continuing to improve responsiveness to the public's questions about, and allegations of non-compliance with, the Privacy Rule.
- Promote privacy protection in the implementation of initiatives to create integrated and interoperable electronic networks for sharing health information, consistent with Secretary Leavitt's 500-day vision for transforming the U.S. health care system.
- Meet annual targets stated in PART and remain on schedule to meet OCR's long-range goal of matching the rate of case resolutions to complaint receipts in the year 2012.

Program Assessment Rating Tool Summary
FY 2006 - 2007
(Dollars in Millions)

Program	FY 2006 Enacted	FY 2007 Request	FY 2006 +/- FY 2007	Narrative Rating
FY 2007 PART				
Office for Civil Rights (OCR)	\$34.65	\$36.28	+\$1.63	Moderately Effective

In FY 2005, OCR underwent the PART process and presented its performance results to OMB. As reflected on the performance reporting web site, www.ExpectMore.gov, OCR earned a PART rating of “Moderately Effective.” The PART process allowed OCR an opportunity to recast its outcome goals and performance measures to more accurately reflect its results-oriented focus. Although some of the newly revised outcome goals and performance measures presented in this submission are refinements of those stated in previous submissions, OCR will continue to use the revised PART-established framework to further refine its performance measures. Based on the FY 2007 PART goals and measures, OCR exceeded its performance targets for FY 2005. Given the 2005 performance, OCR will adjust its targets to ensure they are sufficiently challenging and support continuous improvement. OCR’s PART findings concluded that OCR has a strong purpose and design, is well-managed, and that independent evaluations indicate that OCR is effective and achieving results. OCR will undertake stronger efforts to demonstrate the use of performance information in day-to-day decision-making, including partnership agreements.

OCR is taking the following actions to improve performance:

- Revising performance goals to ensure they are sufficiently ambitious.
- Considering projected performance when making funding decisions.
- Ensuring partnership agreements with other offices of Health and Human Services and other Federal agencies include attainment of long-term and annual measures.

In order to meet the goals set forth in OCR’s PART submission, OCR is requesting \$36,283,000 for FY 2007.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, [\$31,682,000] \$32,969,000 together with not to exceed \$3,314,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund. (*Department of Health and Human Services Appropriations Act, 2006*).

OFFICE FOR CIVIL RIGHTS
AMOUNTS AVAILABLE FOR OBLIGATION¹

	<u>2005 Actual</u>	<u>2006 Appropriation</u>	<u>2007 Estimate</u>
<u>Appropriation:</u>			
Annual	\$32,043,000	\$31,682,000	\$32,969,000
Enacted rescission	-61,000	---	---
Enacted rescission	-256,000	---	---
Enacted rescission	---	-317,000	---
Subtotal, adjusted appropriation	31,726,000	31,365,000	32,969,000
Subtotal, adjusted budget authority..	31,726,000	31,365,000	32,969,000
<u>Trust funds:</u>			
Annual appropriation	3,314,000	3,314,000	3,314,000
Enacted rescission	-26,000	---	---
Enacted rescission	---	-33,000	---
Subtotal, adjusted trust funds	3,288,000	3,281,000	3,314,000
<u>Total Budget Authority</u>	35,014,000	34,646,000	36,283,000
Unobligated balance lapsing	<u>- 61,000</u>	<u>---</u>	<u>---</u>
Total obligations	\$34,952,000	\$34,646,000	\$36,283,000

¹ Excludes the following amounts for reimbursable activities carried out by this account:
FY 2006 \$400,000, FY 2007 \$575,000.

**OFFICE FOR CIVIL RIGHTS
SUMMARY OF CHANGES**

2006	Appropriation.....	\$31,365,000
	Trust funds transfer.....	3,281,000
	Total estimated budget authority.....	\$34,646,000
2007	Estimate – General funds.....	\$32,969,000
	Trust funds transfer.....	3,314,000
	Total estimated budget authority.....	\$36,283,000
	Net Change.....	+\$1,637,000

	<u>2006 Current Budget Base</u>		<u>Change from Base</u>	
	(FTE)	Budget <u>Authority</u>	(FTE)	Budget <u>Authority</u>
Increases:				
A. <u>Built-in:</u>				
1.	(259)	\$25,607,000	(259)	+\$200,000
2.	(259)	\$25,607,000	(259)	+\$425,000
3.	(259)	\$25,607,000	(259)	+\$491,000
4.	(259)	\$9,039,000	(259)	+\$521,000
	(259)	\$34,646,000	(259)	+\$1,637,000
B. <u>Program:</u> None				
Decreases: None				
Net Change.....	(259)	\$34,646,000	(259)	+\$1,637,000

**OFFICE FOR CIVIL RIGHTS
BUDGET AUTHORITY BY ACTIVITY¹**
(Dollars in Thousands)

	<u>2005 Actual</u>		<u>2006 Final Appropriation</u>		<u>2007 Estimate</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Compliance Activities..	214	\$30,339	224	\$29,964	224	\$31,380
Legal Services.....	18	2,550	19	2,542	19	2,662
Program Management..	<u>15</u>	<u>2,125</u>	<u>16</u>	<u>2,140</u>	<u>16</u>	<u>2,241</u>
Total Budget Authority	247	\$35,014	259	\$34,646	259	\$36,283
General funds.....		\$31,726		\$31,365		\$32,969
HI/SMI trust funds.....		<u>3,288</u>		<u>3,281</u>		<u>3,314</u>
Total Budget Authority		\$35,014		\$34,646		\$36,283

¹ Excludes the following projected amounts for reimbursable activities carried out by this account:
FY 2006 \$400,000 and two FTE; FY 2007 \$575,000 and two FTE.

**OFFICE FOR CIVIL RIGHTS
BUDGET AUTHORITY BY OBJECT**

	2006 <u>Appropriation</u>	2007 <u>Estimate</u>	Increase or <u>Decrease</u>
Full-time equivalent employment.....	259	259	--
Average SES salary.....	\$138,873	\$141,165	+\$2,292
Average GS grade.....	11.8	11.9	---
Average GS salary.....	\$78,313	\$80,691	+\$2,378
<hr/>			
Personnel compensation:			
Full-time permanent.....	\$19,666,000	\$20,559,000	+\$893,000
Other than full-time permanent.....	840,000	574,000	-266,000
Other personnel compensation.....	200,000	300,000	+100,000
Military personnel.....	71,000	73,000	+2,000
Total, Personnel Compensation.....	20,777,000	21,506,000	+729,000
Civilian personnel benefits.....	4,791,000	5,178,000	+387,000
Military personnel benefits.....	18,000	18,000	---
Benefits to Former Personnel.....	21,000	21,000	---
Subtotal, Pay Costs.....	25,607,000	26,723,000	+1,116,000
Travel.....	300,000	300,000	---
Transportation of Things.....	17,000	17,000	---
Rental payments to GSA.....	3,600,000	3,676,000	+76,000
Rental payments to others.....	27,000	27,000	---
Communications, utilities, and others.....	403,000	403,000	---
Printing and Reproduction.....	45,000	45,000	---
Services from the Private Sector.....	687,000	687,000	---
Purchases of goods and services from other government accounts.....	2,339,000	2,784,000	+445,000
(Service and Supply Fund payment).....	(1,694,000)	(1,730,000)	(+36,000)
Operation and Maintenance of Facilities.....	150,000	150,000	---
Operation and Maintenance of Equipment.....	1,148,000	1,148,000	---
Subtotal Other Contractual Services.....	4,324,000	4,769,000	+445,000
Supplies and Materials.....	274,000	274,000	---
Equipment.....	49,000	49,000	---
Subtotal, Non-Pay Costs.....	9,039,000	9,560,000	+521,000
Total Budget Authority by object class.....	\$34,646,000	\$36,283,000	+1,637,000

**OFFICE FOR CIVIL RIGHTS
SALARY AND EXPENSES**

<u>Object Class</u>	2006 <u>Appropriation</u>	2007 <u>Estimate</u>	Increase or <u>Decrease</u>
Personnel compensation:			
Full-time permanent (11.1).....	\$19,666,000	\$20,559,000	+\$893,000
Other than full-time permanent (11.3).....	840,000	574,000	-266,000
Other personnel compensation (11.5).....	200,000	300,000	+100,000
Military personnel (11.7).....	71,000	73,000	+2,000
Total, Personnel Compensation.....	20,777,000	21,506,000	+729,000
Civilian personnel benefits (12.1).....	4,791,000	5,178,000	+387,000
Military personnel benefits (12.2).....	18,000	18,000	---
Benefits to Former Personnel (13.0).....	21,000	21,000	---
Subtotal, Pay Costs.....	25,607,000	26,723,000	+1,116,000
Travel (21.0).....	300,000	300,000	---
Transportation of things (22.0).....	17,000	17,000	---
Rental payments to others (23.2).....	27,000	27,000	---
Communications, utilities, and others (23.3).....	403,000	403,000	---
Printing and Reproduction (24.0).....	45,000	45,000	---
Services from the Private Sector (25.2).....	687,000	687,000	---
Purchases of goods and services from other			
government accounts (25.3).....	2,339,000	2,784,000	+445,000
(Service and Supply Fund payment).....	(1,694,000)	(1,730,000)	(+36,000)
Operation and Maintenance of Facilities (25.4).....	150,000	150,000	---
Operation and Maintenance of Equipment.(25.7).....	1,148,000	1,148,000	---
Subtotal Other Contractual Services.....	4,324,000	4,769,000	+445,000
Supplies and Materials (26.0).....	274,000	274,000	---
Subtotal, Non-Pay Costs.....	5,390,000	5,835,000	+445,000
Total Salary and Expenses.....	\$30,997,000	\$32,558,000	+1,561,000
Direct FTE.....	259	259	---

**OFFICE FOR CIVIL RIGHTS
AUTHORIZING LEGISLATION**

	2006 Amount <u>Authorized</u>	2006 <u>Appropriation</u>	2007 Amount <u>Authorized</u>	2007 Budget <u>Request</u>
Office for Civil Rights:				
P.L. 88-352;				
42 U.S.C. 300s;				
P.L. 91-616;				
P.L. 92-157;				
P.L. 92-158;				
P.L. 92-255;				
P.L. 93-282;				
P.L. 93-348;				
P.L. 94-484;				
P.L. 95-567;				
P.L. 97-35;				
P.L. 103-382;				
P.L. 104-188;				
P.L. 92-318;				
P.L. 93-112;				
P.L. 94-135;				
P.L. 101-336;				
P.L. 104-191	Indefinite	\$34,646,000	Indefinite	\$36,283,000

**OFFICE FOR CIVIL RIGHTS
APPROPRIATIONS HISTORY TABLE**

	<u>Budget Estimate to Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
1998				
Appropriation	17,216,000	16,345,000	16,345,000	16,345,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
1999				
Appropriation	17,345,000	17,345,000	17,345,000	17,345,000
Rescission	---	---	---	-34,000
1% Transfer	---	---	---	-7,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2000				
Appropriation	18,845,000	18,338,000	18,845,000	18,838,000
Rescission	---	---	---	-64,000
1% Transfer	---	---	---	445,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2001				
Appropriation	24,142,000	18,774,000	23,242,000	24,742,000
Rescission	---	---	---	-51,000
1% Transfer	---	---	---	---
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2002				
Appropriation	28,691,000	28,691,000	28,691,000	28,691,000
Rescission	---	---	---	-50,000
Rescission	---	---	---	-23,000
Rescission	---	---	---	-126,000
Transfer to GDM	---	---	---	-376,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2003				
Appropriation	30,328,000	---	30,328,000	30,328,000
Transfer to GDM	-385,000	---	-385,000	-385,000
Rescission	---	---	---	-219,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
2004				
Appropriation	30,936,000	30,936,000	30,936,000	30,936,000
Rescission	---	---	---	-133,000
Rescission	---	---	---	-182,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-14,000
Rescission	---	---	---	-19,000
2005				
Appropriation	32,042,000	32,042,000	32,042,000	32,043,000
Rescission	---	---	---	-61,000
Rescission	---	---	---	-255,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-27,000
2006				
Appropriation	31,682,000	31,682,000	31,682,000	31,682,000
Rescission	---	---	---	-317,000
Trust Funds	3,314,000	3,314,000	3,314,000	3,314,000
Rescission	---	---	---	-33,000
2007				
Appropriation	32,969,000			
Trust Funds	3,314,000			

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS**

	<u>2005 Actual</u>	<u>2006 Appropriation</u>	<u>2007 Request</u>	<u>Increase or Decrease</u>
Budget Authority	\$35,014,000	\$34,646,000	\$36,283,000	\$1,637,000
FTE	247	259	259	---

Note: FTE level does not include two reimbursable FTE in FY 2006 and FY 2007.

