



**DEPARTMENT
of HEALTH
and HUMAN
SERVICES**

Office for Civil Rights

FY 2008 Annual Performance Report

Introduction

This FY 2008 Annual Performance Report provides information on the Office for Civil Rights' (OCR) actual performance and progress in achieving the goals established in the FY 2008 Annual Performance Plan, which was published in February 2007 as part of OCR's FY 2009 Justification of Estimates for Appropriations Committees (<http://www.hhs.gov/ocr/CJ2009.pdf>) and Online Performance Appendix (<http://www.hhs.gov/ocr/OPA2009.pdf>).

The goals and objectives contained within this document support the Department of Health and Human Services' Strategic Plan (available at <http://aspe.hhs.gov/hhsplan/2007/>).



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Dear Reader:

I am pleased to present the Office for Civil Rights' (OCR) Fiscal Year 2008 Annual Performance Report. Consistent with the Secretary's policy guidance, this performance report continues support for the President's and Secretary's priority initiatives and reflects the goals and objectives in the Department's Strategic Plan. To the best of my knowledge, the performance data reported in OCR's Fiscal Year 2008 Annual Performance Report and for inclusion in any Departmental reporting is accurate, complete, and reliable, and there are no material inadequacies in the data provided by OCR for inclusion in this report.

OCR's performance portrays our commitment 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 Fiscal Year 2008 Annual Performance Report demonstrates our continued commitment to effectively and efficiently use our human capital to achieve results in support of our non-discrimination 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. Everyone in OCR will continue to work together to achieve our shared objectives in protecting civil rights and the privacy of health information.

Robinsue Frohboese, J.D., Ph.D.
Acting Director

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

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Introduction

The Annual Performance Report is one of several documents that fulfill the Department of Health and Human Services' (HHS') performance planning and reporting requirements. HHS achieves full compliance with the Government Performance and Results Act of 1993 and Office of Management and Budget Circulars A-11 and A-136 through HHS agencies' Annual Performance Reports, the Agency Financial Report and the Citizens' Report. These documents can be found at: <http://www.hhs.gov/budget/docbudget.htm> and <http://www.hhs.gov/afr/>.

The Annual Performance Report summarizes past and planned performance information. The Agency Financial Report provides fiscal results, and the Citizens' Report highlights results for key performance measures.

Summary of Measures and Results Table

Office for Civil Rights (OCR)

Fiscal Year	Targets	Results Reported	% of Measures with Results Reported	Targets Met	Targets Unmet	Targets Unmet But Improved	% of Targets Met
2004	4	4	100%	4	0	0	100%
2005	4	4	100%	4	0	0	100%
2006	4	4	100%	4	0	0	100%
2007	6	6	100%	4	2	0	67%
2008	11	11	100%	11	0	0	100%
2009	11	Data in late Fall 2009	Data in late Fall 2009	Data in late Fall 2009	Data in late Fall 2009	Data in late Fall 2009	Data in late Fall 2009

Performance Detail

OCR has organized its performance measures around two overarching strategic objectives which directly support the HHS Strategic Plan, the Secretary’s 500-day plan and priority initiatives, and the President’s Management Agenda.

OCR has two long-term performance objectives: 1) ensure compliance with, and increase awareness and understanding of, Federal laws requiring non-discriminatory access to HHS-funded programs and the protection of the privacy of individually identifiable health information; and 2) enhance operational efficiency.

OCR’s performance targets are based on projections of workload, historical levels of workload complexity, and ongoing efforts to improve staff efficiency. OCR uses goals and performance measures to manage its resource allocations across the organization, holding staff accountable for supporting and achieving programmatic goals. Over the past five years, OCR has experienced a steady rise in its workload, exemplified by the increase in the number of new civil rights and HIPAA health information Privacy Rule complaints and new Medicare application reviews, which during this period have increased on average nearly seven percent per year. During the same FY 2004 – FY 2008 period, due to operational improvements, the number of cases resolved per full-time equivalent employee has increased by nearly 70 percent. Factoring in these results, OCR regularly reviews and makes changes to its annual targets to reflect both higher projections in complaint receipts and more ambitious efforts to increase productivity based on existing staffing levels.

