

Title: 3.1.5 CoC Nondiscrimination Policy

Prepared By: CAFTH

Reviewed By: Governing Council

Approved By: Governing Council

Date Approved: 9/13/2021

Purpose:

The purpose of this proposal is to formally adopt a Policy on Nondiscrimination for Memphis/Shelby County Continuum of Care (CoC) funded programs as it relates to the prioritization of persons experiencing homelessness and other vulnerable persons. The Department of Housing and Urban Development (HUD) requires all CoC & Emergency Solutions Grants (ESG) funded agencies to adopt a Policy on Nondiscrimination and Fair Housing to ensure protections and equal rights are made available to all program participants. These protections must be applied consistently among all HUD projects.

Scope:

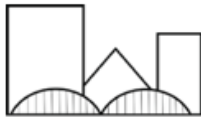
This policy applies to everyone who operates under the umbrella of the CoC, including the CoC and Homeless Management Information System (HMIS) Lead Agencies, the Memphis Shelby County Homeless Consortium (MSCHC) Governing Council, and agencies that receive CoC funding for program operation.

Policy:

As required by the Housing and Urban Development's (HUD) final rule, the TN-501 Memphis/Shelby County Continuum of Care (CoC) as well as its members and subrecipients, are required to comply with applicable civil rights laws through the adoption and implementation of the fair housing and equal opportunity policy. The final rule ([24 CFR 578.93](#)), addressing nondiscrimination and equal opportunity requirements, is provided to offer greater direction to recipients and subrecipients on the use of grant funds. It states that the nondiscrimination and equal opportunity requirements set forth in [24 CFR 5.105\(a\)](#) apply. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), Titles II and III of the Americans with Disabilities Act, HUD's Equal Access to Housing Final Rule, and Gender Identity Final Rule (24 CFR 5.106(b)).

Procedure:

- 1) The CoC will verify that applicable programs have adopted and implemented Policy 3.1.5 on an annual basis through the required monitoring process of agency policies and projects.
- 2) The CoC lead agency will offer an annual training on equal access or anti-discrimination.



Key components of this Nondiscrimination Policy are as described below:

Nondiscrimination

24 CFR 578.93(a) requires CoC Programs to operate in compliance with federal nondiscrimination and equal opportunity requirements. Through this final rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families.

CoC- and ESG-funded providers shall not discriminate on the basis of any protected characteristic, including race, ethnicity, color, national origin, language, ancestry, religion, sex, familial status, age, gender identity, gender expression, LGBTQ+ (lesbian, gay, bisexual, transgender, queer/questioning, etc.) status, marital status, domestic or sexual violence victim status, or sensory, mental, or physical disability. See 24 CFR 5.105(a) and 5.106(b) for a full list of applicable laws, regulations, and Executive Orders.

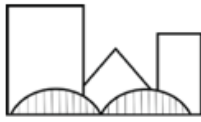
This means that TN-501 CoC and partner agencies and their staffs, volunteers, and contractors will not:

- Deny any person facilities, services, financial aid, or other benefits.
- Provide services that are different, or are provided in a different form, from that provided to others under the program or activity.
- Subject any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit under the program or activity.
- Restrict in any way access to, or the enjoyment of any advantage or privilege enjoyed by others in connection with, facilities, services, financial aid, or other benefits under the program or activity.
- Treat any person differently from others in determining whether the person satisfies any admission, enrollment, eligibility, membership, or other requirement or condition, which individuals must meet to be provided shelter, services, or other benefits provided under the program or activity.
- Deny meaningful access to persons with limited English proficiency, to include translated documents, notice of participant's rights, grievance forms, and other materials vital for program access or fail to work with language services or interpreters to assist persons who speak an alternate primary language other than the staff persons and need assistance communicating.

Housing for specific populations

Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area. It must meet HUD criteria in 24 CFR 578.93.

Fair Housing



A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means the recipient must:

1. Affirmatively market their housing and supportive services to eligible persons regardless of race, ethnicity, color, national origin, language, ancestry, religion, sex, familial status, age, gender identity, gender expression, LGBTQ+ (lesbian, gay, bisexual, transgender, queer/questioning, etc.) status, marital status, domestic or sexual violence victim status, or sensory, mental, or physical disability, who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;
2. Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and
3. Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

Accessibility and integrative housing and services for persons with disabilities

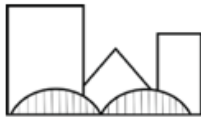
For persons with disabilities, fair housing law makes it illegal to: fail to make reasonable accommodation in rules, policies, and services to give a person with a disability equal opportunity to occupy and enjoy the full use of a housing unit; and fail to allow reasonable modification to the premises if the modification is necessary to allow full use of the premises.