Statement of Budget Request

The President's appropriation request of \$36,283,000 for this account represents current law requirements. No proposed law amounts are included. OCR conducts public education; outreach; complaint investigation and resolution; and other compliance activities to prevent and eliminate discriminatory barriers, to ensure the privacy of individually identifiable health information, and to enhance access to quality HHS-funded programs.

Program Description

As the primary defender of the public's right to nondiscriminatory access to and receipt of federally funded health and human services, OCR works to ensure equal opportunity for all to access the wide range of services available and that the privacy of their health information is protected while ensuring access to care. Through prevention and elimination of unlawful discrimination and by protecting the privacy of individually identifiable health information, OCR helps HHS carry out its overall mission of improving the health and well-being of all people affected by the Department's many programs. OCR assesses compliance with nondiscrimination and Privacy Rule requirements by processing and resolving complaints. In addition, OCR also conducts pre-grant and preventative compliance reviews; monitoring of corrective action plans; and public education, outreach, voluntary compliance, training, technical assistance, and consultation activities as additional means of achieving compliance with nondiscrimination and Privacy Rule requirements.

OCR is comprised of compliance, policy, legal counsel, and program management staff. The majority of OCR's staff works on frontline civil rights nondiscrimination and Privacy Rule compliance activities, largely in OCR's regional offices. In support, a cadre of headquarters analysts provides program and policy coordination and initiatives to enhance program effectiveness and efficiency.

OCR allocates staff time to mandated complaint investigations, Medicare pre-grant reviews, and OCR-initiated compliance activities (e.g., compliance reviews, public education, outreach, voluntary compliance, and technical assistance). Staff time spent on OCR-initiated compliance activities focuses on particularly compelling, high profile, or systemic issues that benefit the greatest number of people possible. The issues surfaced in complaints and pre-grants also address public civil rights and privacy concerns.

Investigations of compliance, public education, outreach, voluntary compliance, technical assistance, training, consultation, and collaborative project activities are each equally significant methods by which OCR achieves corrective action and prevention of unlawful discrimination and Privacy Rule non-compliance. OCR uses these methods interchangeably and with flexibility to address the unique compliance circumstances facing individual HHS grantees, service providers, and other covered entities, with an emphasis on prevention and voluntary compliance. In some cases, public education and outreach may better serve the purpose of achieving compliance than a review or audit activity. In other instances, an investigation or review may be deemed the best means for achieving a positive compliance outcome. Each of the activities that are identified as results or indicators in this report are planned, substantive, and part of an overall compliance strategy that requires significant staff time and resources.

Performance Analysis

For each objective in the FY 2007 performance plan, OCR set targets for each of the measures in relation to this FY 2007 President's Budget request. If OCR receives funding below this level, it will adjust its targets accordingly.

<p>Increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews received each year to 100% per year by the end of FY 2012.</p>	<p>OCR has met or exceeded its annual target since establishing the baseline in FY 2003 and is on schedule to achieve this goal in the timeframe specified.</p>	<p>As the Department's law enforcement agency responsible for resolving complaints of non-compliance, OCR's performance measures are the rate of civil rights and privacy complaint cases resolved and new Medicare application reviews completed each year to cases / reviews received. Output measures are appropriate for OCR since its functions are primarily investigating and resolving complaints and ensuring compliance with privacy and civil rights laws.</p>
<p>Increase the number of individuals who are, or represent, health and human service providers, other interest groups, and consumers to whom OCR provides information and training.</p>	<p>OCR has established 31,250 as its annual target for this measure and is on schedule to achieve the goal in this and subsequent fiscal years.</p>	<p>From FY 2005 through FY 2012, OCR will provide information and training to 31,250 individuals annually, who are, or represent, health and human services providers, other interest groups, and consumers.</p>
<p>Increase the number of covered entities that make a substantive policy change or develop new policies as a result of OCR intervention and/or review.</p>	<p>OCR established the baseline in FY 2005 (1,019 covered entities) and developed ambitious future targets according to the framework developed in OCR's PART.</p>	<p>By increasing the number of covered entities that make substantive policy changes or develop new policies as a result of OCR intervention, OCR has a measurable outcome to assess its impact on the population it serves.</p>

Rationale for Budget Request

Since implementation of the Privacy Rule in 2003, which more than tripled the number of complaints filed with OCR, case resolution has not been able to keep pace with the receipt of new health information privacy and civil rights' complaint receipts. Although the backlog of unresolved complaints will continue to grow in the short term, OCR's ambitious achievement of its PART goals will enable it to reduce the growing backlog in future years with a goal of finally eliminating it.

The following tables illustrate OCR's projected receipt and complaint resolution workload for Privacy Rule and civil rights discrimination complaints, along with preventative compliance review workload (primarily new Medicare application reviews) from FY 2005 through FY 2007.

Complaint Workload – Privacy Rule

	FY 2005 Actual	FY 2006 Projected	FY 2007 Projected
Beginning Inventory	3,482	4,853	5,963
Complaints Received	6,756	6,750	6,750
Total Workload	10,238	11,603	12,713
Complaints Resolved	5,385	5,640	5,810
Ending Inventory	4,853	5,963	6,903

Complaint Workload – Civil Rights

	FY 2005 Actual	FY 2006 Projected	FY 2007 Projected
Beginning Inventory	1,655	1,663	2,038
Complaints Received	3,046	3,100	3,150
Total Workload	4,701	4,763	5,188
Complaints Resolved	3,038	2,725	2,815
Ending Inventory	1,663	2,038	2,373

Workload – New Medicare Application Reviews (Pre-Grants)

	FY 2005 Actual	FY 2006 Projected	FY 2007 Projected
Beginning Inventory	2,429	1,005	745
New Reviews	2,466	2,550	2,600
Total Workload	4,895	3,555	3,345
Reviews Resolved	3,890	2,810	2,890
Ending Inventory	1,005	745	455

As OCR reported in its FY 2006 Congressional Justification, Privacy Rule complaints since implementation of the Rule in April 2003 have far exceeded original expectations. Complaints received in FY 2004 and FY 2005, the first two full years since implementation of the Privacy Rule, together totaled 13,173, or 25 percent more than forecasted at the time the Rule was implemented. In its FY 2006 Congressional Justification, OCR projected a gradual leveling off of Privacy Rule complaints in FY 2005 and FY 2006 to 6,602 and 6,735 per year respectively. An analysis of OCR's Privacy Rule complaint receipt data over the past twelve months confirms a leveling off of complaint volume to approximately 6,750 per year in the FY 2005 – FY 2007 period.

OCR has also experienced a greater than anticipated increase in receipts of civil rights complaints since FY 2004. In its FY 2006 Congressional Justification, OCR noted that the number of civil rights complaints received in FY 2004 and FY 2005 was 21 percent and 19 percent higher per year respectively than was projected in the FY 2005 Congressional Justification. Nonetheless, OCR's increased projections of civil rights complaints in the FY 2006 Congressional Justification have proven conservative for FY 2005, as current data show that complaint volume for FY 2005 was almost 3 percent greater than had been forecasted. This contrasts with the data for FY 2006, however, where the volume for civil rights complaint receipts is now projected to be 4 percent less than anticipated in the FY 2006 Congressional Justification. OCR's analysis of the last twelve months' data suggests that while the volume of civil rights complaints will continue to increase at a higher rate than Privacy Rule complaints, the rate of increase is slowing considerably. OCR projects a 1.6 percent increase from FY 2006 to FY 2007 in civil rights complaint receipts.

As a result of the increased complaint receipt volume for both Privacy Rule and civil rights complaints over the past two years, case resolution has not kept pace with the increased volume of complaint receipts. In the ten year period from 1994-2003, prior to implementation of the Privacy Rule, OCR resolved on average just under 70 percent of each year's complaint workload (cases carried into the year plus allegations newly received in each year). In FY 2005, OCR's resolution rate against total workload was 62 percent, and current projections indicate the rate may fall below 60 percent in both FY 2006 and FY 2007.

Because complaint resolution has not kept pace with increases in complaint receipts, the percentage of OCR's workload that is composed of older unresolved complaints has continued to increase. In FY 2005, 38 percent of the year's total workload was composed of backlogged complaints compared to 30 percent in FY 2004. Based on current projections, this rate will exceed 40 percent in FY 2006 and FY 2007. By the end of FY 2007 OCR anticipates a backlog of over 9,000 combined Privacy and civil rights complaints and new preventative compliance Medicare application reviews (pre-grants).

In addressing this challenge, OCR anticipates achieving greater efficiencies in case resolution due to its FY 2004 reorganization and improved case management techniques. In FY 2007 OCR will identify competency gaps in critical positions to enhance staff performance and serve as a tool for management to remedy gaps in skill sets and to more efficiently deploy appropriate staff resources. OCR will continue to focus on other ways to enhance efficiencies, for example, in the summer of FY 2005, OCR hired temporary employees to assist in the resolution of preventative compliance reviews, freeing OCR's Equal Opportunity Specialists to apply greater effort toward reducing the backlog of civil rights complaint receipts. This resulted in a reduction in the backlog of 400 civil rights complaints. To do so, OCR applied FTEs and associated funding for positions not yet filled after staff departures due to a buy-out opportunity associated with a reorganization in late FY 2004 and early FY 2005. This effort allowed OCR to achieve the 56.4 percent resolution rate for FY 2005 cited above.

Through these efforts, and in the context of the anticipated leveling off in the volume of new complaints as described above, OCR has established an output measure and target for FY 2007, as reported in this budget submission and in OCR's FY 2007 PART submission, to achieve a

receipt to resolution ratio for aggregated complaints and new Medicare application reviews of 92 percent, with a long-term goal, factoring in a 3.3 percent productivity rate increase each year, to achieve a 100 percent equilibrium between receipts and resolutions / reviews by the end of 2012. The requested funding level will sustain OCR's efforts to achieve this equilibrium by the target date. Achieving this long-term performance goal is critical to OCR's efforts to apply resources to reduce and finally eliminate the currently growing backlog of complaints and preventative compliance reviews.

The following section highlights some of OCR's successes resulting from the wide range of activities in which OCR is involved in its efforts to ensure compliance with federal laws requiring nondiscrimination and the protection of individually identifiable health information.

OVERVIEW OF OCR ACTIVITIES

OCR will implement its civil rights and privacy of health information compliance activities through a comprehensive compliance and public education and outreach program. The program includes:

- Complaint Processing
- Preventative Compliance Reviews, Medicare Pre-Grant Reviews, and Monitoring
- Public Education, Outreach, and Voluntary Compliance

In addition, OCR will ensure the integrity and efficiency of its compliance activities by conducting:

- Policy-making and Coordination
- Legal Advisory Support for Policy
- Program Management and Operations Support

COMPLIANCE ACTIVITIES

COMPLAINT PROCESSING

OCR is responsible for investigating complaints of civil rights discrimination or noncompliance with privacy regulations within its jurisdiction that are filed with the office. This responsibility is based on the Department's regulations implementing the various nondiscrimination statutes and the Department of Justice (DOJ) coordinating regulations requiring compliance agencies, such as OCR, to establish procedures for the prompt processing and disposition of complaints alleging discrimination. It also derives from numerous other statutory and regulatory authorities including the Americans with Disabilities Act (ADA) regulations and the Privacy Rule pursuant to HIPAA.

I. Civil Rights

A. Disabilities

1. *The Americans with Disabilities Act (ADA), Olmstead, and the New Freedom Initiative*

OCR is involved in a variety of efforts to increase the independence and quality of life of persons with disabilities, including those with long-term needs. Most notably, OCR has played a critical role in the Administration's New Freedom Initiative that was announced in February 2001, and implemented through an Executive Order issued on June 19, 2001 (E.O.13217). The Executive Order commits the United States to a policy of community integration for individuals with disabilities and calls upon the Federal Government to work with states to implement the ADA regulation requiring that qualified individuals with disabilities be provided with services "in the most integrated setting appropriate to their needs," as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.* The Executive Order calls for swift implementation of the *Olmstead* decision and full enforcement of Title II of the ADA through investigations, complaint resolution, and the use of alternative dispute resolution.

