

# CenterPage

A quarterly publication of the

## Office of Equal Opportunity and Civil Rights

Centers for Medicare & Medicaid Services



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### CMS Hosts Disability Training Conference



Glenn Locklear with students of the Milford Mill Academy ROTC

On October 30, 2003, the Baltimore Federal Executive Board's (FEB) 17<sup>th</sup> Annual Disability Awareness Training Conference was held at CMS's headquarters in Baltimore. The theme for this year's conference, "America Works Best When All Americans Work," brought together 20 federal, state and local agencies as well as private organizations to a day-long conference that also included CMS staff in Baltimore with Regional Offices participating via video-conference.

The Baltimore FEB Disability Advisory Committee, chaired by Glenn Locklear of CMS' Office of Equal Opportunity & Civil Rights, organized this annual event, and it is the second year CMS has played host. The membership on this committee comprises eight agencies or organizations in the Baltimore/Washington area.

The purpose of the conference was to update participants' awareness of workplace issues, which specifically included the deaf and hard of hearing; equal employment opportunity and reasonable

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### New Civil Rights Law Takes Effect

The Notification and Federal Employee Anti-Discrimination and Retaliation Act (No FEAR) was signed into law on May 15, 2002 and took effect October 1, 2003. This law has been touted as the first major civil rights bill of the new millennium.



The law imposes new enforcement requirements upon federal agencies and

is designed to hold agencies more accountable for ensuring the protection of federal employees from discrimination, harassment, retaliation, and whistleblowing. The law is posted on OEOCR's web page at: <http://cmsnet.cms.hhs.gov/hpages/oecr/LawsRegulations.htm>

As a result of the *No FEAR Act*, CMS has begun to implement required changes. In the coming months, you may see these changes in a variety of ways. CMS is now required to:

- Reimburse the Department of Treasury for any settlements or awards paid out on EEO cases in District Court.
- Provide written information and training for all employees on their rights, protections, and remedies under discrimination, retaliation, and whistleblower laws.
- Report annually to Congress, the number of cases in which the Agency is alleged to have violated any of the covered discrimination or whistleblower statutes, the disposition of each of the cases, the total of all monetary awards charged against the Agency from the cases, and the number of Agency employees disciplined for discrimination, retaliation, harassment or any other infraction of the laws covered by the Act.
- Begin posting on its public Web site summary statistical data relating to EEO complaints. Starting January 31, 2004, a link to this information will be prominently posted on CMS.gov, and there will be a hyperlink to Department-wide data.

Stay tuned for more information on this legislation. Should you have any questions, please contact OEOCR at 410-786-5110 or [OEOCRinquiry@cms.hhs.gov](mailto:OEOCRinquiry@cms.hhs.gov).

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# Disability Training Conference

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accommodation; and the President's New Freedom Initiative. At the same time, the conference allowed participants to share information, network, and learn about new and innovative programs.



Richard Howell, Executive Director of the Baltimore FEB, opened the conference by introducing the Milford Mill Academy ROTC as they presented the colors. Tim Love, Chief Information Officer and Director, Office of Information Services at CMS, provided remarks that drew attention to the contributions of employees with disabilities and to the mission of the Agency that also serves beneficiaries with disabilities in the Medicare and Medicaid programs. Ramón Surís-Fernández, Director of the Office of Equal Opportunity and Civil Rights at CMS, shared information on the Agency's activities related to reasonable accommodation and disability recruitment and hiring, and stressed the importance of sharing best practices.

The following are highlights of the training conference presentations:

