

November 13, 2023

Melanie Fontes Rainer, Director  
Office for Civil Rights  
Department of Health and Human Services  
200 Independence Ave SW  
Washington, DC 20201

*Submitted electronically via <http://www.regulations.gov>.*

**RE: RIN 0945-AA15: Discrimination on the Basis of Disability in Health and Human Service Program or Activities**

Dear Director Fontes Rainer:

On behalf of the Milwaukee County Area Agency on Aging – an organization with the mission to improve the health and well-being for all older adult residents of Milwaukee County by acknowledging and overcoming structural racism, promoting health equity, improving communication and collaboration, and addressing all dimensions of wellness – we welcome the opportunity to comment on the proposed rule changes under Section 504 of the Rehabilitation Act of 1973.

The Rehabilitation Act of 1973 is critical to protecting the civil rights of those with disabilities and, 50 years after its implementation, it is time to modernize its provisions. We commend that, through this proposed rule, OCR recognizes that individuals with disabilities face discrimination from health and human service providers at higher rates than those without.

We urge OCR to consider the following related to this proposed rule:

- **Medical Treatment**—the rule clarifies that “no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in medical treatment under any program or activity that receives Federal financial assistance, including in the allocation or withdrawal of any good, benefit, or service.” We support this distinction. The Department requested feedback on the use of the term “medical treatment” and if it correctly encompasses all that it is intending. We encourage clarification regarding the definition of “medical treatment.” Beyond the examples listed in the proposed rule, it is beneficial for governmental health and human service agencies to understand all that constitutes medical treatment, especially if they do not engage in conventional medical services. The rule states that it is intended to apply broadly to management or care of a patient; for example, does this include Family Caregiver services as defined under the Older Americans Act? We could support this, and other examples like this, as being included under the definition of medical treatment, but would propose that the definition be more specific.
- **Value Assessments**—we are supportive of this rule changes, in particular the provision that value assessments do not discriminate against individuals with disabilities when making decisions regarding referrals. As noted, this can have a damaging impact on the ability to access necessary care and services. When referring individuals for services, the rule makes clear that those assisting with the referral should consider the needs of the individual and not solely whether a particular service would extend their life. As an agency

that makes referrals to services and provides access to care on a daily basis, this rule refinement is significant.

- Web and mobile accessibility—ensuring that websites, applications, and self-service kiosks are accessible for individuals with disabilities is crucial and we are in support of this rule change and its uniformity with the new rule in the Americans with Disabilities Act (ADA). The Department requested feedback on the burden these requirements for web and mobile accessibility will place on “small recipients.” We agree that small recipients will bear the greatest burden in complying with this rule, especially since technology management can require advanced, specialized knowledge. However, we urge OCR to consider that even large recipients will need time and resources to make these changes, especially if they include changes to websites, applications, kiosks, social media platforms, and all electronic documents. Many health and human service agencies do not readily have staff with these capabilities on hand and outsource to other departments or outside vendors. We support these changes, but also recommend implementing guidance on expected timeframes for completing upgrades.
- Accessible medical equipment—we are supportive of this provision to require accessible medical equipment for people with disabilities. We are also supportive of the clear timeframe for acquiring the equipment following implementation of the proposed rule. The Department requested feedback as to whether the guidance in the rule should also apply to non-diagnostic equipment. To ensure true accessibility, and to conform with ADA standards, we expect that the rule should also apply to non-diagnostic equipment. However, if the Department chooses to expand the rule to include non-diagnostic equipment, additional clarification may be needed on acceptable timeframe for acquiring the equipment, crafting definitions, and what other considerations may need to be included.
- Integration—this rule proposal requires that services to individuals with disabilities be provided in a community-based setting when appropriate, can be accommodated, and if it is the preference of the individual. We are supportive of this rule change and the intention of the Department to promote “full inclusion and integration in the economic, political, social, cultural and educational mainstream of American society.”

We request that the final rule include guidance clarifying the exact programs and activities that are encompassed by the Section 504 framework because they are the recipients of federal financial assistance. For example, we ask for confirmation that Section 504 requirements apply to state Medicaid programs and the managed care organizations with which state agencies contract to administer Medicaid services to beneficiaries. Given the growing number of individuals enrolled in Medicaid, and the nature of the services covered by the program, particularly for individuals with disabilities, clear guidance regarding the applicability of Section 504 to state Medicaid programs and MCOs will ensure the underlying goals of the statute are being met. In 2023, Wisconsin MCOs underwent major changes that raised concern for participants and advocates. Because Wisconsin MCOs served more than 35,000 individuals with a disability in September 2023, it is important to clarify whether these organizations are expected to comply with the provisions of Section 504.

While we support reiterating these important nondiscrimination principles and clarifying ambiguities in the current law, we are concerned that repercussions for noncompliance are not equally reinforced. The process for filing a complaint with OCR has not been changed in accordance with these rule proposals. An individual experiencing discrimination needs to file a

complaint with OCR, who will then thoroughly investigate. If a violation is found, the offending agency will have opportunity to implement corrective action. If the corrective action is not sufficient, or if the agency does not agree to remedy the incident, OCR may recommend that federal funding be revoked. We encourage OCR to consider including additional incentives for agencies and providers to comply with the newly enhanced provisions. There is also no process by which individuals can appeal a decision made by OCR if the resolution is insufficient.

Additionally, the burden of filing a discrimination complaint could be simplified. We support OCR in streamlining the complaint process by developing straightforward educational materials, implementing shorter timeframes for responding to and addressing complaints, increasing the amount of time individuals can file a complaint, and eliminating any barriers to accessing the complaint form. Although the complaint form is offered in multiple languages and for those that require accommodations, it is not easy to access that information. OCR's website encourages use of the online form as opposed to filing a written complaint or making a call, which places limitations on those that have disabilities or difficulties with web access. Choosing to speak up against perceived discrimination already takes emotional and mental strength; the technical process should not also create hardship.

Overall, we are grateful that DHHS and OCR have amplified concerns that individuals with disabilities experience in health care settings. We believe that these provisions will provide clarity for health and human service providers, which will ultimately lead to better service delivery for all. It is important that the rules address inclusion of individuals with disabilities because programs and services offered by agencies are constantly evolving and expanding.

Thank you for your consideration of our comments. We appreciate OCR and DHHS' commitment to supporting individuals with disabilities by strengthening protections against discrimination and reinvigorating the Rehabilitation Act of 1973.

Sincerely,

Milwaukee County Area Agency on Aging