As part of the Executive Order, the President directed the Secretary of HHS to coordinate the activities of other Federal agencies. At the Secretary's direction, OCR coordinated the efforts of nine Federal agencies in a rigorous self-evaluation, with public input, of their policies, programs, statutes, and regulations to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities. This coordinated effort led to the production of *Delivering on the Promise*, a comprehensive compilation of the reports of nine Federal agencies outlining more than 400 specific steps the agencies will implement to support community living for the nearly 54 million Americans living with disabilities. OCR, on behalf of the Department, has sole responsibility for fulfilling certain specific commitments in *Delivering on the Promise*.

Since 1999, when the *Olmstead* decision was issued, OCR has received approximately 700 complaints and resolved approximately 500 complaints filed by individuals and organizations alleging individual and systemic violations of the Title II integration regulation of the ADA. OCR has successfully resolved a number of these complaints by working extensively with states to assist them in complying with the requirements of the ADA. The work of OCR has helped move individuals from institutional to community settings and has helped others avoid institutionalization. During FY 2007, OCR's investigation and resolution of *Olmstead*-related complaints as well as its public education and direct technical assistance to the states will continue to underscore the Administration's commitment and the Department's Federal Government leadership and coordinating role of improving access to community-based services for people with disabilities.

The following are specific examples of OCR *Olmstead* complaint investigation outcomes and their impact.

- Delaware Department of Health and Social Services and Delaware Psychiatric Center - An advocacy group filed a complaint, alleging that psychiatric hospital residents who sought discharge and whose treating professionals had determined that they could appropriately be served in the community were being inappropriately institutionalized. Through nearly four years of OCR intervention and assistance, the State took actions to address the individual and systemic issues involved in this complaint. As an outgrowth of OCR's investigation, the State identified individuals ready for discharge from the institution, and worked with OCR to place more than 50 of these individuals into the community.
- Montana Department of Public Health and Human Services - OCR worked with the State, the complainant, and advocates to resolve a complaint filed on behalf of an individual with several mental and physical disabilities. The complainant alleged that she was not placed in the most integrated setting appropriate for her needs when she was moved from the community to an institutional setting. OCR initially met with State officials to assist with the development of the State's *Olmstead* Plan and provided *Olmstead* related training to the State legislature. Once the complainant was certified as eligible for treatment in the community, OCR worked with the State and advocates to identify potential placement options for the complainant and explore the possibility of adapting the State's community services program to meet the needs of the complainant. The complaint was ultimately resolved through the complainant's placement in the community where she receives support services.
- Kansas Department of Social and Rehabilitation Services (KS-SRS) - During FY 2005, OCR's Region VII office received twenty-three *Olmstead* complaints against KS-SRS. OCR provided significant technical assistance to the agency and secured relief to all complainants, who received the home and community based waiver services they had requested.
- Oregon Department of Human Services - OCR's Region X staff worked with a complainant's advocate and representatives of the Oregon Department of Human Services, county, and contractor entities to facilitate creation of an innovative duplex-based housing and services plan. Prior to OCR's involvement, the complainant was at risk of institutionalization due to inadequate supported housing resources in the existing mental health services delivery system. The stable, supported housing/services arrangement created to resolve the complaint removes the possibility of eviction/homelessness and resulting institutionalization. The complainant's advocate reports that the complainant is now making remarkable developmental progress due to her stable situation. Based on this experience, Oregon officials have asked OCR to participate in future *Olmstead* work group sessions to foster inter-agency communications and cooperation.
- State of Tennessee - OCR worked with the State to resolve a complaint filed by a woman with cerebral palsy, who had resided in a nursing home for three years. She was approved for 12 hours/day of personal support services and moved to an apartment in the community.

2. Other OCR Activities to Ensure Non-Discriminatory Treatment of Individuals with Disabilities: HIV/AIDS, Accessibility, and Effective Communication

In addition to enforcing Title II of the ADA, OCR enforces Section 504 of the Rehabilitation Act of 1973, which prohibits recipients of Federal financial assistance from discriminating against qualified individuals on the basis of disability. HHS recipients subject to Section 504 include many hospitals, nursing homes, mental health centers, medical providers, and human services programs.

OCR is continuing its long history of using Section 504, along with other non-discrimination authorities, to respond to the HIV/AIDS epidemic and the continuing stigma and discrimination faced by some persons living with HIV and AIDS. For example, OCR works to ensure that providers who participate in the Medicaid program do not unlawfully refuse to treat persons with HIV infection who are protected by Section 504 and/or Title II of the ADA. Minorities bear a disproportionate share of the burden of these new HIV infections each year, bringing to bear OCR's commitment to reducing health disparities in addition to our focus on disability rights and our efforts to protect the privacy of health information so important to persons with HIV. In 2005, OCR mounted a national OCR HIV/AIDS in-service Training and Conference for our staff. OCR and CDC trainers provided updates on legal authorities and new tools for investigative and outreach activity. In FY 2006 and 2007, OCR will use new tools for HIV/AIDS work developed in 2005 in conjunction with this training such as an analytic investigatory guide, a review of pertinent case law, a PowerPoint outreach presentation for lay audiences, a revised fact sheet on HIV/AIDS discrimination, and resource and referral information posted on OCR's website.

OCR's investigative activities in this area have resulted in health care providers modifying their practices and policies to afford equal access to individuals with HIV infection. Other 504 cases have resulted in facilities establishing telecommunications services for the deaf, and making facilities more accessible. The following are a sample of OCR complaints concerning Section 504 of the Rehabilitation Act:

- Oakwood Annapolis Hospital in Wayne, MI - The complainant alleged that Oakwood Annapolis Hospital discriminated against him on the basis of his disability as an HIV+ individual. Specifically, the complainant was told by the Hospital when he arrived for a scheduled surgery that his surgery could not be performed at the time scheduled because the staff was not previously aware that he had AIDS and was now required to conduct certain sterilization preparations. OCR's investigation revealed that the Hospital's protocol to apply standard precautions consistently in the care of all patients in all patient care settings had not been properly followed. The Hospital voluntarily took corrective actions to avoid future incidents of this type by counseling staff members to consistently use a high level disinfectant that satisfies Universal Precautions protocol. The Hospital also purchased additional equipment to prevent delays associated with cleaning and disinfecting equipment.
- Sinai-Grace Hospital (SGH) in Detroit, MI - As a result of a complaint that alleged that SGH discriminated on the basis of disability (deafness) by failing to provide a qualified sign language interpreter as an auxiliary aid and thereby denying equal opportunity to benefit

from high quality health care, a systemic change was made. SGH is owned by the Detroit Medical Center (DMC), which also operates six other hospitals. As result of OCR's technical assistance efforts, DMC revised, augmented, and refined its admissions and assessment policies and procedures to achieve effective communication with all patients and their families, including: assessment and accommodation of the needs and preferred method of communication for the patient, family member, or concerned individual who is deaf or hard of hearing and provision of qualified sign language interpreters free of charge, with a very short turn-around time, even during the middle of the night or on weekends. The DMC also ensured that brochures were made available and signs that include sign language symbols were posted that describe auxiliary aid rights; additional TTY devices were installed; and the Section 504 coordinator for each facility was identified to enable consultation and assistance. Further, DMC conducted a systems-wide in-service training program in effective communication and auxiliary aids, reaching all seven hospitals and 712 nurses at Sinai-Grace. Such training will be repeated annually and for all newly hired employees. Staff members who routinely answer telephone calls from the public were trained on how to respond to calls from deaf individuals using the "relay" calls.

- Elmhurst Medical Center of the New York City Health and Hospital Corporation - OCR's Region II office resolved a complaint against Elmhurst Medical Center of the New York City Health and Hospital Corporation alleging that an American Sign Language interpreter was not provided to a patient at the Psychiatric Center's Emergency Department and during transfer to New York Presbyterian/Weill Cornell University Hospital. OCR's investigation resulted in the Hospital's installing a comprehensive and wide-reaching telecommunication system, "Deaf Talk," which will greatly facilitate the prompt delivery of services to the deaf and hard of hearing. OCR's resolution of this complaint also resulted in the hiring of two staff interpreters and a commitment by the Center to improve its record-keeping of communication assessments of patients at the Center. These actions will significantly enhance the provision of language services.
- Utah Valley Regional Medical Center (UVRMC) - As a result of a complaint about lack of accommodation for sight-impaired persons, OCR worked with UVRMC to implement a number of corrective measures. During OCR's investigation, UVRMC appointed a Section 504 Coordinator and developed policies regarding provision of services to sight-impaired persons, including availability of the most commonly needed forms, such as consent forms, on audiotape, in Braille, and in large print. During OCR's investigation, UVRMC inquired about interpreter services for Limited English Proficient (LEP) persons. In response, OCR provided technical assistance. UVRMC has now set up an interpreter service within the facility, and the hospital is working on training and certification of staff as interpreters. The hospital is also writing a grant for a "tele-monitor" to facilitate provision of sign language interpreting.

B. Title VI (Race, Color and National Origin) Access Initiatives

OCR's jurisdictional basis for working with states, localities, and providers with respect to potential race and national origin discrimination is Title VI of the Civil Rights Act of 1964.

Recipients of HHS Federal financial assistance must ensure that policies and procedures do not exclude or have the effect of excluding or limiting the participation of beneficiaries in their programs on the basis of race, color, or national origin. Ensuring Title VI compliance is a core function of OCR's mission.

1. Limited English Proficiency (LEP)

On August 8, 2003, HHS published revised LEP guidance in the Federal Register. Following its publication, OCR has focused on developing technical assistance. OCR continues to be a leading member of the Federal Interagency LEP working group that is also coordinating and developing resources for recipients across Federal agencies, including use of a centralized website (www.LEP.gov). For example, a 35 minute educational video on Title VI and the rights of LEP individuals and multilingual brochures were produced by OCR in collaboration with the Departments of Justice (DOJ) and Agriculture (USDA) and are used by OCR at conferences and meetings with providers and community-based organizations serving LEP populations. The video is dubbed in Spanish and Vietnamese and subtitled in Chinese and Korean for use in reaching out to LEP communities as well as for use in outreach to recipients and the general public.

OCR continues to leverage its available resources through partnerships with other Federal agencies involved in Title VI and other language access activities. OCR works with other HHS offices and agencies, particularly the Office on Minority Health, the Centers for Medicare and Medicaid Services (CMS), Administration on Children and Families (ACF), Health Resources and Services Administration, and the Substance Abuse and Mental Health Services Administration to identify ways to maximize existing HHS resources for language assistance and to develop initiatives to enhance resources and technical assistance for recipients. These initiatives include clarifying what Federal financial assistance can be used to pay the costs of language assistance, identifying and providing translation of common forms and notices, developing sample assessment tools and model language assistance plans, and developing links to Federal, state, and local sources for various forms of language assistance services.

In FY 2007, OCR will continue to work with health care and social service providers, state and local agencies, and other HHS components to ensure that LEP persons are not discriminated against on the basis of national origin in federally funded programs (e.g., emergency room care, welfare to work, child protective services, senior centers, and in-home services).

The following are specific examples of OCR LEP complaint investigation outcomes and their impact:

- Erie County Medical Center Psychiatric Department - OCR's Region II resolved with positive change a complaint regarding a 63 year old homeless Spanish speaking person against Erie County Medical Center Psychiatric Department (Center). The individual's language barrier limited medical staff from performing various psychological assessments. OCR's investigation found that the individual did not receive consistent interpretation services during his 150 day stay at the Center. As a result of OCR's intervention, the Center made systematic changes to its policies, procedures and practices for ensuring early identification of interpretation needs to

ensure appropriate provision of service. The Center developed a “clinical alert” system to prompt an objective assessment of the timeliness and quality of service based on the patient’s need.

