

CLIENT ALERTS

Proposed Rule Ensures Access to Equal Treatment in All Medical Services

Client Alert

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If your organization receives funding from any programs offered by the U.S. Department of Health and Human Services (HHS) – including Medicare, Medicaid, and Head Start – then a newly proposed rule may affect your services. This new rule clarifies existing law that prohibits discrimination based on disability in federally funded programs.

Background

Fifty years ago, the federal Rehabilitation Act of 1973 became law. Predating the Americans with Disabilities Act (ADA) by almost two decades, Section 504 of this law prohibited programs funded by or conducted by the Federal Government from discriminating based on a person's disability status.

Since its inception, disability-rights awareness and advocacy have motivated several other laws (such as the ADA), executive orders, Supreme Court cases, and other initiatives to prevent discrimination and enhance access to services. The proposed rule's amendments bring Section 504 in line with several of these developments, seeking to strengthen equal access to quality healthcare.

Proposed Rule – Nondiscrimination Based on Disability in Programs or Activities Receiving Federal Financial Assistance

Currently, Section 504 of the Rehab Act provides that no disabled person can be excluded from participation in any program or activity receiving federal financial assistance because of their disability. The newly proposed rule clarifies the application of this section.

Related People

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At a high level, the proposed rule now makes it clear that Section 504 applies to new areas: medical treatment decisions, value assessments, accessibility to communication services, and accessible medical equipment. It also broadens requirements for federally funded child welfare programs and activities.

Among Other Provisions the New Rule Will:

- Ensure that medical treatment decisions are not based on negative biases or stereotypes about individuals with disabilities, including decisions related to organ transplantation priority, life-sustaining care, emergency care, and access to participate or benefit from clinical research.
- Create a rule violation if value assessments are used which place a lower value on life expectancy for people with a disability, if such methods are then used to deny an equal opportunity to receive an aid, benefit, or service.
- Provide people with a disability equal access to medical diagnostic equipment, such as wheelchair accessible scales, x-ray equipment, adjustable examination tables, and hospital equipment such as stretchers. Technical requirements will be published by the U.S. Architectural and Transportation Barriers Compliance Board. Significantly, all such equipment acquired after this rule goes into effect must be accessible (with certain exceptions).
- Reinforce that providers must ensure effective communications with individuals with hearing, speech, and vision impairments.
- Mandate accessibility in websites, mobile apps, and self-service kiosks.

The proposal sets up a tiered implementation deadline for these standards based on the number of employees an organization has.

As a final note, the new rule will clarify that nondiscrimination provisions also apply to child welfare programs and activities, which include heightened requirements to ensure individuals with disabilities receive access to the most integrated setting appropriate to the child's needs.

Public Comment

Healthcare, medical services, and childcare organizations that receive any federal funding should note the new proposed requirements and amendments as they will be required to comply with the proposed rule's updates.

As of today, this rule is still only a proposal. It is open to public comment, with the comment period ending on November 13, 2023.

If you would like to read the rule and add your public comment, [click here](#).

Butzel is here to help you review your business's policies and practices in anticipation of the proposed rule taking effect. Call your attorney today to discuss any questions or concerns that may be brought up during the comment period.

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