Outputs / Outcomes Table

#	Key Outcomes	FY 2005 Actual	FY 2006 Actual	FY 2007 Target	FY 2007 Actual	FY 2008 Target	FY 2008 Actual	FY 2009 Target
Long-Term Objective 1: To ensure compliance, to increase awareness, and to increase understanding of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of protected health information								
1	The number of corrective actions that covered entities take as a result of OCR intervention per year	1,644	3,352	3,060	3,007	3,200	3,910	4,000
2	The number of substantive policy changes that covered entities make as a result of OCR intervention and/or review per year ¹	1,019	2,466	1,900	2,068	2,150	2,601	2,650
#	Key Outputs	FY 2005 Actual	FY 2006 Actual	FY 2007 Target	FY 2007 Actual	FY 2008 Target	FY 2008 Actual	FY 2009 Target
Long-Term Objective 1: To ensure compliance, to increase awareness, and to increase understanding of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of protected health information								
3	Percentage of civil rights cases, privacy cases, and new Medicare application reviews closed per total number of	100.4%	96.6%	90.0%	90.4%	97.5%	103.6%	104.0%

¹ Substantive policy changes are a type of corrective action and therefore are a sub-component of measure #1.

	cases and reviews received							
4	Percentage of civil rights cases and new Medicare application reviews resolved per cases and reviews received ²	125.7%	102.0%	93.0%	94.5%	105.0%	110.1%	110.5%
5	Percentage of privacy cases resolved per cases received ³	79.7%	91.8%	88.0%	87.4%	93.0%	99.7%	100.0%
6	Number of people made aware of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of protected health information through the provision of information and training to individuals per year	72,000	74,313	75,000	61,086	78,000	92,603	95,400
7	Percentage of civil rights complaints that require a formal investigation that are resolved within 365 days of receipt	40.1%	43.9%	N/A	38.6%	N/A	30.0%	33.0%
8	Percentage of civil rights complaints that do not require a formal investigation that are resolved within 180 days of receipt	74.1%	79.6%	N/A	85.9%	N/A	79.6%	80.0%
9	Percentage of health information privacy complaints that require a formal investigation that are resolved within 365 days of receipt	71.7%	59.8%	N/A	56.6%	N/A	42.3%	45.0%
10	Percentage of health information privacy complaints that do not require a formal investigation that are resolved within 180 days of receipt	72.8%	69.5%	N/A	72.8%	N/A	67.0%	66.0%
Long-Term Objective 2: To enhance operational efficiency								
11	Rate of closure for civil rights cases, privacy cases, and new Medicare application reviews per FTE employee	49.85	50.32	49.60	51.28	59.00	65.58	66.00
	Appropriated Amount (\$ Million)	\$35	\$35	\$35	\$35	\$34	\$34	\$34

Performance Narrative

Long-term performance objective #1: To ensure compliance, to increase awareness, and to increase understanding of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of protected health information

OCR anticipates that growth in the receipt of both civil rights complaints and health information privacy complaints will continue in the FY 2009 – FY 2010 period, at an approximately eight percent annual growth rate for civil rights and health information privacy complaints combined.

- **Rate of closure for civil rights cases, privacy cases, and new Medicare application reviews per cases and reviews received.**

- OCR achieved a 103.6 percent resolution rate in FY 2008 which exceeded the target of 97.5 percent.

² Percentage of civil rights cases and new Medicare application reviews is a sub-component of measure #3.

³ Percentage of privacy cases is a sub-component of measure #3.