- New York City Human Resources Administration (NYC HRA) - OCR’s Region II secured a system-wide change for several thousand clients who are eligible to receive benefits and from the NYC HRA and an agency with which it contracts to conduct assessments for persons with mental and physical disabilities, Health Services Systems (HSS). HSS expanded its communication assistance to clients by utilizing the Language Line, a telephonic interpreter service to provide interpreter services for languages not spoken by HSS staff. As a result of OCR’s intervention, approximately 124,230 clients, 42 percent of whom are LEP, will be notified of the opportunity to access translation and interpretation services. The revision of policy and training of HSS staff will assist them in better identifying and serving their clients who speak different languages.
- PA Department of Public Welfare (PA DPW) - OCR’s Region III office resolved a complaint filed by Community Legal Services on behalf of the Refugee Communities Coalition of Philadelphia, alleging that the PA DPW discriminates against LEP persons on the basis of their national origin by failing to provide the language assistance necessary in the provision of employment and training services by the Bureau of Employment and Training Programs (BETP) and agencies under contract with DPW. As a result of OCR’s investigation and subsequent technical assistance, DPW/BETP has taken the following primary actions: BETP expanded the standards in its Employment and Training Master Guidelines requiring that its various contractors be able to provide all services and activities to LEP individuals; BETP encourages its contractors to sub-contract with organizations prepared to provide linguistic and employment and training services to LEP persons; BETP has translated a variety of forms and general information into Spanish, with efforts being made to translate materials in other non-English languages; BETP developed monitoring tools to determine contractors’ ability to identify language needs and to provide language assistance to LEP persons; BETP has agreed to add a standard to its Master Guidelines requiring that contractors provide LEP training to their sub-contractors and that sub-contractors provide the language assistance needed to ensure meaningful access to LEP persons; and BETP incorporated an LEP component to its training program that is provided to its contractors on an annual basis. BETP requested OCR’s participation in the training and OCR provided LEP training sessions to BETP’s contractors. The PA DPW, BETP will continue its efforts to address potential barriers and take appropriate steps to ensure that LEP TANF beneficiaries have meaningful access to employment and training programs and services.
- Marin General Hospital (MGH), Kentfield, CA - A community advocate on behalf of a Spanish-speaking LEP person filed this complaint against MGH. Marin County has a substantial LEP Latino population. The complaint alleged that MGH discriminated against an LEP individual on the basis of his national origin by failing to provide him with an interpreter during his hospital stay and when given discharge instructions, and that MGH’s failure to provide language assistance to LEP persons denied them an equal opportunity to access MGH’s services. OCR’s investigation substantiated the allegations in the complaint and as a result of our investigation, MGH has taken substantial action steps to augment

services to its LEP patients. In response to OCR's finding, MGH took the following actions: formed an Interpreter Task Force to enhance its services to LEP patients and visitors; revised its policy on providing language assistance to LEP persons; provided OCR with information on a new program offered by MGH's parent corporation that determines if willing MGH employees can provide basic and/or medical interpretation for LEP patients and visitors; contracted with a service to provide telephonic interpretation for LEP patients; appointed a translation services coordinator to oversee the facility's interpretation and translation services; and began monthly training of all new hospital employees on its translation services programs and MGH's LEP policies and procedures. Importantly, MGH now determines if a patient is LEP during the admitting process and regularly translates discharge instructions into Spanish for its Spanish-speaking patients. MGH also provided OCR with documentation of multilingual posters; interpreter services notices, and hospital signage available in Spanish.

- Madison Early Childhood Center, Loveland, CO - As a result of OCR's investigation and intervention, a head start program stopped its practice of placing non-English speaking children in classes with an English-only speaking teacher. Now, bilingual aides are placed in the classes with the teacher so there is more effective communication between the teacher and students. This change will affect approximately 105 students each year.

2. Health Disparities – "Closing the Gaps in Health Care"

Despite notable progress in the overall health of the Nation, there are continuing disparities in illness and death and access to care experienced by members of minority racial and ethnic groups, compared to the U.S. population as a whole. Demographic changes anticipated over the next decade magnify the importance of addressing disparities in health status, which is a primary goal of *Healthy People 2010*. Groups currently experiencing inferior health status are expected to grow as a proportion of the total U.S. population; therefore, the future health of the Nation as a whole will be influenced substantially by the Department's and others' success in improving the health of these groups. HHS has identified six priority health areas on which to focus health disparity activities (cancer screening and management, cardiovascular disease, diabetes, HIV infection/AIDS, immunizations, and infant mortality).

OCR is a key participant in the Department's health disparities initiative, has conducted civil rights sessions at regional and HHS National Leadership Summits on Eliminating Racial and Ethnic Disparities in Health, and has partnered with the Office of Minority Health on activities geared toward the elimination of racial and ethnic health disparities. OCR's Director has made a number of keynote addresses on its activities in this area at national conferences. In FY 2007, OCR will continue to focus on a broad range of Title VI access issues including disparities in access, quality, and availability of health services.

The following is an example of OCR's compliance activity in this area:

- San Francisco Department of Public Health (SFDPH), San Francisco, CA - Two separate complaints were filed alleging that SFDPH changed the admission policy at Laguna Honda Hospital to limit admissions to patients. The complaints alleged that this policy would have a disparate impact on persons who are Chinese by denying them admission to LHH in larger proportions than other groups. After OCR began its investigation, SFDPH reconsidered and rescinded its new limited admissions policy, returning to its previous policy.

C. Non-Discrimination in Adoption and Foster Care

OCR will continue to address race, color, and national origin discrimination in the context of strengthening families by promoting adoption and foster care. For example, the requested FY 2007 budget will enable OCR to further its implementation of Congressional mandates to eliminate delays and denials of foster and adoptive placements on the basis of race, color or national origin, as clarified through the Small Business Job Protection Act of 1996 (SBJPA). Section 1808 of the SBJPA affirms and strengthens the prohibition against discrimination in adoption or foster care placements. Since the passage of the SBJPA, OCR has worked with the HHS Administration for Children and Families (ACF) to ensure that states eliminate policies, practices, and statutory provisions that pose Section 1808 compliance problems. For example, OCR and ACF have jointly issued the *Multi-Ethnic Placement Act (MEPA) / Section 1808 Internal Evaluation Instrument*. This voluntary instrument is designed to assist states and other entities involved in adoption and foster care to assess their compliance with the Section 1808 and MEPA. The instrument is also useful as a self-assessment of compliance with Title VI in this area, because a violation of MEPA or Section 1808 constitutes a violation of Title VI.

The following are typical examples of how OCR's work in this area is helping to facilitate non-discriminatory placement of children:

- Hamilton County Department of Job and Family Services (HCJFS) vs. Ohio Department of Job and Family Services (ODJFS) - Currently, ODJFS and HCJFS are in the process of implementing an agreement with OCR and ACF to remedy violations of Section 1808 and Title VI. ACF and OCR believe that once the provisions outlined in these documents are completed, the quality of public child welfare services in Ohio will be substantially improved and many of the means by which discriminatory acts took place against children and families will be removed.
- Complaint against Kansas Department of Social and Rehabilitation Services (KS-SRS) through the Kansas Children's Service League (KCSL) - The complainant alleged that she was denied custody of her granddaughter, who is biracial, because of the complainant's race. Region VII worked with the state and provided technical assistance that resulted in KS-SRS' establishing a plan to return the complainant's granddaughter to her home and to provide the complainant with necessary supports in caring for the child.

D. Age Discrimination Act of 1975

OCR enforces the Age Discrimination Act of 1975, which is a national law that prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It applies to persons of all ages. The Age Discrimination Act and HHS implementing regulation apply to each HHS recipient. OCR also plays a unique role with respect to the Age Discrimination Act as it has primary responsibility for compiling an annual report to Congress as well as determining what each of twenty-six Federal agencies has done to eliminate age discrimination government-wide. HHS and the Office of the General Counsel (OGC) review all proposed and final Federal agency regulations pursuant to the Age Discrimination Act prior to publication in the Federal Register. A memorandum is prepared to the agency with OGC and HHS' recommendations prior to publishing the regulations.

OCR screens all complaints upon receipt and refers those that describe actions covered by the Age Discrimination Act to the Federal Mediation and Conciliation Service (FMCS). Complainants and recipients are required to participate in an effort to reach a mutually satisfactory mediated settlement of the complaint. OCR investigates complaints that are unresolved by the FMCS or when cases are reopened because the mediation agreement is violated. The following is an example of OCR's work in this area:

- Complaint against Texas Medicaid Program (STAR/STAR+PLUS) - The complainant alleged that the Texas Medicaid Program denied her prescription medication based on her age and disability. OCR referred the complaint to the FMCS for resolution in accordance with the requirements of the Age Discrimination Act. A mediation session was held, and the complainant notified the FMCS that she considered the case resolved.

II. Privacy

OCR enforces the Privacy Rule issued pursuant to HIPAA. The Privacy Rule established for the first time a Federal foundation to protect the privacy of medical information and to provide rights to individuals with respect to that information, including access and notice. Covered entities (other than small health plans) were required to comply with the Privacy Rule as of April 14, 2003. On that date, OCR began accepting complaints against these entities, which include large health plans, health care providers that engage in electronic transactions, and health care clearinghouses.

As of the end of FY 2005, OCR has reviewed 15,475 complaints. Case resolutions include those where corrective action or compliance is achieved or where OCR lacks jurisdiction under HIPAA, such as complaints alleging violations prior to the Privacy Rule's compliance date, complaints alleging violations by entities not covered by the Rule, or where the activities alleged do not violate the Rule.

The allegations raised most frequently in the complaints are:

- 1) impermissible use or disclosure of an individual's identifiable health information
- 2) lack of adequate safeguards to protect identifiable health information
- 3) various types of outpatient facilities

- 4) pharmacies
- 5) group health plans and other health insurance issuers

Complaints are most often filed against the following types of covered entities:

- 1) private health care practices
- 2) general hospitals
- 3) pharmacies
- 4) outpatient facilities
- 5) group health plans

OCR refers to the DOJ appropriate cases involving the knowing disclosure or obtaining of individually identifiable health information in violation of the Rule for criminal investigation. As of September 2005, OCR made over 245 such referrals to DOJ.

The following are some specific examples of OCR privacy complaint investigations:

- Group Health Insurance (GHI) - In response to several complaints alleging violations of the Privacy Rule by GHI, OCR's Region II office established a strong collaborative working relationship with GHI to resolve the complaints filed with OCR. Through effective communication and the provision of technical assistance, GHI and OCR entered into an agreement to expedite complaint processing and any required corrective action. As a result, GHI has retrained its staff and created more stringent policies regarding permissible and impermissible disclosures of individually identifiable health information. As GHI is one of the leading insurance carriers in this nation, it is anticipated that this agreement may significantly affect other carriers.
- Baltimore, MD Area Hospitals - OCR's Region III office resolved five complaints filed against four hospitals located in the Baltimore, MD area. One of the hospitals investigated is a member of the largest health care system in the Mid-Atlantic region (MedStar Health) while another is one of the premier health care institutions in the nation (Johns Hopkins Hospital). The issue in each of the cases was the improper disclosure of individually identifiable health information pursuant to subpoenas. OCR's investigations revealed that none of these hospitals was obtaining written assurance that the time period for objections to a subpoena had lapsed and that no objections to the subpoena were filed. Moreover, none of the hospitals was aware of this documentation requirement and, therefore they were not obtaining such documentation prior to disclosing PHI pursuant to any subpoenas they received, not just the subpoenas in these complaints. OCR provided the hospitals with technical assistance and each revised their practices to ensure compliance with the Privacy Rule in this regard. OCR also ensured that all appropriate staff had been re-trained to minimize any future improper disclosures.
- Complaint against Missouri Baptist Hospital - In this case, a complainant tried to use the online pre-admission service offered by Missouri Baptist Hospital but saw no assurance that the process was secured. The pre-admission service requested several pieces of sensitive information such as a patient's social security number, illness/physical condition information, address and proposed dates of admission to the Hospital. After receiving the

complaint, OCR's Region VII office contacted the Missouri Baptist Hospital. The Hospital did not know their security features had failed until OCR notified it about the complaint. Once the Hospital discovered that the security features had failed, the Hospital took the online pre-admission service down, repaired it, and audited all patient records to see if any information had been improperly accessed through the security breach. As a result of the investigation, the Hospital has instituted a series of regular checks on the pre-admission service to maintain security measures.