- Dr. Sheryl Cooper, Deaf Studies Program Coordinator and Interpreter/Sign Language Specialist at Towson University, introduced the attendees to some concepts in the culture of the deaf and hard of hearing, and provided tips for communicating with deaf and hard of hearing individuals.
- Don Names, Director of Special Services Staff, Office of Federal Operations, Equal Employment Opportunity Commission, summarized recent case law in the reasonable accommodation arena and emphasized the need to participants to review the revised *EEOC Enforcement Guidance on Reasonable Accommodation*. Mr. Names fielded questions from the audience and offered his personal e-mail address to assure that all questions would be answered.
- A panel of three attorneys, including a representative from the Maryland Disability Law Center, part of the national network of the State Protection and Advocacy Systems, led an audience-interactive discussion on the "Americans With Disabilities Act: A Decade Later." The three attorneys are routinely engaged in lawsuits brought by plaintiffs alleging a violation of the Act.
- Susan Parker, Director, Policy and Research, Office of Disability Employment Policy, U.S. Department of Labor, provided an update on the New Freedom Initiative. This initiative is part of a nationwide effort to remove barriers to community living for people with disabilities. Reiterating the slogan adopted by the Department of Labor, "America Works Best When All Americans Work," Ms. Parker noted that the New Freedom Initiative is a comprehensive plan that represents an important step to ensure that all Americans have the opportunity to learn and develop skills, engage in productive work, make choices about their daily lives, and participate in community life.
- Fidos for Freedom, Inc. demonstrated the skills of Service Dogs, Hearing Dogs, and Therapy Dogs in aiding individuals with disabilities to achieve greater independence, self-esteem and confidence.

# Major Life Activity Substantially Limits

*This is an ongoing series of articles on reasonable accommodations to help readers understand the many aspects of this important topic.*

An individual with a disability is:

1. Any person who has a physical or mental impairment that **substantially limits** one or more of the major life activities;
2. Any person who has a record of such an impairment; or
3. Any person who is regarded as having such an impairment.

A person must meet one of these three criteria to be an individual with a disability.

An impairment substantially affects a major life activity if it significantly restricts the duration, manner or condition under which a person can perform the major life activity when compared to an average person's ability to do the same activity. Examples of major life activities are:

- |                                  |                                    |   |
|----------------------------------|------------------------------------|---|
| <input type="checkbox"/> Seeing  | <input type="checkbox"/> Speaking  | <input type="checkbox"/> Caring for oneself |
| <input type="checkbox"/> Hearing | <input type="checkbox"/> Breathing | <input type="checkbox"/> Sitting            |
| <input type="checkbox"/> Lifting | <input type="checkbox"/> Eating    | <input type="checkbox"/> Concentrating      |

Several characteristics should be taken into account when determining if an impairment is substantially limiting, including: (1) the nature and severity of the impairment, (2) the duration or expected duration of the impairment, and (3) the permanent or long term impact, or the expected permanent or long term impact of, or resulting from, the impairment. With respect to the second factor, duration means the length of time the impairment actually persists. Furthermore, impact means the residual effects of the impairment. For example, if a person falls and sustains a concussion and injury to the head, the duration would be the amount of time for the injury to the head to heal. The impact would be any resulting loss or reduction of memory, or other cognitive skills.

A case-by-case analysis is used to determine whether a person is substantially limited in a major life activity. With regard to medical conditions, the mere fact that a medical condition exists does not mean that the person has a disability that substantially limits a major life activity. The individual must submit specific evidence showing that s/he is a qualified individual with a disability that substantially limits or affects a major life activity. This should include medical evidence, including medical records and a doctor's medical opinion regarding the individual's disability and how it affects a major life activity.

Because of the nature of the two tests described above, it is possible for a disability to substantially limit a major life activity for one individual, but not another. Thus, individual medical or psychological evidence is especially crucial. "The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual." 29 C.F.R. 1630.2(j). This factor is especially important when considering the fact that employers are not required to accommodate impairments that do not rise to the level of a disability as defined above.

For additional information, visit the OEOCR website or call Bettie T. Spencer, CMS Reasonable Accommodation Coordinator at (410) 786-0762.

<sup>1</sup> This information is provided in part by the attorneys at Passman & Kaplan, P.C.



# Limited English Proficiency (LEP)

This is the second of a series of CenterPage articles on LEP. The first article appeared in the Spring 2003 issue.



LEP individuals are those who do not speak English as their native language and who have a limited ability to read, write, speak or understand English. This summer, the Department of Health and Human Services (HHS) issued revised guidance on LEP for recipients of federal financial assistance.

(Federal Register, August 8, 2003.) The guidance was mandated by an August 11, 2000 Executive Order 13166: *Improving Access to Services for Persons with Limited English Proficiency* ([www.lep.gov](http://www.lep.gov)), which required federal agencies to publish guidance to recipients of federal financial assistance on how best to comply with Title VI of the Civil Rights Act of 1964 that prohibits discrimination on the basis of race, color or national origin. Discrimination against LEP individuals was linked to national-origin discrimination as a result of a 1974 Supreme Court case. The published guidance is posted on the OEOCR website at: <http://cmsnet.cms.hhs.gov/hpages/oecr/CivilRights.htm>

Executive Order 13166 also required federal agencies to assure language access when conducting their own programs and activities. HHS and its agencies are responsible for meeting the language needs of LEP beneficiaries to the same degree that our recipients of federal financial assistance (community health centers, States, managed care organizations, hospitals, home health agencies, physicians and other providers, contractors, etc.) are required to do so under Title VI. And, as is the case for recipients, HHS' LEP guidance provides a roadmap for HHS agencies in the provision of language services.

