LEGAL

Laws Affecting Equal Employment Opportunity
Legal Considerations

• Federal, state, and local legislation
• Court decisions
• Presidential executive orders
Equal Employment Opportunity: An Overview

• EEO modified since passage of:
  – Equal Pay Act of 1963
  – Civil Rights Act of 1964
  – Age Discrimination in Employment Act of 1967

• Other congressional legislation
• Major Supreme Court decisions
• Executive orders signed into law
Civil Rights Act of 1866

- Oldest federal legislation affecting staffing
- Based on Thirteenth Amendment
- No statute of limitations
- Employment is a contractual arrangement
- Extended to cover private parties in 1968

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Laws Enforced by EEOC

- Title VII of 1964
- Age Discrimination in Employment Act (ADEA)
- American Disabilities Act of 1990
- Genetic Information Nondiscrimination Act 2009
- Equal Pay Act (EPA) of 1963
- Pregnancy Discrimination Act (PDA) of 1973
Title VII of Civil Rights Act of 1964, Amended in 1972

• Greatest impact on HR management
• Illegal for employer to discriminate
• Applies to firms with fifteen or more employees
• Created the Equal Employment Opportunity Commission (EEOC) to enforce Title VII
Protected Groups – Title VII

- GENDER
- RACE
- COLOR
- NATIONAL ORIGIN
- RELIGION

Source - http://www.eeoc.gov/facts/qanda.html
Americans with Disabilities Act of 1990 (ADA)

- Prohibits discrimination against qualified individuals with disabilities
- Disabled individual: Person who has, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities, and has a record of such an impairment
- (ADA – AA in 2008)
Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994

- Protections for Reservists and National Guard called to active duty
- Workers entitled to return to civilian employment after military service
- Intended to eliminate or minimize employment disadvantages to civilian careers
- Escalator principle: Can return to job he/she would have attained

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Executive Order

• Directive issued by the President of the U.S.

• Has the force and effect of a law enacted by Congress

• Applies to federal agencies and federal contractors
Laws and Regulations Affecting Data Collection, Language and Accessibility
Legislative and Regulatory Levers to Collect Patient Race, Ethnicity, and Language Data

• The American Recovery and Reinvestment Act of 2009 (ARRA)
  – Meaningful Use
  – Standards and Certification Criteria for Electronic Health Records
• The Patient Protection and Affordable Care Act of 2010 (ACA)
• The Joint Commission
Language Access Services and Communication for Deaf/Hard of Hearing

- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act (ADA)
- Title XVIII of the Social Security Act
- Hill-Burton Act
- Age Discrimination Act of 1975
- Section 542 of the Public Health Service Act

Source: http://www.jointcommission.org/assets/1/6/ARoadmapforHospitalsfinalversion727.pdf
Joint Commission Roadmap Effective Communication, Culturally Competence, Patient/Family Centered Care
National/State Reporting Requirements
R/E/L Data

- Office of Management and Budget (OMB) revised standards (1997)
- Health Insurance Portability and Accountability Act of 1996
- Consumer Bill of Rights and Responsibilities (1997)
- Benefits Improvement and Protection Act (2000)
- Executive Orders 13166 "Improving Access to Services for Persons with Limited English Proficiency" and 13125 "Improving the Quality of Life of Asian Americans and Pacific Islanders" (2000)
- Minority and Health Disparities Research and Education Act of 2000
- Department of Health and Human Services Title VI Regulations (1964)
- Department of Health and Human Services Inclusion Policy (1997)
- Healthy People 2010 (2000)
- Culturally and Linguistically Appropriate Services (2000)
- HHS Data Council Activities (ongoing)
- National Committee on Vital Health Statistics (ongoing)

Regulatory Agencies
Centers for Medicaid and Medicare Services (CMS)

- Programs administered - Medicare, Medicaid, and the State Children's Health Insurance Program. On January 18, 2007, the President issued Executive Order (E.O.) 13422, an Amendment to E.O. 12866 for Regulatory Planning and Review. The primary focus of the E.O. is on improving the way the Federal government does business with respect to “significant” guidance documents – by increasing their quality, transparency, accountability and coordination. Simultaneously, the Office of Management and Budget issued a “Final Bulletin for Agency Good Guidance Practices” that established policies for the development, issuance, and use of significant guidance documents, including requirements for making these documents available for public comment.