PREVENTIVE COMPLIANCE REVIEWS

OCR conducts routine preventative compliance reviews for its traditional civil rights authorities. Currently, OCR plans to conduct Privacy Rule compliance reviews through 2007 only where compelling and unusual circumstances demand. OCR conducts civil rights preventative compliance reviews in two major ways:

- Preventative Compliance Reviews - A review examines the compliance status of a program recipient after receipt of HHS funds (therefore, these reviews are also referenced as post-grant reviews). Reviews may be comprehensive or of limited scope with respect to the compliance issues involved and the statutory authorities applied.
- Pre-Grant Reviews - A pre-grant review is conducted when health care facilities seek approval from the CMS to participate in the Medicare program.

I. Summary - Preventative Compliance Reviews

Under regulations implementing the nondiscrimination laws, OCR must periodically review the policies and practices of program recipients to assess compliance. In addition, the regulations authorize OCR to investigate when a report or other information indicates a possible failure to comply with nondiscrimination requirements. A proactive review and investigation program enables OCR to target its compliance resources to address priority civil rights issues. This enables more effective prevention efforts than can be accomplished through handling of issues raised by complaints alone.

For example, through state application reviews conducted between 2000 and 2005, OCR has provided technical assistance in over 40 states to ensure that the application processes for HHS-funded programs do not contain barriers to access for national origin minorities and persons with disabilities. With special focus on the joint applications for Medicaid, the State Children's Health Insurance Program and TANF used by each of these states, OCR has lead a collaborative effort with CMS, ACF, and the Food and Nutrition Service of the USDA to review and highlight promising practices that facilitate nondiscriminatory access and reduce civil rights complaints. Application reviews seek to ensure that potential applicants who may need assistance with the application process (such as translation and interpretation for blind, deaf, and LEP persons) are able to obtain it. Reviews also promote nondiscriminatory access by immigrant family members to needed health and welfare services to which they are legally entitled.

Some examples of OCR's preventative review work are listed below:

- Virginia Department of Social Services (VDSS) - OCR conducted a review of the VDSS in conjunction with reviews of three county departments of social services. The reviews addressed compliance with Section 504 of the Rehabilitation Act and Title II of ADA as related to the administration of the TANF program. OCR's Region III office requested that the VDSS update and reissue its policies to local offices regarding services to persons with disabilities, including those persons who are deaf/hard of hearing or visually impaired. VDSS reissued policies that demonstrate its efforts to afford persons with disabilities meaningful access to the programs and services provided through the State's TANF and VIEW programs.
- D.C. Income Maintenance Administration (IMA) - OCR's Region III office conducted a compliance review of the D.C. Income Maintenance Administration's TANF program with respect to access for LEP persons. During the course of the review, OCR participated in IMA's annual diversity training, during which OCR presented an overview of the revised OCR guidance regarding Title VI prohibition against national origin discrimination affecting LEP persons. The training was attended by approximately 450 IMA caseworkers. In addition to the training, OCR worked with IMA to ensure the upgrading of IMA systems to identify and track the LEP individuals and the languages spoken in the IMA service area, and negotiated changes in policies and practices to address access for LEP persons seeking IMA services. As a result of the review, IMA will provide notices on informational and marketing materials about the availability of translation services when needed. IMA will also monitor the work of their vendors in serving LEP individuals.
- Hackensack University Medical Center - OCR Region II undertook a comprehensive review of Hackensack University Medical Center, New Jersey, to examine the Center's established policies and practices for ensuring effective communication with deaf and/or hard of hearing beneficiaries. During the review, OCR discovered that client population numbers could not be determined due to various reasons, including non-reporting of persons who are deaf and hard of hearing. As a result of OCR's review, the Center created a position titled "Manager of Language Services" and implemented a computer program to capture information on patients who are deaf and/or hard of hearing and their special needs. Advocacy organizations have informed OCR that the Center's training module and services for deaf and/or hard of hearing persons are excellent models and have recommended use of the module to the New Jersey State Attorney General's office for implementation in other facilities. Subsequent to OCR's on-site investigation, the Center's Chief Compliance Officer and Manager of Consumer Affairs advised OCR that the Center developed a videotape that is used to train staff on the needs and services for individuals who are deaf or hard of hearing.

II. Summary - Pre-Grant Reviews

Pre-grant reviews, another type of preventative review of civil rights compliance, are conducted when health care providers, such as hospitals, nursing homes, home health agencies, and rehabilitation facilities, apply to participate in the Medicare program. CMS requires health care providers to meet certain legal requirements in order to participate in the Medicare Part A

program established by Title XVIII of the Social Security Act. Those legal requirements include ensuring that health care providers receiving Federal financial assistance from HHS do not deny benefits or services to qualified persons based on their race, color, national origin, disability, or age. When providers seek Medicare certification, OCR conducts a pre-grant review to determine if they will be in compliance with Title VI, Section 504, and the Age Discrimination Act when they receive HHS funds. Such reviews promote compliance because they both educate health care providers about their legal responsibilities to refrain from illegal discrimination and identify potential civil rights concerns prior to receipt of Federal financial assistance.

The pre-grant review enables recipients to establish appropriate policies and procedures or correct potential noncompliance in a voluntary context. At least three-fourths of OCR's pre-grant reviews result in corrective action mainly related to LEP and sensory-impaired persons' communication issues. Because of the self-corrective and direct technical assistance nature of the pre-grant review, OCR's experience has been that recipients are generally cooperative and view the activity as an informative and positive step that can help them prevent civil rights compliance problems from arising in the future. Facilities administrators have reported that the increased awareness brought about by OCR's technical assistance efforts has great ripple effects as administrators often move on to other facilities, applying the civil rights knowledge to the new entities. OCR is continually improving the efficiency of its pre-grant review process. For example, in response to a National Pre-Grant Survey that identified bottlenecks causing delays in case processing, OCR revised its data request form to streamline the process and improve recipient comprehension of civil rights laws and OCR's expectations for clearance.

Some examples of the impact of particular pre-grant reviews are listed below:

- Mariner Healthcare - As a result of the pre-grant review process, this national corporation, with over 260 skilled nursing homes nationwide, developed new civil rights policies and procedures to be implemented by all their facilities. These new policies and procedures included comprehensive nondiscrimination requirements, procedures for providing meaningful communication with LEP persons, and auxiliary aids and interpreters for sensory-impaired persons. In addition, the corporation provided training for staff to implement the procedures.
- North Capitol Nursing and Rehabilitation Center - After receiving technical assistance from OCR during the pre-grant review process, North Capitol Nursing and Rehabilitation Center, with over 100 employees, developed complete policies for communication with LEP and sensory-impaired persons, including names and telephone numbers of interpreters and interpreter services, as well as a list of auxiliary aids. In addition, the Center expanded their Section 504 Grievance Procedure to cover patients and clients as well as employees.
- Gentiva Health Services - As a result of OCR's pre-grant reviews and technical assistance, Gentiva, a corporation of over 40 home health agencies nationwide, now has procedures to: (1) assess the need for interpreters and translated materials in their various home health

agencies, and (2) provide meaningful communication with LEP and deaf / hard of hearing persons by establishing procedures to ensure access to local interpreters, language line services, and TTD equipment.

MONITORING

The purpose of monitoring is to ensure that program recipients carry out the measures set forth in corrective action plans negotiated by OCR. Corrective action plans are negotiated to resolve compliance problems that are uncovered or verified during a review or a complaint investigation. Monitoring involves reviewing reports or information submitted by program recipients. In some instances, on-site visits may be necessary to assess a recipient's progress in implementing corrective measures.

An example of a positive outcome from OCR's monitoring work follows:

- OCR received a complaint against Holy Name Hospital. Specifically, the complainant alleged that he was denied a sign language interpreter when he used the Hospital's emergency room. On May 13, 2004, OCR and the Hospital entered into a Voluntary Resolution Agreement (VRA). As part of the agreement, the Hospital was subject to a monitoring period and required to submit Title II and Section 504 compliance information to OCR for a year. On April 1, 2005, OCR advised the Hospital that they had successfully completed the monitoring portion of their VRA. As a result of the agreement, the Hospital replaced their paper chart records system with a highly advanced records maintenance system that allows for the continuous updating and dissemination of patient information, including notification of special needs such as interpreter services. This new system places touch-screens at all patient bedsides for practitioners to access when reading or updating a medical record. Speakerphones and video cameras attached to these bedside computers allow for immediate access to simultaneous translating services.

PUBLIC EDUCATION, OUTREACH, AND VOLUNTARY COMPLIANCE

The assignment of staff time to public education, outreach and voluntary compliance, and collaborative projects represents a commitment by OCR to listen and respond cooperatively to its customers. OCR's work also evidences collaboration with other HHS components and Federal agencies, states, local governments, providers, and community and faith-based and other organizations to address acute and chronic civil rights problems, and to work with covered entities and consumers to address Privacy Rule issues. Outreach activities often involve several of OCR's legal authorities at once, and therefore are not easily differentiated on that basis. In FY 2007, with this allocation, OCR will conduct a variety of national outreach, public education, and technical assistance activities including:

- Partnering with other HHS agencies, state agencies, trade associations, community-based organizations, provider groups, as well as community groups and faith-based organizations working with target populations, to raise awareness regarding complying with Title VI, the ADA, and MEPA/Section 1808 of the Small Business Act. OCR's public education and outreach activities include presenting at national and state forums, providing training and

technical assistance, responding to phone inquiries and correspondence, and developing targeted industry-specific materials.

- Providing technical assistance, policy clarification, public education, and other guidance to covered entities under the Privacy Rule through continued operation of toll-free phone lines; updating of FAQs for the OCR website; provision of public education and informational documents targeted to specific health care service providers and other categories; and presentations either on-site at conferences or through telephone and/or web-based conferences.

I. Civil Rights

A. Disabilities

OCR is promoting compliance with Title II of the ADA and Section 504 of the Rehabilitation Act by providing outreach, training, and technical assistance to states and community-based organizations. OCR has also provided extensive technical assistance to states in their *Olmstead* planning efforts.

Examples of OCR's work with Federal agencies and state and local organizations and groups include:

- Greater New York Hospital Association (GNY) – OCR Region II's on-going relationship with the Greater New York Hospital Association (GNY) continues to result in substantially increased compliance activity among the 300+ member hospitals and nursing homes. OCR's compliance reviews of GNY member institutions have yielded strong cooperation and action steps taken by hospitals to ensure compliance with civil rights laws and the privacy rule. The success to date is due to OCR's work to foster increased collaboration with the association. This consistent interaction, with extensive public education, and technical assistance efforts has resulted in increased access for LEP and deaf / hard of hearing persons, among others. Further evidence of OCR's success is the recent formation of a GNY Special Advisory Task Force on Diversity and Healthcare Leadership and the opening of a Center for Trustee Initiatives and Recruitment. Both of these entities were established, in part, to help GNY member institutions expand access to quality health care. In addition, proactive efforts are continuously being made that will result in the member hospitals' CEOs, trustee and director boards to better reflect on the populations they serve. OCR has been consulted as the civil rights resource and is regularly briefed on progress of the initiatives.
- Training: University of Cincinnati Hospitals - A long-term partnership between OCR and the University of Cincinnati Hospitals results in annual training by OCR on a variety of disability issues including communication with persons who are hard of hearing. This collaboration has encouraged entities to contact OCR for technical assistance and, thus, has brought about increased compliance with Section 504 and the ADA, averting potential discriminatory actions.

B. Title VI

1. *Health Care Disparities*

OCR works with community groups and faith-based communities to provide public education and awareness of civil rights protections in access to health care for racial and ethnic minorities. OCR provides training and conducts workshops at national, regional, and local meetings of African-American, immigrant and refugee, and Native American organizations. OCR collaborates with state and local government agencies to develop strategies to reduce health disparities, including education and training opportunities. OCR participates with other HHS agencies to sponsor large-scale public education/health expo activities. For example:

- Tufts School of Medicine - On December 5, 2004, OCR was a panelist at the symposium "Everyone Counts: State Infrastructure and Capacity to Eliminate Ethnic Health Disparities in New England" at the Tufts School of Medicine, Boston MA. OCR led a "Cultural and Linguistic Competency" breakout session, which included a discussion of issues such as legal requirements, guidelines, and how to persuade business executives of the topic's importance from a business perspective. The group assessed the Commonwealth Fund's report "A State Policy Agenda to Eliminate Racial and Ethnic Health Disparities" and developed recommendations. OCR educated the participants about OCR's role, and discussed collaborative efforts for future endeavors with various groups and organizations.