- OCR's sub-measure, "Percentage of civil rights cases and new Medicare application reviews resolved per cases and reviews received," had an FY 2008 target of 105 percent. OCR exceeded this target by achieving a resolution rate of 110.1 percent.
 - OCR's second sub-measure, "Percentage of privacy cases resolved per privacy cases received," had an FY 2008 target of 93 percent. OCR exceeded this target by achieving a resolution rate of 99.7 percent.
 - Over the past five years operational improvements, including upgrades to OCR's case management system, enhancing employee skill sets through training and empowerment, instituting a comprehensive docket-review program, developing an inclusive investigator evaluation measure, and redistributing workload across regional offices to maximize productivity, has resulted in the number of cases resolved per FTE increasing by nearly 70 percent.
 - Given the challenge of operating with diminished resources, a 1.7 percent budget reduction and 5.8 percent FTE employee reduction, OCR believes that its performance in relation to the established targets for resolving civil rights and privacy complaints and closing new Medicare application reviews is a significant accomplishment.
- **The number of people made aware of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of protected health information through the provision of information and training to individuals per year.**
 - OCR provided training and technical assistance to 92,603 individuals through its public education and compliance activities in FY 2008. This level exceeded OCR's target of 78,000 individuals.
 - During FY 2008 OCR had the opportunity to participate in several events with wide audiences. These events gave OCR the opportunity to reach out to a larger number of individuals than is typically the case with local and community events.
 - OCR's ability to accurately estimate the number of individuals that will be reached through its public education program is contingent upon the type of events that OCR is able to attend.
- **The number of corrective actions (including substantive policy changes) that covered entities make as a result of OCR intervention and/or review per year.**
 - In FY 2008, the number of covered entities that made substantive policy changes as a result of OCR intervention and/or review was 2,601, which exceeded OCR's target of 2,150 covered entities.
 - Given the importance of assuring that covered entities comply with the laws that OCR enforces, it is significant that OCR was able to exceed the target in this area.
 - Sustaining similar results in the future depends upon the number of cases that OCR is able to resolve in a given year since policy changes are a direct result of OCR's compliance activities.
 - Policy changes are a type of corrective action, and OCR added a new measure for FY 2008 designed to capture all corrective actions. In FY 2008, the number of corrective actions as a result of OCR intervention and/or review was 3,910, which exceeded the target of 3,200.

- **The percentage of civil rights complaints that require a formal investigation that are resolved within 365 days of receipt.**
 - This is a new measure for FY 2009 that is designed to track and improve OCR's responsiveness to the public as it relates to civil rights complaints that have been filed with this office and require a formal investigation.
 - OCR's target in FY 2009 reflects an improvement over the results obtained in FY 2008 while taking into consideration the existing backlog of approximately 1,400 open civil rights complaints.

- **The percentage of civil rights complaints that do not require a formal investigation that are resolved within 180 days of receipt.**
 - This is a new measure for FY 2009 that is designed to track and improve OCR's responsiveness to the public as it relates to civil rights complaints that have been filed with this office and do not require a formal investigation.
 - A formal investigation is not required for those complaints that ultimately are determined to not allege a violation over which OCR has jurisdiction, where the allegation is against an entity that is not a recipient of Federal financial assistance, or when the complaint can otherwise be adjudicated administratively.
 - OCR's target in FY 2009 reflects an improvement over the results obtained in FY 2008 while taking into consideration the existing backlog of approximately 1,400 open civil rights complaints.

- **The percentage of health information privacy complaints that require a formal investigation that are resolved within 365 days of receipt.**
 - This is a new measure for FY 2009 that is designed to track and improve OCR's responsiveness to the public as it relates to health information privacy complaints that have been filed with this office and require a formal investigation.
 - OCR's target in FY 2009 reflects an improvement over the results obtained in FY 2008 while taking into consideration the existing backlog of approximately 6,500 open health information privacy complaints.

- **The percentage of health information privacy complaints that do not require a formal investigation that are resolved within 180 days of receipt.**
 - This is a new measure for FY 2009 that is designed to track and improve OCR's responsiveness to the public as it relates to health information privacy complaints that have been filed with this office and do not require a formal investigation.
 - A formal investigation is not required for those complaints that are submitted to OCR that ultimately are determined to not allege a violation of the Privacy Rule, where the allegation is against an entity determined not to be a covered entity under the Privacy Rule, or when the complaint can otherwise be adjudicated administratively.
 - OCR's target in FY 2009 reflects an improvement over the results obtained in FY 2008 while taking into consideration the existing backlog of approximately 6,500 open health information privacy complaints.

