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Do You Go To a Doctor?

Understanding New Federal Regulations:

Nondiscrimination in Health Care on the Basis of Disability

LPA Committee on Advocacy

Overview

- Over the last year, a series of final rules have been published in the *Federal Register* intended to prohibit discrimination on the basis of disability in provision of healthcare covered by the requirements of:
 - Section 504 of the Rehabilitation Act 1973.
 - Any program or activity receiving Federal financial assistance.
 - The Americans with Disability Act.
 - State and local governments' services, programs, and activities (Title II)
- First major regulatory revision in 40 years, reflecting:
 - Passage of Americans with Disabilities and Affordable Care Acts.
 - Supreme Court and other significant court cases.
 - Recent specific manifestations of disability-based discrimination.

Overview



- Section 504 of the Rehabilitation Act of 1973
- Final Department of Health and Human Services rule published in the *Federal Register* on May 9.
 - Effective date - July 8, 2024.
 - Updates and amends regulations implementing section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.
- Americans with Disabilities Act
- Final Department of Justice rule published on April 24.
 - Effective date – June 24, 2024
 - Updates regulations implementing the Americans with Disability Act requirements for Accessibility of Web Information and Services of State and Local Government Entities.
- Final Department of Justice rule published on August 9.
 - Effective date – October 8, 2024
 - Updates regulations implementing the Americans with Disability Act requirements for Medical Diagnostic Equipment.
- MDE standard for use in Federal regulations
- Final Architectural and Transportation Barriers Compliance Board rule published on July 25.
 - Effective date – September 23, 2024. Requires further rulemaking from HHS and DoJ for adoption.
 - Removes the January 1, 2025 sunset date for standards for Medical Diagnostic Equipment and replaces the 2017 standard for low transfer height (17 to 19 inches) with a standard of 17 inches.

What do the new rules cover?



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The rules prohibit disability-based discrimination in:

- Medical treatment
- Value assessment methods
- Child welfare programs and activities
- Integration
- Web and mobile accessibility
- Accessible medical equipment

Medical treatment

- Term change throughout the rule: “handicapped person” replaced by “individual with a disability”.
- Prohibits an individual with a disability being the subject of discrimination on the basis of a disability in medical treatment under any covered program or activity.
- Prohibits denial of treatment based on:
 - Bias or stereotypes about an individual’s disability;
 - Judgments that an individual with a disability will be burden to others; or
 - A belief that the life of a person with a disability has lesser value than the life of a person without a disability, or that life with a disability is not worth living.
- Does not require provision of treatment to an individual who does not consent.

Value assessment methods



- Prohibits the use of any measure, assessment, or tool that discounts the value of life extension on the basis of disability to deny or afford an unequal opportunity to individuals with disabilities for any aid, benefit, or service, including the terms or conditions under which they are made available.



Child welfare programs and activities

- Prohibits an individual with a disability, on the basis of disability, from being excluded from participation in or denied the benefits of under any child welfare program or activity from a covered entity.
- Prohibited discrimination includes:
 - Decisions based on speculation, stereotypes, or generalizations that a parent, caregiver, foster parent, or prospective parent, because of a disability, cannot safely care for a child; and
 - Decisions based on speculation, stereotypes, or generalizations about a child with a disability.
 - Any action to:
 - Deny a parent with a disability custody or control of, or visitation to, a child;
 - Deny a parent with a disability an opportunity to participate in or benefit from any and all services provided by a child welfare agency;
 - Terminate the parental rights or legal guardianship of an individual with a disability; or
 - Require children, on the basis on the disability, to be placed outside the family home through custody relinquishment or other forfeiture of parental rights in order to receive services.

Integration

- Prohibits providing benefits or activities that use settings that segregate individuals with a disability on the basis of their disability.
- Prohibited segregated settings include:
 - congregate settings that are populated exclusively or primarily with individuals with disabilities characterized by regimentation in daily activities;
 - lack of privacy or autonomy; or
 - policies or practices limiting visitors or
 - limiting individuals' ability to engage freely in community activities and to manage their own activities of daily living.
- Prohibition includes failure to provide community-based services that results in institutionalization or serious risk of institutionalization.

Web and mobile accessibility



- Requires covered entities to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.
- Covered communications are those provided via:
 - Telecommunication and telephone systems;
 - Information and signage;
 - Kiosks, and
 - Web and mobile services.



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Accessible medical equipment

- Medical diagnostic equipment (MDE) includes examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes.
- Requires that all new purchases or leases of new MDE after effective date, meet the **2017 Standards** for Accessible MDE established by the Access Board until each facility reaches 10 percent (but no less than one unit) of each type of equipment in use.
 - Programs and facilities specializing in treating mobility conditions have a 20 percent requirement.
- The 2017 Standards (36 CFR Part 1195) provide for a low position transfer height of 17 inches minimum and 19 inches maximum for MDE for patients in supine, prone or side-lying position (e.g., an examination table).
- Requires that within two years of July 8, 2024, each recipient of Federal financial assistance purchase at least one examination table and one weight scale that meet the Standards for Accessible MDE if they do not otherwise have them in place.
- The rule also includes a requirement to have qualified staff able to successfully operate accessible MDE, assist with transfers and positioning of individuals with disabilities, and carry out the program access obligation regarding existing MDE.
- No exemption in the section 504 rule for small firms (15 employees or less).

MDE Issues

- LPA comments on the DoJ ADA rule.
 - On February 12, LPA submitted comments on the Department of Justice MDE rule.
 - [Regulations.gov](https://www.regulations.gov)
 - Shared member difficulties in getting critical medical care with MDE that has been designed narrowly to accommodate only the average-height population.
 - Urged consideration of more accelerated implementation of the requirements.
 - DoJ response: Acknowledged the problems as real and retained the two-year implementation requirement.
- DoJ MDE rule does not cover ADA title III entities.
 - Private entities that own, operate, lease, or lease to places that are open to the public.
 - DoJ “will continue to consider issues concerning MDE under title III as well as equipment and furniture other than MDE under both titles.”

Oh, and another thing ...



- On May 6, the Department of Health and Human Services published a final rule and interpretation in the *Federal Register* - Nondiscrimination in Health Programs and Activities.
- The rule broadly prohibits any discrimination in Federally-funded programs such as the Affordable Care Act, Medicare, Medicaid, etc.
- The comprehensive rule addresses language access barriers, expands physical and digital accessibility, tackles bias in health technology among other areas.
- The effective date of the rule is July 5, 2024.

Enforcement



- Section 504 of the Rehabilitation Act of 1973
 - Department of Health and Human Services – Office of Civil Rights
 - [Filing a Complaint | HHS.gov](#)
- The Americans with Disabilities Act
 - Department of Justice – Civil Rights Division
 - [Enforcement | ADA.gov](#)
 - [File a Complaint | ADA.gov](#)



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Questions?

- Samantha Rayburn-Trubyk - advocacy.director@lpaonline.org
- Chelsea Rivas – chelsearivas@gmail.com
- Jon Etherton - jon.etherton@lpaonline.org