2. *LEP*

OCR has conducted numerous public education and awareness outreach activities to educate LEP populations, covered entities, and appointed officials about the importance of language access, and to share information about OCR's efforts to assist states in revising benefits applications. OCR is an active participant in the Federal interagency LEP Workgroup and, as discussed on page 33, collaborated with DOJ and USDA to produce a videotape and consumer brochure in multiple languages about LEP rights and responsibilities. In addition to its interagency efforts, OCR has made numerous presentations on LEP to a wide variety of audiences. For example:

- Greater Hartford Immigrant and Refugee Health Council - On April 6, 2005, Region I OCR presented "Making Strides in LEP - A Connecticut Forum on Limited English Proficiency" at a symposium sponsored by the Greater Hartford Immigrant and Refugee Health Council, which is coordinated by the Central Area Health Education Center. It was a half-day event focusing on LEP and its local and statewide impact. State legislators, health care providers, community-based organizations, and consumers attended.
- Latino Civil Rights Summit - In Missouri, OCR presented at the Latino Civil Rights Summit, marking OCR's third time participating in this annual event. OCR gave two

workshops, one of which included a PowerPoint presentation of its Title VI LEP Policy Guidance. The second workshop included a panel discussion with other Federal agencies such as the Department of Housing and Urban Development, the Equal Employment Opportunity Commission, the Department of Education's OCR, and the Department of Labor. This second workshop involved a discussion of the various laws that protect against discrimination and included information on how to file discrimination complaints. The Summit targeted social service and health care providers, and community groups.

- Faith Based Community Forum on Health Initiatives (Georgia) - OCR Region IV assisted in coordinating and organizing a two-day, faith-based community forum and health fair sponsored by the North Georgia Conference of the United Methodist Church. The conference was a part of the annual meeting of the United Methodist Church's North Georgia Conference held at the Classic Center in Athens, Georgia. The theme of the forum and health fair was "A Day of Service: Empowering Communities for Healthier Lives" and was designed to equip area churches and the surrounding community with information and tools for better, healthier, and longer lives. The forum covered three major dimensions of health: Spirituality and Health, the Body-Mind-Spirit Connection, and Service to the Community. The event concluded with a question and answer period from the community. There were approximately 1,500 persons in attendance representing church members, advocates, physicians, educators, and community based organizations.
- Radio Interview in Texas - OCR reached a nationwide Spanish-speaking audience through a radio interview in Spanish with KNON Radio 89.3, a public radio station in Dallas that broadcasts worldwide. The subject of the program was language access in hospitals. Questions covered the use of family or friends as translators in hospitals, OCR guidance to health care facilities on LEP, communication alternatives, confidentiality, translation of documents, and denial of services to LEP patients.
- Addressing the Linguistic Needs of Today's Diverse Patient Population - OCR Region VI addressed current legal responsibilities of health care providers by informing the audience of 50 Texas hospital participants of the Federal requirements and regulatory guidelines and by giving an overview of the published standards. There were a total of nine speakers representing various entities at the local, State, and Federal levels that are directly involved with the provision of health services to the public. The Director of Cross Cultural Development with the Texas State Department of Health presented two research studies. One study concluded that Spanish-speaking patients whose families have a language barrier seem to have a significantly increased risk for serious medical events during pediatric hospitalization compared with patients whose families do not have a language barrier. The second study suggested that language barriers contributed to health disparities by impeding adequate health communication. Participation in this conference led to an invitation from the Texas Health Resources (Center for Learning) for OCR Region VI to make the LEP power point presentation to the 13 Texas hospitals with which they are associated. The Center for Learning is a faith-based organization for a nonprofit health care delivery system.

- USDA Southwest Conference - On August 29, 2005, OCR Region VI staff provided a presentation on OCR's LEP Policy Guidance and OCR resources at the annual training for Region VI Civil Rights Managers sponsored by USDA Food and Nutrition Service (FNS). Twenty civil rights managers and their staff from state human service agencies attended, representing Texas, Arkansas, Louisiana, New Mexico, and Oklahoma. The presentation included the "Breaking Down the Language Barrier" videotape produced by DOJ, HHS/OCR and USDA/FNS. Copies of the LEP Policy Guidance presentation were provided to the participants as a reference guide. Two DVD copies of "Breaking Down the Language Barrier" were provided to each state office as well as USDA/FNS Civil Rights office with the instructions on how to download additional DVD presentations at the OCR LEP website.
- National Head Start Hispanic Institute Conference - In Albuquerque, New Mexico, in February 2005, at the National Head Start Hispanic Institute Conference sponsored by ACF, OCR collaborated with the U.S. Department of Education to present three workshops on LEP and access for LEP parents and children enrolled in the Head Start program. Head Start grantees from all over the country were present. Over 80 people attended each of the workshops that included discussion of OCR's LEP Policy Guidance and resources available to head start administrators and clients with regards to improving services to LEP persons who participate or are eligible to participate in head start programs. OCR distributed copies of the LEP video and as well as other information.

C. Non-Discrimination in Adoption and Foster Care

- Multi-Ethnic Placement Act/Section 1808 - OCR worked in collaboration with the HHS Administration on Children and Families, and the Minnesota Department of Human Services to implement administrative rule changes to ensure that race, color, or national origin are not used as factors in assessing or making adoptive or foster family placement decisions statewide. This collaboration will affect thousands of placement decisions that are made for children and families across the state of Minnesota.

D. Cross-Cutting: Race, Color, National Origin, and Disabilities

OCR's outreach work often targets particular populations, but addresses more than one of its legal authorities simultaneously. Often, OCR achieves greater efficiencies by working with governmental entities and other groups to educate audiences about a variety of OCR civil rights authorities. The following are examples of crosscutting outreach activities.

Examples of OCR's outreach activities related to Indian Tribes include:

- Region VI's outreach efforts have resulted in contacts with, and dissemination of civil rights information to, all Indian Health Service entities and federally recognized Tribes within the region (37 in Oklahoma, 22 in New Mexico, four in Louisiana, three in Texas, and one in Arkansas). Region VI sent letters to each entity, identifying OCR's civil rights

responsibilities in the health and social services fields, and sent Fact Sheets regarding LEP and Disability information.

- Region VI staff reached over 1,000 persons through participation in four tribal conferences. Attendees at the conferences included Tribes throughout Region VI, Federally-employed Navajo women, state agencies, national advocacy groups, and the general public. These conferences were: the 26th Annual Navajo Area Federal Women's Conference (Farmington, NM); the National Council on Disability Tribal Affairs National Forum (Santa Ana Pueblo, NM); the Region VI Annual Tribal Consultation Session (Oklahoma City, OK); and the 6th and 7th Annual Circle of Harmony Conferences hosted by the Albuquerque Area Indian Health Board. Information provided by OCR staff included OCR's authorities and processes for serving people with disabilities in Indian Country, and Fact Sheets about Title VI, Section 504 of ADA, Age Discrimination, and HIPAA.

Examples of OCR's outreach activities related to Immigrant Access include:

- Kansas Immigrant Access Conference - In Region VII, OCR co-sponsored an Immigrant Access Forum with CMS, ACF, Kansas Social and Rehabilitation Services, Kansas Hispanic and Latino American Affairs Commission, and the USDA/Food and Nutrition Service/Food Stamp Program from Denver, Colorado. This was the first cooperative event on this topic held in Kansas. Federal, state, and community leaders discussed key policies governing immigrant access to various health and social services, as well as each agency's work with immigrants and their advocates to increase access to these services. OCR gave a presentation on its Title VI LEP Policy Guidance. Other workshop topics included Housing, Limited English Proficiency, Education, Domestic Violence, Food Stamps, Healthcare, TANF, Health Disparities and Breaking Down Cultural Barriers. Speakers included attorneys from the National Immigration Law Center in Oakland, CA; DOJ's Civil Rights Division, Washington, D.C.; Mexican-American Legal Defense and Education Fund; and Federal staff from the Kansas City Regional Office.

The following are examples of OCR's outreach activities related to State Consultations:

- Rhode Island Department of Health - Region I OCR served as the keynote speaker, presenting information on the LEP Policy Guidance, and disseminating relevant OCR materials at the Rhode Island Minority Health Advisory Committee Meeting.
- Maryland Department of Health and Mental Hygiene - In partnership with the Maryland Department of Health and Mental Hygiene, Region III conducted training on Title VI and the LEP guidelines in three locations throughout the state. The training was designed as a "train the trainer" program. Portions of the program presentations were uploaded to the agency's intranet as part of a mandatory training package for all staff in the local county health departments. This strategy enabled OCR to reach all local health department staff in the 22 counties of the State.

- Texas Department of Human Services Civil Rights Office - Region VI has had a long-standing partnership with the Texas Department of Human Services (TDHS), under the umbrella of the Texas Health and Human Services Commission (THHSC). During FY 2004, THHSC went through a massive reorganization that resulted in the creation of one Civil Rights Office (CRO) for all of its programs. When the reorganization began, the CRO asked OCR for ongoing technical assistance to help prepare them for their new responsibilities, which included: community mental health services, mental health institutions, alcohol and drug abuse services and new authorities including Hill-Burton, and Block Grants.
- New Mexico Department of Health - Region VI OCR was requested to provide technical assistance on the development of a Limited English Proficiency (LEP) policy for the New Mexico Department of Health (NMDH). OCR then provided NMDH with OCR's LEP Guidance and technical assistance in developing its policy statement and procedure, "Nondiscrimination Against Patient/Clients with Limited English Proficiency (LEP)." The policy and procedure will be used to provide guidance to employees of NMDH during the care and treatment of its LEP patients/clients. OCR also shared best practices used by other states when addressing cultural competence in racial and ethnic health disparities. NMDH will use the guidance to develop a cultural competence policy to ensure that specific measures are taken by its staff members and contractors to address the disparate health status of cultural, ethnic, linguistic, and racial groups who are bearing a disproportionate burden of disease, disability, and premature death in New Mexico.
- Partnership with Office of Minority Health (OMH) on Town Hall Meetings in New Mexico - OCR Region VI staff have partnered with the HHS OMH on a series of outreach activities focusing on HIV/AIDS issues and their relevance to the elimination of racial and ethnic health disparities. OCR has helped to plan and will be making presentations at a series of town hall meetings on HIV/AIDS to New Mexico's racial and ethnic population groups. OCR's presentations will focus on its mission, jurisdictional authorities, and commitment to ensure non-discriminatory access to HHS-funded services for individuals living with HIV and AIDS. Throughout the town hall meeting planning process, OCR has worked closely with the Office of Minority Health Resource Center and has engaged in outreach to entities of New Mexico State government, including the State Department of Health and the Office of African American Affairs.

II. Privacy

In FY 2007, OCR will continue to focus heavily on education and technical assistance activities to prevent Privacy Rule violations. OCR's public education activities will continue to entail outreach and technical assistance to health care providers, health care clearinghouses, and health plans to ensure that they understand their responsibilities under the Privacy Rule. OCR will also undertake efforts to educate health care recipients about their rights under the Rule. OCR will continue to utilize a variety of methods to educate the public about the Rule. For example, OCR will continue to make available a free call-in line for HIPAA questions. Customer service representatives on this line are able to respond directly to many frequently asked questions. If the customer service representatives cannot answer the caller's question, the call will be directed

to regional or headquarters staff for a response. Since April 2003 to September 2005, OCR has responded to over 54,000 telephone calls about the Privacy Rule.

In addition, in 2007 OCR will continue to make our senior experts available on a regional and national basis for presentations at conferences and seminars attended by all sectors of the healthcare industry. Presentations are typically at national healthcare association conferences that include both providers and health plans, as well as at national, state and local bar associations, medical societies, and universities. OCR participates regularly with many professional organizations and government-sponsored events including: national HIPAA Summits, the American Health Information Medical Association, Workgroup for Electronic Data Information, and DOL ERISA conferences. OCR has partnered with other HHS operating divisions as well, including teleconferences sponsored by CMS and conferences sponsored by the National Institute of Health (NIH) and the CDC.