Measure for long-term performance objective #2: To enhance operational efficiency

OCR anticipates that continued operational efficiency efforts will result in an increase in the number of cases resolved per FTE employee assigned during the FY 2009 – FY 2010 period.

- **Rate of closure for civil rights cases, privacy cases, and new Medicare application reviews per FTE employee**
 - In FY 2008, OCR exceeded the target of 59.0 cases per FTE by resolving 65.58 cases per FTE employee.
 - OCR's management objective of enhancing operational efficiency is critical for achieving each of the previously discussed performance goals. In the past several years, OCR has employed numerous strategies to increase efficiency, including managing caseloads across regional lines.
 - Another OCR strategy to increase efficiency is instituting a comprehensive docket-review program and cascading organizational performance targets down to the individual investigator level. These efforts resulted in improvements in operational efficiency in FY 2008. Although OCR experienced a reduction in staff this fiscal year, OCR was still able to achieve a 28 percent increase in the number of cases resolved per FTE.
 - Given the aforementioned challenge of operating with diminished resources, a 1.7 percent budget reduction and 5.8 percent FTE reduction, OCR's performance in relation to the established targets for increasing the number of cases resolved per FTE assigned is a significant accomplishment.

Performance Improvement Plans

OCR has several ongoing initiatives that are designed to improve program performance. One initiative is to improve OCR's cross-collaboration with other components within HHS. In this case OCR is working with the Office of the National Coordinator for Health Information Technology (ONC) to assess gaps in the public's understanding of privacy protections within the context of health information exchange. In addition to this initiative, OCR is also working to integrate the provisions of the Genetic Information Nondiscrimination Act (GINA) within the existing Privacy Rule. More information about these improvement plans can be obtained at ExpectMore.gov.

OCR's Strategic Goals

Activities that support OCR's strategic goal to ensure compliance and increase awareness and understanding of Federal laws requiring non-discriminatory access to HHS-funded programs, and protection of the privacy of individually-identifiable health information, include:

- Enforcing the laws and regulations within OCR's jurisdiction through preventative (e.g. public education), proactive (e.g. compliance review), and reactive (e.g. complaint investigation) activities
- Investigating complaints of discrimination in HHS programs or health information privacy violations received from the public
- Reviewing physicians' applications to serve Medicare beneficiaries

- Reviewing and monitoring resolution agreements with recipients and covered entities to ensure compliance with corrective action plans
- Public education, partnerships, and technical assistance

Activities that support OCR's strategic goal to enhance operational efficiency include:

- Improving case management processes, including the use of information technology to balance caseloads across OCR's ten regional offices
- Enhancing staff skill sets through training, hiring, and strategic deployment
- Holding staff accountable in their performance appraisals for supporting and achieving OCR and HHS strategic goals and performance measures

Link to HHS Strategic Plan

	OCR Strategic Goals / Objectives				
	Goal 1: To ensure compliance and to increase awareness and understanding of Federal laws requiring non-discriminatory 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.
HHS Strategic Goals					
1: Health Care Improve the safety, quality, affordability and accessibility of health care, including behavioral health care and long-term care.					
1.1 Broaden health insurance and long-term care coverage.					
1.2 Increase health care service availability and accessibility.	X	X	X	X	X
1.3 Improve health care quality, safety and cost/value.		X	X		X
1.4 Recruit, develop, and retain a competent health care workforce.					
2: Public Health Promotion and Protection, Disease Prevention, and Emergency Preparedness Prevent and control disease, injury, illness and disability across the lifespan, and protect the public from infectious, occupational, environmental and terrorist threats.					
2.1 Prevent the spread of infectious diseases.					
2.2 Protect the public against injuries and environmental threats.					
2.3 Promote and encourage preventive health care, including mental health, lifelong healthy behaviors and recovery.	X	X	X		X
2.4 Prepare for and respond to natural and man-made disasters.	X	X	X		X
3: Human Services Promote the economic and social well-being of individuals, families and communities					
3.1 Promote the economic independence and social well-being of individuals and families across the lifespan.	X		X		X
3.2 Protect the safety and foster the well being of children and youth.	X		X		X
3.3 Encourage the development of strong, healthy and supportive communities.	X		X		X
3.4 Address the needs, strengths and abilities of vulnerable populations.	X		X		X
4: Scientific Research and Development Advance scientific and biomedical research and development related to health and human services					
4.1 Strengthen the pool of qualified health and behavioral science researchers.					
4.2 Increase basic scientific knowledge to improve human health and human development.					
4.3 Conduct and oversee applied research to improve health and well-being.					
4.4 Communicate and transfer research results into clinical, public health and human service practice.					