## The Revised Guidance

The guidance makes clear that Title VI requires HHS recipients to take reasonable steps to provide LEP persons with meaningful access to health and human services. It does not change the law of Title VI as it applies to LEP persons. Rather, it enhances the quality of the technical assistance provided by HHS to recipients by clarifying the nature and extent of their obligations in assuring the rights of LEP persons.

The guidance states that the starting point in any analysis of the application of Title VI requirements is an individualized assessment that balances four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered; (2) the frequency with which LEP individuals come in contact with the program, including consideration of whether linguistically appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups; (3) the nature and importance of the program, activity, or service to people's lives; and (4) the resources available and costs associated with taking reasonable steps to achieve meaningful access. Moreover, the guidance discusses how the four factors should be weighed in determining whether there is an obligation to provide language access services and how to best meet that obligation. If, after completing the four-factor analysis, the recipient determines that it should provide language access services, the guidance provides technical assistance on building a language access plan to address identified needs.

The guidance provides specific examples and suggestions for how to provide more cost effective language access services by: training bilingual staff on how to serve as interpreters and translators; sharing of information through industry groups; using telephonic and video

conferencing interpretation services; pooling resources and standardizing documents; using qualified translators and interpreters; centralizing translator and interpreter services to achieve economies of scale; or formalizing the use of community volunteers. Other suggestions address what recipients may want to consider in determining interpreter or translator competency and when different options for providing language assistance may prove most useful.

The guidance addresses translation issues in some depth. As defined by the American Translators Association, translation is the replacement of a written text from one language (source language) to another language (target language) that is culturally sensitive. The guidance provides helpful information concerning when it is necessary to translate materials and what material to translate (vital documents). A good example of a vital document at CMS might be the Notice of Privacy Practices for the Original Medicare Plan provided in the *Medicare & You* handbook. The guidance also identifies "safe harbor" provisions that apply to the translation of materials.

Moreover, the guidance makes clear that LEP persons may make an informed choice of whether they want to use a family member or friend as an interpreter, provided that the choice is consistent with good care and practice. Regardless, the guidance makes clear that LEP persons should be made aware of the fact that they are entitled to free and competent interpretation services.

For questions related to LEP, contact Michael Katz at (410) 786-1568.

## Hispanic Heritage Month



Jamie Galvez, Helene Braver, Mercedes D. Hernandez and Ramón Suris Fernández

On Tuesday, September 30, 2003, CMS recognized National Hispanic Heritage Month. The national theme for this year's program was "*Hispanic Americans: Honoring our*

*Past, Surpassing our Present, Leading our Future.*"

An informative presentation on HIV/AIDS was provided by the program's guest speaker, Mercedes D. Hernandez, Ph.D., an assistant professor of Psychology at George Washington University. Dr. Hernandez was introduced to the audience by Mr. Jaime Galvez, Chair of CMS's Hispanic Committee.

Dr. Hernandez presented alarming statistics for HIV/AIDS cases affecting the minority community. Acknowledging the seriousness of her message, Dr. Hernandez commended the audience for attending a program that dealt with a critical public health crisis. "More than 50 percent of HIV in the United States occurs in youth ages 13 – 24 years," she said to an audience that included students of Patterson High School who attended the program as a part of the CMS sponsored Student Career Academy Youth Initiative. Dr. Hernandez stated that the audience had the skills to communicate with their peers about HIV prevention and could make a difference in their communities. She also emphasized that many young people continue to lack the necessary knowledge to prevent this disease.