From April 2003 through September 2005, OCR had over 2.75 million visits to its Privacy web pages and also had over 3.4 million Privacy Rule answers viewed on the frequently asked questions site maintained by HHS. OCR and its sister divisions in the Department, particularly CMS, but also the NIH, CDC, and the Substance Abuse Mental Health Services Administration among others, have worked and continue to work in concert to produce materials and guides responsive to the needs of the wide range of healthcare industry segments that are affected by the Privacy Rule. OCR's FY 2006 and FY 2007 activities also will include issuing additional guidance to aid in implementation and to dispel misconceptions about the Privacy Rule.

Finally, OCR uses its listserv that currently has nearly 18,000 subscribers to distribute announcements, notices of available resources, and other educational information about the Privacy Rule. As new guidance and FAQs have been published, OCR has used the listserv to notify the public that such information is available. Recently, for example, OCR disseminated over its listserv a series of FAQs on the how the Privacy Rule applies to disclosures in the litigation context.

The following are examples of OCR's outreach activities related to the Privacy Rule:

- Dallas Area Police Chiefs and Fire Fighters; Baylor University Medical Center, Dallas, Texas - OCR Region VI and Assistant United States Attorney Sean McKenna made a presentation before Dallas area police chiefs and fire fighters on the Privacy Rule. This presentation, sponsored by the Greater Dallas Crime Commission, emphasized the general rule regarding the obligation of covered entities not to disclose individually identifiable health information and the exceptions contained in the Privacy Rule provision regarding disclosing to law enforcement.
- Healthcare Recovery in the Aftermath of Hurricane Katrina - OCR conducted an outreach project in New Orleans where approximately 300 people attended. There were representatives of various health care groups, small physician practices, Health IT, Small Business Administration, private health plans, the Louisiana Medical Association, health care attorneys, health care consultants, hospitals, pharmacies, and patient interest groups. OCR conducted presentations and was the only federal agency to have a booth on display

during the conference. OCR received excellent feedback on the guidance from OCR's website after Katrina. OCR provided additional office information and provided technical assistance for many entities, particularly concerning disclosures to emergency agencies and requests for patient access to medical records, in light of Katrina's aftermath.

- Oklahoma Department of Human Services - OCR and the Oklahoma Department of Human Services Privacy Coordinator conducted a session on the HIPAA Privacy Rule and communicating with LEP persons. The session involved a discussion of scenarios that a HIPAA covered entity might encounter with LEP patients or clients. Oklahoma Department of Health Services videotaped this session for use in training of all its workers. This session received the highest evaluation of the conference.

ACTIVITIES TO ENSURE INTEGRITY AND EFFICIENCY OF OCR'S COMPLIANCE WORK

I. POLICY-MAKING AND COORDINATION

Teams of staff at headquarters work to coordinate and support the compliance, review, pre-grant, and outreach activities of the organization. OCR will continue to devote substantial resources to these efforts. OCR regularly receives requests for policy interpretations of its civil rights and privacy regulations and continues to receive a high volume of calls with questions related to these regulations. OCR will continue to provide advice on the civil rights regulations and the Privacy Rule in response to these requests during FY 2007 to facilitate compliance. Some of the headquarters policy-related activities will include the following:

- Serving as technical civil rights and privacy experts to Congress; in this regard, briefing Congress and reviewing and commenting on legislative proposals applying civil rights and policy expertise to the analyses;
- Analyzing the need for modifications to civil rights and privacy regulations and proposing regulatory modifications when necessary;
- Coordinating complaint investigation activities with other Federal agencies, such as DOJ which coordinates all Title VI and ADA regulatory activities and enforces sanctions for criminal violations of the Privacy Rule, and CMS, which enforces the other HIPAA administrative simplification rules;
- Ensuring that Departmental regulatory, policy, and outreach issuances are consistent with Federal civil rights and privacy statutes and regulations;
- Working with other Departmental offices to ensure that Departmental initiatives are resolved in accordance with civil rights and privacy policy; for example:

- OCR has taken a leadership role in working with the newly created Office of the National Coordinator for Health Information Technology as that office has sought to protect the privacy of patient records while guiding the nationwide implementation of interoperable electronic health records in both the public and private health care sectors;
 - OCR will continue to work with the HHS Office on Disability (OD), created by HHS in 2002 as part of the Department's activities to carry out the New Freedom Initiative. Through various methods, OCR has supported OD's coordination and leadership of HHS disability-related activities, including by consulting with OD staff on matters with possible civil rights implications, attending Department-wide meetings convened by OD, and participating on OD-initiated subcommittees to devise solutions to barriers to community integration posed by inadequate housing and employment opportunities, to raise public awareness of health-related problems faced by individuals with disabilities, and to develop emergency preparedness and response plans for persons with disabilities. OCR will also continue to participate in other HHS activities related to the New Freedom Initiative and E.O. 13217, including efforts to support and implement Federal agencies' response to the recommendations of the New Freedom Commission on Mental Health.
- Actively participating in Departmental working groups such as the Health Disparities Council; the HIPAA Privacy Council; the Intra-departmental Council on Native American Affairs; the Secretary's Advisory Committee on Genetics, Health, and Society; and the Global Healthy Policy Core Group.
 - Coordinating with CMS in enforcing HIPAA and in reviewing home and community services waivers for persons with disabilities;
 - Reporting or compiling reports such as the Annual Age Discrimination Report to Congress as required by the Age Discrimination Act, through which twenty-six Federal agencies report on the steps taken during the preceding fiscal year to comply with the Age Discrimination Act;
 - Responding to requests for a second level of review of complaint findings by regional offices;
 - Responding to media requests about the Privacy Rule and various civil rights authorities; and
 - Responding to a range of correspondences asking questions about issues under OCR's jurisdiction. Writers include national trade associations, advocacy organizations, consumers, covered entities, Federal, state and local governmental bodies; and members of Congress. In answering letters, OCR often explains or clarifies particular provisions of the Privacy Rule or its civil rights regulations or policies.

COMPLIANCE LEGAL COUNSEL - OGC (CIVIL RIGHTS)

OCR's budget submission includes funds to support compliance legal advisory services provided by the Civil Rights Division of the Department's Office of the General Counsel. Division attorneys in headquarters and in the regional offices provide OCR staff with legal advice and assistance in interpreting and applying the nondiscrimination laws and regulations and the Privacy Rule. Staff attorneys in each of OCR's regional offices and in Headquarters address issues related to most integrated setting and other ADA/Section 504 case law, health disparities, quality of care, managed care, Title IX, immigration/public charge issues, and privacy of health information.

Specifically, the OGC Civil Rights Division: (1) prepares cases for administrative enforcement proceedings and refers cases to DOJ for enforcement; (2) assists DOJ in litigating court cases involving civil rights issues and health and human services programs and the Privacy Rule; (3) reviews or assists OCR in developing civil rights and privacy regulations, policy interpretations, and guidelines; (4) issues legal opinions at OCR's request; and (5) provides legal guidance in applying civil rights laws, the Privacy Rule, the Freedom of Information Act, and other statutes and regulations with which OCR must comply.

OCR anticipates that at the FTE level included in the FY 2007 request, the Civil Rights Division will be able to provide necessary legal assistance in connection with letters of findings, corrective action plans, regulations, legal interpretations, policy development, guidelines, and technical assistance materials. In FY 2007, the legal staff is expected to provide legal advice in connection with investigated complaints, reviews, corrective action plans, and litigation matters. In addition, the attorney staff will review potential enforcement actions, advise on the development of Privacy Rule exception determinations, represent OCR at administrative hearings and appeals, and provide general legal guidance regarding court decisions and the scope and applicability of statutory and regulatory requirements.

COMPLIANCE PROGRAM MANAGEMENT

This component of the budget supports OCR's leadership, policy setting, planning, management systems, and program oversight functions. This includes providing overall policy and program direction; coordinating with HHS officials and with other executive branch departments and agencies; establishing compliance priorities; developing short- and long-range program plans, including formulating and executing the budget; and setting measures for program outcomes and staff performance. Compliance program management leadership and support also includes allocating staff to accomplish program objectives; monitoring, evaluating, and reporting on program effectiveness; implementing management and quality improvement projects; developing and maintaining program management information systems; and coordinating with administrative service providers in the Office of the Secretary and the Department to address a wide array of resource management issues.

Compliance program management staff will continue to provide the office with the leadership, planning, and oversight necessary to manage OCR's headquarters and regional operations.

Summary of Measures Table¹

The Program Performance Report Summary Table below shows that, since FY 2002, as a result of the broader conceptual framework of OCR's restructured objectives and measures, OCR has reduced the number of performance measures for reporting accomplishments by 73 percent, thereby concentrating efforts on those measures that can be attributed directly to OCR's resources and activities. In FY 2005 for the first time, OCR portrayed its performance results through submission of the PART to OMB. The PART process allowed OCR another opportunity to recast its outcome performance measures and portray OCR as a results-based program. While it is recognized that this refinement of OCR's performance measures is a departure from that portrayed in previously submitted documents, OCR will continue to use the revised PART-established framework to further refine its performance measures.

FY	Measures Total in Plan	Total Reported		Total Met Met	Total Not Met		% Met
		Results Reported	% Reported		Improved	Total Not Met	
2002	22 (18)	4 ²	18%	3	0	1	75%
2003	17 (11)	4	24%	3	0	1	75%
2004	4	4	100%	4	0	0	100%
2005	4	4	100%	4	0	0	100%
2006	4	data in late Fall 06					
2007	6	data in late Fall 07					

Detail of Performance Analysis

OCR has organized its performance measures around the two overarching strategic goals that directly support the HHS Strategic Plan, the Department-wide Top 20 Objectives, and the President's Management Agenda. All targets in the following table reflect OCR's resolution estimates consistent with funding at the level represented in this budget submission, and as reflected in OCR's PART submission. These targets are not achievable at a reduced funding level.

¹ The numbers in parentheses are the numbers of developmental measures for which baseline data were not available and targets, therefore, had not been set.

² In FY 2001, in each programmatic objective, OCR consolidated several measures into a single indicator and reported on the consolidated measures in FY 2002. In the FY 2004 Plan, OCR consolidated objectives into broader categories for both the Final FY 2003 Plan and the FY 2004 Plan resulting in a further reduction in measures.

Long Term Goal: To ensure compliance, to increase awareness, and to increase			
Measure	FY	Target	Result
OCR's consolidated long-term measure (output) is to increase the resolution rate of civil rights and privacy cases and new Medicare application reviews to 100 percent of new cases/reviews received per year by the end of FY 2012	2007	92.0%	Oct-07
	2006	87.0%	Oct-06
	2005	82.0%	100.4%
	2004	78.0%	78.5%
	2003	Baseline	68.2%
OCR's first measure (output) is percentage of civil rights cases and new Medicare application reviews resolved to cases/reviews received	2007	92.1%	Oct-07
	2006	91.2%	Oct-06
	2005	89.9%	125.7%
	2004	85.5%	89.1%
	2003	Baseline	85.1%
OCR's second measure (output) is the percentage of privacy cases resolved to cases received	2007	86.4%	Oct-07
	2006	81.2%	Oct-06
	2005	74.2%	79.7%
	2004	Baseline	68.8%
OCR's annual measure (output) is the number of individuals who are or represent health and human service providers, other interest groups, and consumers to whom OCR provides information and training annually.	2007	31,250	Oct-07
	2006	31,250	Oct-06
	2005	Baseline	33,118
OCR's long-term measure (outcome) is to increase the number of covered entities that make substantive policy changes as a result of OCR intervention	2007	1,125	Oct-07
	2006	1,070	Oct-06
	2005	Baseline	1,019
Data Source: OCR has an internet-based Program Information Management System (PIMS) that captures data in real time related to complaint processing, Medicare application reviews, outreach and technical assistance. All of the data required for OCR's short and long-range goals is drawn from PIMS.			
Data Validation: OCR has achieved considerable efficiencies through continuous updates to its IT systems, particularly the automated case management system, PIMS. The system allows paperless storage, retrieval, review, and communication of case files. The files are not only accessible by the investigator assigned to the case, but also by management personnel in the regional office as well as at the headquarters. This system, which was developed in 2002, supports OCR's efficiency goal of increasing the number of cases resolved per FTE assigned.			
Cross Reference: This performance goal supports all eight HHS Strategic Goals and all major priorities outlined in Secretary Leavitt's 500-day plan.			