Prohibition against involuntary family separation

The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

Access and Accessibility for Persons with Limited English Proficiency

- 1) Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP", and may be entitled to language assistance with respect to a particular type of service, benefit, or encounter. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Memphis & Shelby County CoC and the Federal Government are committed to improving the accessibility of these programs and activities to eligible LEP persons. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government assisted programs and activities.
- 2) Programs are required to present a language access plan in their policies and procedures.



Equal access in accordance with the individual's gender identity

TN-501 CoC partner agencies shall ensure equal access to programs for all individuals and their families in accordance with 24 CFR 5.106(b), which requires programs to be administered in a nondiscriminatory manner to ensure that:

1. Equal access to CPD programs, shelters, other buildings and facilities, benefits, services, and accommodations is provided to an individual in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family;
2. An individual is placed, served, and accommodated in accordance with the gender identity of the individual;
3. An individual is not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity; and
4. Eligibility determinations are made and assisted housing is made available in CPD programs as required by §5.105(a)(2).

Equal Access for Transgender and Gender Nonconforming Policy

The TN-501 CoC prohibits all forms of harassment and discrimination of or by clients, employees, visitors, and volunteers, including harassment and discrimination based on actual or perceived gender identity and expression, or based on an individual's association. The TN-501 CoC will continue to develop partnerships with organizations that can provide expertise around providing services to transgender and gender nonconforming individuals in a manner consistent with federal, state, and local laws. Agencies, staff, volunteers, and contractors shall affirm commitment to providing equal access for all transgender and gender nonconforming individuals in a manner consistent with the equal access rule and provide services to transgender and gender nonconforming individuals in a manner consistent with the equal access rule.

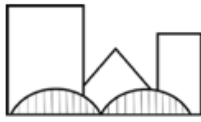
Link to CoC Grievance Policies: <https://www.cafth.org/wp-content/uploads/2021/08/CoC-Grievance-Policy-and-Procedure-Approved-5.8.19.pdf>

Transgender and Gender Nonconforming Procedures:

A Checklist for Agencies

To maintain equal access, agencies and staff should:

- Ensure all staff, volunteers, and contractors maintain the confidentiality of a client's legal name and gender at birth and understand the potential impact that disclosure can have on a client's progress to self-sufficiency.



- Ensure that construction or property rehabilitation includes and promotes privacy and safety in sleeping areas, bathrooms, and showers.
- Offer individual stalls in congregate bathrooms, urinals/toilets, and shower heads to support client safety whenever possible.
- Offer individual gender-neutral bathrooms and gender-neutral shower rooms, where feasible.
- Not consider a client or potential client ineligible because their appearance or behavior does not conform to gender stereotypes and will serve all individuals eligible for the program.
- Not ask questions or seek information concerning a person's anatomy or medical history beyond elements necessary for the purpose of providing services.
- Have a preference to move the client for harassment and safety concerns.
- Honor the request of an individual for a private space to complete intake and data collection.
- Honor the request of an individual for accommodations based on their personal safety and privacy concerns, whenever feasible. An "accommodation" will not be given as a "requirement."
- Not require an individual's gender identity to match the gender listed on an ID or other documents.
- Focus on improving the process of changing gender markers on identification and benefit applications or will ensure subject matter expertise among staff.
- Assist clients without identification documents to understand the resources available to obtain said documents.
- Make available intake materials that allow individuals to indicate their legal name and the name they prefer to be called.
- HMIS participating agencies should enter the client's preferred name.
- Give clients with prescribed hormones and other medications as part of their gender-affirming healthcare regime full access to those medications.
- Use the client's preferred gender and pronoun and support the client's gender identity.
- Correct any misinformation or inaccurate conclusions that transgender clients threaten the health or safety of other clients solely based on their non-conforming gender identity/expression during risk-based conversations.
- Keep client's transgender status confidential, unless the client gives permission to share this information.
- Tell only essential staff, identified by administrators, regarding a client's transgender status to ensure equal access and safety.
- Ensure staff treat client gender identity and sex assigned at birth as confidential medical information unable to disclose without specific, time-limited client consent. Similarly, client legal name shall be treated as confidential information.