- The role of the CMS Field includes three key components: 1) representation, 2) protection and 3) monitoring.
Office of Civil Rights (OCR)

- CMS has legal authority under Title XVIII of the Social Security Act to require health care providers to meet the legal requirements of the civil rights nondiscrimination statutes and regulations enforced by OCR in order to participate in the Medicare Part A program. These statutes and regulations ensure that eligible persons have equal access to quality health care regardless of their race, color, national origin, disability, or age. The specific statutes include: Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color and national origin); Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of disability); and The Age discrimination of 1975 (which prohibits discrimination on the basis of age).
The Joint Commission

An independent, not-for-profit organization, The Joint Commission accredits and certifies more than 19,000 health care organizations and programs in the United States. Joint Commission accreditation and certification is recognized nationwide as a symbol of quality that reflects an organization’s commitment to meeting certain performance standards.

Our Mission: To continuously improve health care for the public, in collaboration with other stakeholders, by evaluating health care organizations and inspiring them to excel in providing safe and effective care of the highest quality and value.

Vision Statement: All people always experience the safest, highest quality, best-value health care across all settings.
Healthcare Facilities Accreditation Program (HFAP)

- (HFAP) is authorized by the Centers for Medicare and Medicaid Services (CMS) to survey hospitals for compliance with the Medicare Conditions of Participation and Coverage.

- Originally created in 1945 to conduct an objective review of services provided by osteopathic hospitals. Provides accreditation to hospitals, ambulatory care/surgical facilities, mental health facilities, physical rehabilitation facilities, clinical laboratories, critical access hospitals and primary stroke centers.

- HFAP's surveying process and standards benefit from oversight by a wide range of medical professionals, including both allopathic and osteopathic disciplines.

Source: http://www.hfap.org/about/overview.aspx
Equal Employment Opportunity Commission (EEOC)

- The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
- Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.
- The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.
Office of Federal Contract Compliance Programs (OFCCP)

The purpose of the Office of Federal Contract Compliance Programs is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government.
Office of Minority Health
National Standards on Culturally and Linguistically Appropriate Services (CLAS)

The CLAS standards are primarily directed at health care organizations; the principles and activities of culturally and linguistically appropriate services should be integrated throughout an organization and undertaken in partnership with the communities being served.

- The 14 standards are organized by themes: Culturally Competent Care (Standards 1-3), Language Access Services (Standards 4-7), and Organizational Supports for Cultural Competence (Standards 8-14). Within this framework, there are three types of standards of varying stringency: mandates, guidelines, and recommendations as follows:

- CLAS mandates are current Federal requirements for all recipients of Federal funds (Standards 4, 5, 6, and 7).
Ethics
Society

**Ethics:** Deals with what is good and bad, or right and wrong, and with moral duty and obligation

**Corporate social responsibility:** Implied, enforced, or felt obligation of managers to serve or protect interests of groups other than themselves
Sources of Ethical Guidance

• Lead to our beliefs or convictions about what is right or wrong

• Examples:
  – Bible and other holy books
  – Conscience
  – Significant others
  – Codes of ethics
Code of Ethics

• Statement of values adopted by:
  – Company
  – Its employees
  – Directors

• Sets official tone of top management regarding expected behavior

• Establishes rules by which organization operates

• Becomes part of organization’s corporate culture

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Diversity Ethics

• Application of ethical principles to Diversity and Inclusion relationships and activities.
An effective CDO can greatly influence an organization’s conscience.
A Model of Ethics

Sources of ethical guidance

Lead to

Our beliefs about what is right or wrong

Determine

Our actions

Type I Ethics

Type II Ethics

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Type I Ethics

Strength of relationship between:

– What an individual or organization believes to be morally correct

– What available sources of guidance suggest is morally correct
Type II Ethics

Strength of relationship between:

– What one believes
– How one behaves
Culturally-Competent Model of Ethical Decision-Making
(Based on Human Rights)

- Patients/Families
  - Cultural Accommodation, Preservation and Repatterning
- Organization
- Profession
- Society

Model adapted from J. Mann's Human Rights Model and M. Leininger's Cultural Care Theory
Application

End of Life Care
Cultural Considerations
Beyond Medical Ethics
Corporate Social Responsibility (CSR)

- **CSR** is the implied, enforced, or felt obligation of managers, acting in their official capacities, to serve or protect interests of groups other than themselves.

- Corporation behaves as if it has a conscience.
The Social Contract

Organization

- Individuals
- Other organizations
- Government
- Society
Possible Types of Social Audits

- Simple inventory of activities.
- Compilation of socially relevant expenditures.
- Determination of social impact.
- An Ideal social audit would involve determining the true benefits to society of any socially oriented business activity.
Questions?