OCR's first long-term goal is to ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information. OCR's first long-term goal has a consolidated long-term output measure: to increase the rate of resolution for civil rights and privacy cases, and new Medicare application reviews, to 100 percent of cases/reviews received per year by the end of FY 2012. That is, OCR will resolve as many cases and reviews as received each year. The average age of all open cases will be less than one year, excluding those requiring long-term monitoring and those in litigation or administrative enforcement. The actual goal is on a graduated scale, which recognizes that improvement will become more difficult as OCR approaches 100%. The baseline in FY 2003 is 68.2 percent of cases and reviews resolved. In FY 2004, OCR slightly exceeded the target for that year of 78 percent. In FY 2005, OCR achieved a rate of 100.4 percent, significantly above the target for that year of 82 percent. In the

summer of FY 2005, OCR hired temporary employees to assist in the review of new Medicare applications, freeing OCR's Equal Opportunity Specialists to apply greater effort toward reducing the backlog of civil rights complaints. The backlog of new Medicare applications is now at a more manageable level.

OCR has two output measures that support the long-term goal. These numbers directly relate to OCR's previous budget submissions and exhibits. OCR previously reported results on issue-specific subsets. OCR consolidated this reporting into three objectives (Health Care, Social Services, and Community-based Services/Disability) in FY 2004. OCR now further refines its measures to capture results on the entirety of its complaint and review workload. OCR's internet-based PIMS captures data in real-time related to complaint processing, Medicare application reviews, outreach and technical assistance. Therefore, OCR can crosswalk previously reported measures to its current, refined framework.

The first measure is the percentage of civil rights cases resolved and new Medicare application reviews resolved to cases / reviews received. The baseline in FY 2003 is 85.1 percent of civil rights cases and reviews resolved. In FY 2004, OCR achieved a rate of 89.1 percent, 3.6 percentage points above the target of 85.5 percent for that year. In FY 2005, OCR achieved a rate of 125.7 percent, 35.8 percentage points above the target of 89.9 percent for that year. Again, this was due to the strategic use of temporary employees to reduce the backlog of new Medicare application reviews, as mentioned above. The second measure is the percentage of privacy cases resolved to cases received. The baseline is 68.8 percent of privacy cases resolved in FY 2004 because FY 2004 was the first full year since implementation of the Privacy Rule. In FY 2005, OCR achieved a rate of 79.7 percent, 5.5 percentage points above the target of 74.2 percent for that year.

OCR's annual measure and its target are to provide information and training to 31,250 individuals per year. The baseline in FY 2005 was 33,118.

OCR's long-term outcome measure is to increase the number of covered entities that make substantive policy changes or develop new policies as a result of OCR intervention. OCR's performance target for this measure is to increase this number by approximately 5.0 percent per year over the FY 2005 baseline of 1,019.

Efficiency Measure			
OCR's efficiency goal is to increase the number of cases resolved per FTE assigned	2007	42.66	Oct-07
	2006	41.30	Oct-06
	2005	39.98	49.85
	2004	Baseline	38.70
Data Source: See the previous performance detail table on page 54 for a detailed explanation.			
Data Validation: See the previous performance detail table on page 54 for a detailed explanation.			
Cross Reference: This efficiency measure supports all eight HHS Strategic Goals and all major priorities outlined in Secretary Leavitt's 500-day plan.			

OCR's management goal, Goal II as submitted in PART, is to enhance operational efficiency. The long-term measure is to increase the number of cases resolved per assigned FTE. The annual effort towards achieving this measure is designed to meet the HHS Departmental goal of a

10 percent overall program improvement over three years. The target of OCR's management goal is to enhance operational efficiency and is directly tied to OCR's efficiency measure, to resolve 50 cases each year per FTE assigned by the end of FY 2012.

As this Detail of Performance Analysis shows, OCR has exceeded its performance goals for 2005. Given this performance, OCR will adjust its targets to ensure they are sufficiently challenging and support continuous improvement.

Changes and Improvements over Previous Years

As a result of the PART process, OCR recast its performance measures to reflect more results-oriented goals. As stated earlier, while it is recognized that this refinement of OCR's performance measures is a departure from that portrayed in previously submitted documents, OCR will continue to use the PART-established framework to further refine its performance measures. The current approach will allow OCR to be more consistent and comprehensive in how it measures the effectiveness of its program over the long-term.

In FY 2004, OCR consolidated its reporting into three objectives (Health Care, Social Services, and Community-based Services/Disability). This consolidation was a significant step away from OCR's previously reported results on issue-specific subsets that changed from year to year, and which had resulted in frequent changes in its stated goals. OCR now further refines these measures to capture results on the entirety of its complaint mission areas in a more comprehensive manner.

The following chart summarizes the changes OCR has made from the FY 2004 – FY 2005 Plan to the FY 2007 PART-framework enhancements. OCR's internet-based PIMS captures data in real-time related to complaint processing, Medicare application reviews, outreach and technical assistance. Therefore, OCR can crosswalk measures reported previously, to its current, consolidated framework.

Targets & Accomplishments for FY 04 – FY 05; and PART–Framework Enhancements for FY 03 – FY07

Objectives	FY 03		FY 04		FY 05		FY 06		FY07	
	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
FY 04 and FY 05 Plans										
A. Health Care	770	783	6500 P ¹ : 5030 CR ² : 1470	12725 P: 10534 CR: 2191	6600 P: 5100 CR: 1500	---	---	---	---	---
B. Social Services	614	617	295	426	400	---	---	---	---	---
C. Community-based Services/Disability	258	491	1265	1474	1432	---	---	---	---	---
Total Revised Targets and Accomplishments	1642	1897	8060	14625	8432	---	--	--	---	---
FY 05 PART- Framework Plans										
Output goal measure: Increase the rate of resolution for civil rights and privacy cases and new Medicare application reviews to 100% of total receipts by the end of FY 2012										
The percentage of civil rights cases and new Medicare application reviews resolved to cases received										
The percentage of privacy cases resolved to cases received										
Annual goal measure: To provide information and training to an additional 31,250 individuals per year										
Long-term Outcome Goal Measure: To increase the number of covered entities that make substantive policy changes as a result of OCR intervention										

¹ P = HIPAA Privacy Rule

² CR = Civil Rights Nondiscrimination

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**OFFICE FOR CIVIL RIGHTS
DETAIL OF FULL-TIME EQUIVALENT (FTE) EMPLOYMENT**

	<u>2005 Actual</u>	<u>2006 Estimate</u>	<u>2007 Estimate</u>
Headquarters:			
Office of the Director and Principal Deputy	5	5	5
Office of the General Counsel (Civil Rights).....	8	9	9
Civil Rights Division	16	26	26
Management Operations Division.....	27	22	22
Privacy Division.....	14	19	19
Regional Offices.....	<u>177</u>	<u>178</u>	<u>178</u>
Total, OCR ¹	247	259	259

Average GS Grade

2002.....	11.6
2003.....	11.6
2004.....	11.8
2005.....	11.7
2006.....	11.8

¹ The FTE level does not include two reimbursable FTEs projected in each of FY 2006 and FY 2007.

**OFFICE FOR CIVIL RIGHTS
DETAIL OF POSITIONS**

	2005 <u>Actual</u>	2006 <u>Estimate</u>	2007 <u>Estimate</u>
Executive Level I.....	---	---	---
Executive Level II.....	---	---	---
Executive Level III.....	---	---	---
Executive Level IV.....	---	---	---
Executive Level V.....	---	---	---
Subtotal.....	---	---	---
Total - Executive Level Salaries.....	---	---	---
Total - SES.....	3	5	5
Total - SES Salaries.....	<u>\$587,625</u>	<u>\$694,366</u>	<u>\$705,823</u>
GS-15.....	23	28	28
GS-14.....	38	38	39
GS-13.....	33	33	35
GS-12.....	80	84	88
GS-11.....	18	24	24
GS-10.....	1	1	1
GS-9.....	14	15	7
GS-8.....	10	8	9
GS-7.....	8	9	9
GS-6.....	6	6	4
GS-5.....	5	4	4
GS-4.....	2	2	3
GS-3.....	3	2	3
GS-2.....	1	---	---
GS-1.....	<u>1</u>	<u>---</u>	<u>---</u>
Subtotal.....	243 ¹	254	254
Total - GS Salary.....	\$17,994,805	\$19,811,634	\$20,624,177
<hr/>			
Average GS grade.....	11.7	11.8	11.9
Average GS salary.....	\$74,053	\$78,313	\$80,691
Average Special Pay.....	---	---	C

1 Reflects the number of positions encumbered as of the end of FY 2005.

OFFICE FOR CIVIL RIGHTS
PERFORMANCE BUDGET CROSSWALK
(Dollars in Thousands)

Civil Rights and Privacy Rule Compliance	Access to nondiscriminatory health care	\$17,814	\$17,676	
	Access to nondiscriminatory social services	\$4,124	\$4,093	
	Access to community-based services and nondiscriminatory treatment for persons with disabilities	\$10,248	\$10,105	
	To ensure compliance and to increase awareness and understanding of Federal laws requiring nondiscriminatory access to HHS programs and protection of the privacy of individually identifiable health information			\$36,283
Total		\$32,186	\$31,874	\$36,283

**OFFICE FOR CIVIL RIGHTS
SUMMARY OF FULL COST**
(Dollars in Millions)

Civil Rights and Privacy Rule Compliance	FY 2005	FY 2006	FY 2007
Access to nondiscriminatory health care	\$17.81	\$17.68	
Access to nondiscriminatory social services	\$4.12	\$4.09	
Access to community-based services and nondiscriminatory treatment for persons with disabilities	\$10.25	\$10.11	
The rate of resolution for civil rights and privacy cases and Medicare application reviews			\$31.20
The number of individuals who are or represent health and human service providers, other interest groups, and consumers to whom OCR provides information and training annually			\$1.72
The number of covered entities that make a substantive policy changes or develop new policies as a result of OCR intervention and/or review			\$3.36
Full Cost Total	\$32.18	\$31.88	\$36.28

Detail of Full Cost

As a result of the 2007 PART process, OCR revised its objectives, as reflected in the Performance Budget Crosswalk (see also the discussion in Overview of Performance on page ten). For crosswalk purposes, the distribution of costs, which are calculated by output measures for the previously identified performance objectives, is included above. In the FY 2006

Congressional Justification, OCR had estimated that 92 percent of its actual obligations were associated with measures and targets in the three program objectives, by excluding costs connected with policy and rule-making. In the FY 2007 projections, OCR is including 100 percent of the costs of its entire program. OCR's PART measures capture results on the entirety of its mission areas in a more comprehensive manner, represented by complaint resolution for both civil rights and Privacy Rule, policy changes made by covered entities, and outreach as represented by the number of individuals to whom OCR provides information and training annually.

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SPECIAL REQUIREMENTS

Unified Financial Management System (UFMS). UFMS is being implemented to replace five legacy accounting systems currently used across the Operating and Staff Divisions (Agencies). The UFMS will integrate the Department's financial management structure and provide HHS leaders with a more timely and coordinated view of critical financial management information. The system will also facilitate shared services among the Agencies and, thereby, help management reduce substantially the cost of providing accounting services throughout HHS. Similarly, UFMS, by generating timely, reliable and consistent financial information, will enable the component Agencies and program administrators to make more timely and informed decisions regarding their operations. UFMS reached a major milestone in April 2005 with the move to production for the Centers for Disease Control and the Food and Drug Administration. OCR's FY 2007 budget request includes \$74,116 for this purpose.

Accounting Operations. Operations and maintenance (O & M) activities for UFMS commenced in FY 2005. The Program Support Center will provide the O & M activities needed to support UFMS. The scope of O & M services includes post-deployment support and ongoing business and technical operations services. Post-deployment services include supplemental functional support, training, change management and technical help-desk services. Ongoing business operation services involve core functional support, training and communications, and help-desk services. Ongoing technical services include the operations and maintenance of the UFMS production and development environments, ongoing development support, and backup and disaster recovery services. OCR's FY 2007 budget request includes \$68,087 for this purpose.

Automating Administrative Activities. HHS Agencies have been working to implement automated solutions for a wide range of administrative activities. As UFMS development and implementation move toward completion, there are added opportunities to improve efficiency through automating the transfer of information from administrative systems to the accounting system. OCR's FY 2007 budget request includes \$29,468 to support coordinated development of these improved automated linkages and administrative systems.

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