Summary of Findings and Recommendations from Completed Program Evaluations

No OCR evaluations were conducted during FY 2008.

Data Source and Validation Office for Civil Rights (OCR)

Office for Civil Rights		
Measure Unique Identifier	Data Source	Data Controls
#1 Rate of closure for civil rights and privacy cases and new Medicare application reviews per cases/review received	OCR has an internet-based Program Information Management System (PIMS) that captures data in real time related to complaint processing, Medicare application reviews, public education and technical assistance. PIMS allows users to code all different types of activities related to cases and their disposition, outreach, and technical assistance. Closure rates are manually calculated by dividing PIMS automated count of cases resolved by cases received.	Case status is checked routinely by team leaders, supervisors, and / or regional managers. Closure calculations are made monthly and summarized on an internal scorecard.
#2 Percent of civil rights cases and new Medicare application reviews resolved per cases/reviews received	PIMS automatically provides case counts and receipts and the percentage is calculated on a summary scorecard.	See #1 above
#3 Percent of privacy cases resolved per cases received	The percentage is calculated from the PIMS automatically provided privacy case resolutions divided by privacy case receipts.	See #1 above
#4 The number of corrective actions that covered entities takes as a result of OCR intervention	PIMS automatically calculates the number of corrective actions based on case disposition.	Corrective actions are continuously checked at the Regional level and reviewed at the Headquarters level.
#5 The number of covered entities that make substantive policy changes as a result of OCR intervention and/or review	Policy changes are a subset of corrective actions (see #4). PIMS calculates the number of substantive policy changes automatically from investigator input.	Policy changes are a subset of corrective actions and are checked continuously at the Regional level and reviewed at the Headquarters level.
#6 Rate of closure for civil rights and privacy cases and new Medicare application reviews per FTE	Actuals are manually calculated on PIMS case data and the number of FTE.	See #1 above
#7 Increased awareness of Federal laws requiring non-discriminatory access to HHS programs and protection of the privacy of protected health information through the provision of information and training to individuals	Actuals are automatically provided in PIMS based on staff individual input of the actual / estimated count of participants.	Data is checked at the Regional level for accuracy and reviewed at the Headquarters level for consistency.
#8 Percentage of civil rights complaints that require formal investigation, resolved within 365 day	Actuals are manually calculated on PIMS case data.	Data is checked at the Regional level for accuracy and reviewed at the Headquarters level for consistency.
#9 Percentage of civil rights complaints that do not require formal investigation, resolved within 180 days	Actuals are manually calculated on PIMS case data.	Data is checked at the Regional level for accuracy and reviewed at the Headquarters level for consistency.
#10 Percentage of privacy complaints that require formal investigation, resolved within 365 days	Actuals are manually calculated on PIMS case data.	Data is checked at the Regional level for accuracy and reviewed at the Headquarters level for consistency.
#11 Percentage of privacy complaints that do not require formal investigation, resolved within 180 days	Actuals are manually calculated on PIMS case data.	Data is checked at the Regional level for accuracy and reviewed at the Headquarters level for consistency.

Disclosure of Assistance by Non-Federal Parties

Preparation of Annual Performance Reports and Annual Performance Plans is an inherently governmental function that is only to be performed by Federal employees. OCR has not received any material assistance from any non-Federal parties in the preparation of this FY 2008 Annual Performance Report.