



Autism
Society



NACDD
National Association of Councils
on Developmental Disabilities

Discrimination on the Basis of Disability in HHS Proposed Rule Toolkit

Background:

On September 7, the U.S. Health and Human Services (HHS) Office for Civil Rights published a [proposed update to the HHS regulations implementing Section 504](#) of the Rehabilitation Act of 1973, which prohibits disability discrimination by recipients of federal funding. This is the first comprehensive update to the regulations since they were first put in place more than 40 years ago. The proposed rule strengthens protections for people with disabilities and reflects the input and priorities of the disability community. HHS will be seeking public comment on the proposed rule with a deadline of November 13. Input from the disability and aging communities is essential!

The Rehabilitation Act was the first civil rights legislation protecting people with disabilities from discrimination. It has a broad reach, prohibiting discrimination on the basis of disability in “any program or activity receiving federal financial assistance.” Section 504 covers all health care and human services programs and activities funded by HHS, from hospitals and doctors that accept Medicare or Medicaid to states’ home and community-based programs. It protects disabled people of all ages – which includes adults who need assistance with major life activities like walking, getting in and out of bed, hearing, or seeing, keeping a checkbook, or cooking and shopping.

The proposed update clarifies obligations in several important areas that are not explicitly addressed in the current rule and improves consistency with legislation since the current regulations were issued. It is important that the disability community comments on this rule because there may be pushback from industries that do not want to comply with these new rules. **Comments must be submitted by November 13, 2023.**

What's most important for people with disabilities to know?

The Rule is long and complex but here's what's most important to know. The proposed HHS Rule:

Prohibits discrimination in medical treatment

- Ensures that medical treatment decisions are not based on biases or stereotypes about people with disabilities, judgments that an individual will be a burden on others or beliefs that the life of an individual with a disability has less value than the life of a person without a disability. These include, for example, decisions about life-sustaining treatment, organ transplantation, rationing care in emergencies, and other vital medical decisions.

Ensures medical equipment is accessible

- Adopts the U.S. Access Board's accessibility standards for medical equipment to address barriers like exam tables that are inaccessible because they are not height-adjustable, weight scales that cannot accommodate people's wheelchairs, and mammogram machines that require an individual to stand to use them. The rule would require most doctors' offices to have an accessible exam table and weight scale within two years.

Mandates web, mobile app, and kiosk accessibility in healthcare settings

- Adopts the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA accessibility standards for websites and mobile applications. It also requires self-service kiosks to be accessible. These provisions are particularly important given the increased use of websites, apps, telehealth, video platforms, and self-service kiosks to access health care.

Protects against discrimination in child welfare programs and activities

- Clarifies requirements in HHS-funded child welfare programs and activities to help eliminate discriminatory barriers faced by children, parents, caregivers, foster parents, and prospective parents with disabilities, such as using the presence of a disability or an individual's IQ score alone as a reason for removal of a child, prohibiting disabled parents from serving as foster parents, or failing to place disabled children who need services in the most integrated settings appropriate to their needs.

Reasserts community integration

- The rule clarifies obligations to provide services in the most integrated setting appropriate to a person's needs, consistent with the Supreme Court's decision in *Olmstead v. L.C.* The court's *Olmstead* decision found the unjustified segregation of people with disabilities is a form of unlawful discrimination under Title II of the Americans with Disabilities Act (ADA).
- The Court held that states are required to provide community-based services for people with disabilities who would otherwise be entitled to institutional services when such placement is appropriate; the affected person does not oppose such treatment; and the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of other individuals with disabilities.
- The proposed rule refers to the DOJ's "Guidance on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*," integrated settings provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible; are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual's choosing; and afford individuals choice in their daily life

activities. The Department proposes to adopt this language as its definition of “most integrated setting.”

Prohibits the use of value assessment methods

- To establish whether a particular intervention, such as a medicine or treatment, will be provided and under what circumstances, healthcare organizations often use a variety of methods to evaluate whether the benefits of the intervention outweigh the costs. These “value assessment methods” are an increasingly significant tool for cost containment and quality improvement efforts, but they may discriminate against people with disabilities when they place a lower value on extending the life of a person with a disability. The proposed rule prohibits the discriminatory use of such methods to deny or limit access to aids, benefits, or services.

Since the 504 regulations were originally published, the Rehabilitation Act has been amended and the ADA was passed. Because Congress directed that Section 504 and the ADA be interpreted consistently, the proposed rule also aligns HHS’ 504 regulations with newer ADA regulations. For example, the proposed rule requires recipients of HHS funding to allow the use of trained service animals in most circumstances and to ensure effective communications by providing, when necessary, accommodations such as qualified interpreters, text telephones, and information in Braille, large print, or electronically for use with a computer screen-reading program.

Draft Comments

The Autism Society and the National Association of Developmental Disabilities Councils have come together to provide joint [comments](#) and to provide this toolkit to help individuals with disabilities, family members, professionals, and other allies make comments.



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How to Submit Your Comments

It is important for the people who would be impacted by this proposed rule to make their voices heard. HHS wants to hear comments from people who directly experience obstacles in healthcare settings. You can easily submit a comment through the Autism Society's [Action Alert](#). The message body will be the official comment that is submitted to HHS. Feel free to follow the guidelines to customize and add your personal stories. **Comments must be submitted by November 13, 2023.** Thank you for your advocacy!

To get advice and guidance on your comments, please join our office hours. We will have a staff on a Zoom call on November 3 and November 10 from 2-3 pm EST. To get the Zoom link or call-in number, register [here](#).