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## Leadership Character: It's More Than Ethics

"Your ability to create organizational success is enhanced or limited by your own leadership character." Leaders need to live positive behaviors and values. This is especially true given today's concerns about business ethics and the uncertain economy. Companies and organizations need strong leaders if they are to maintain their credibility. Recent research has shown that leadership character contributes to the success of great companies far more than ever imagined. In Jim Collin's book, *Good to Great*,



<http://www.amazon.com/exec/obidos/ASIN/0066620996/winningworkpl-20> (HarperCollins 2001), he reports that the best company leaders consistently exhibit humility and fierce resolve and that it's these leaders who achieve the greatest and most sustained financial success. Leadership character is defined as the ongoing process of knowing, living and deepening your values. Leaders aren't born with a good or bad character. Rather, character is developed throughout a lifetime, through daily interactions and decisions, and built especially in crisis or stress. To be successful it is essential that leaders engage in regular "character work."

According to Collins, there are four key "character practices" that leaders should emphasize: personal responsibility (taking ownership); authenticity (being yourself); passion (following your enthusiasms); and service (connecting to others). Each practice is enhanced by the meta-practice of balance. Balance is the consistent, harmonious integration of all four practices into the leader's behavior. Which of the four character practices - responsibility, authenticity, passion and service - seems more natural or comes easier for you and which seems more difficult? Your answers may provide clues to your own leadership character issues.

Here are some practical suggestions for what you can do to integrate "character work" into your leadership skills:

1. Practice "stopping" daily. Take two minutes every day to stop, breathe, and remember what's really important.
2. Conduct difficult conversations the right way. Stop arguing and show curiosity. Avoid "all or nothing" thinking.
3. Drop your need to be perfect. Be willing to reveal what you don't know, what really worries you, or where you feel most vulnerable or unprepared.
4. Connect to your true enthusiasms. Be aware of what really gives you energy and seek out where your personal passion intersects with organizational needs.
5. Don't go it alone. Rely on advice from mentors, professional coaches

## CALENDAR OF EVENTS

### NATIONAL AMERICAN INDIAN AND ALASKAN NATIVE HERITAGE MONTH

CMS AUDITORIUM  
THURSDAY, NOVEMBER 20, 2003, 12:00 NOON

### MARTIN LUTHER KING JR. COMMEMORATION

CMS AUDITORIUM  
JANUARY 2004

or others you can trust. Listen carefully to what others have to say.

6. Keep learning. Step out of your comfort zone and learn something new. Always be involved in a situation where you're the novice, not the expert.
7. Make acknowledgement a habit. Once or twice a week, take the time to remember someone who has supported, trusted, or served you. Then do something to show your gratitude: a short note (better than an e-mail), a quick visit, a smile, or a thank you.
8. Share your leadership journey routinely with those you lead. Talk about your own leadership challenges and intentions, and your ongoing leadership "character work."

Remember, character is much more than adherence to a simple set of rules or separating the "bad guys" from the "good guys." As Richard Tedlow (Harvard Business School) says, "Life is lived on a slippery slope. It takes a person of character to know what lines you don't cross."

Learn more about the Center for Character-Based Leadership at: [www.characterinleadership.com](http://www.characterinleadership.com) and <http://www.characterinleadership.com/>

<sup>1</sup> From Winning Workplaces Ideas, eNewsletter, Vol. 1, No.5, December 2, 2002  
Innovative Leadership, Guest Columnist, Peter LeBrun

## Hispanic Heritage Month *(Continued from Page 3)*

Also on the program was Helene Braver, Assistant to United States Senator, Barbara A. Mikulski, of Maryland. Ms. Braver read a letter from Senator Mikulski citing the many contributions of Hispanic Americans to this Nation. *"During Hispanic Heritage Month we pause to recall the rich and dynamic heritage of the Hispanic community and the contributions that Hispanic and Latino Americans have made to the country and State[of Maryland]. We see it in scholars, physicians, scientists, and businessmen and women who have all played a part in making the United States a great nation."*

An entertaining musical program was performed by the Mexican Folk Dance Group, *Los Quetzales*. The group performed several dance selections, wearing colorful costumes indigenous to the regions of Vera Cruz (eastern Mexico, near the gulf) and Jalisco (western Mexico).

As part of the program, Ramón Surís Fernández, OEOCR Director, presented data on the different Hispanic populations in the United States. He noted the growth of the Hispanic population between 2000 and 2002 due to immigration, higher birth rates and longevity. Now, with 38 million Hispanics reported, it is projected that one out of four people in this country will be of Hispanic origin by 2050--- data that speaks directly to the makeup of the future beneficiary population of this country.

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