



New HHS Rule Strengthens Prohibitions Against Discrimination Based on a Disability in Health Care and Human Services Programs

The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) and the Centers for Medicare and Medicaid Services (CMS) recently issued a final rule, [Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance](#). The rule, which will take effect July 8, 2024, covers much of the same ground as the final rule, [Nondiscrimination in Health Programs and Activities](#), that was also recently [announced](#) by HHS/OCR (Section 1557 Rule). This rule focuses specifically on protecting the civil rights of individuals with disabilities under section 504 of the Rehabilitation Act of 1973.

This rule applies to federally funded health programs and services, meaning nursing homes and ID/DD providers are subject to this final rule. Assisted living facilities could be subject to the rule if they receive federal financial assistance (e.g., through a Medicaid waiver program).

The requirements in this final rule mirror many of the requirements in the American Disabilities Act (ADA) requirements. This means that many of the physical plant aspects of the rule should already be in place, following construction standards that have been in place to comply with the ADA since the 1970s and updated under various other statutory and regulatory developments since then. However, the rule does require that any facilities not in compliance with the relevant standards for accessibility based on when they were built will need to be brought into compliance with the Uniform Federal Accessibility Standards or the 2010 ADA Standards for Accessible Design.

Broad Construction of Disability

One of the main themes of the Section 504 rule is the desire from HHS/OCR to have the effect of the term disability broadly construed. Much of the preamble and the general provisions of the rule go into depth about how, when determining if an individual is considered “disabled” and thus covered by the rule, the term should be interpreted to the broadest possible extent.

The rule also indicates that the focus of disputes under the rule should be on compliance with its requirements and whether there has been discrimination on the part of the federally funded program, and that the disability status of the individual is not meant to meet a very demanding standard of review.

Medical Treatment Discrimination

Under the new Section 504 rule provision, however, there is again a deeper focus on individuals with a disability than in the Section 1557 Rule. Under the new rule, a program that receives federal financial assistance may not discriminate against individuals with a disability in decisions on whether to provide medical treatment.

This can mean that the provider may not deny medical treatment to an individual with a disability because of a bias against their disability or judgment that the disabled individual would be a burden on others. Additionally, a program may not provide additional medical treatment that it would not otherwise provide an individual without the disability.

That is not to say that the new rule requires a medical conclusion. There is a specific statement in the rules that indicates that it allows a provider to use professional judgment in the provision of medical treatment. If the provider has a legitimate, nondiscriminatory reason for providing or withholding treatment or has the consent of the disabled individual or their authorized representative, then the provider may be able to show compliance with the rule.

Communications and IT Accessibility

The Section 504 rule sets specific standards for communications to ensure that any communications between programs and disabled individuals or their companions are as effective as communications with individuals without a disability. Like the Section 1557 Rule, the Section 504 Rule requires a program to provide appropriate auxiliary aids and services to accomplish this requirement.

As with the facility requirements above and the Medical Diagnostic Equipment provisions discussed below, the Rule does not require a provider to take any action that would result in a fundamental alteration in the nature of a program or would require an undue financial or administrative burden. In those cases, the provider needs only show that they will provide the communications in a way that provides access to the services in the most integrated manner possible.

Additionally, in Subpart I, the Section 504 rule sets forth requirements that Federal financial assistance recipients must meet with regard to their use of web, mobile or kiosk access points. Under those provisions, providers with more than 15 employees must meet certain Web Content Accessibility Guidelines for their web and mobile content by May 11, 2026. For providers with fewer than 15 employees, the compliance deadline is May 10, 2027. Again, these requirements have an exception for changes that would result in a fundamental alteration in the nature of the program or in undue financial or administrative burdens. There are also exceptions for preexisting and archived content.

Medical Diagnostic Equipment

There are several new provisions within the rule that implicate the use of medical diagnostic equipment (Subpart J). A summary of those provisions are as follows:

- All medical diagnostic equipment acquired (including through a lease renewal) after July 8, 2024, must meet the Standards for Accessible Medical Diagnostic Equipment (MDE)
- At least 10 percent of medical diagnostic equipment in a facility must meet the Standards (with a minimum of one unit), except for rehabilitation facilities that specialize in treating mobility conditions, for those facilities, 20 percent of the equipment must meet the standards.
- By July 7, 2026, all Federal funding assistance recipients must have at least one examination table that meets the Standards for Accessible MDE and at least one weight scale that meets those Standards.

There is an exception to this requirement for instances where a group can prove that taking actions to comply with the rules would result in a fundamental alteration in the nature of the program or activity or in an undue financial and administrative burden. In that case, the provider can prove compliance by reassignment of services to alternate accessible locations, home visits or any other method to provide services to individuals with disabilities in the most integrated setting appropriate.

The rule also requires that a program receiving Federal financial assistance ensure that its staff can successfully operate the accessible MDE, assist with transfers and positioning of individuals with disabilities and to carry out the program access obligation regarding existing MDE.

AHCA/NCAL developed a comprehensive summary of the regulatory requirements under the Section 1557 rule that members can access [here](#). Contact regulatory@ahca.org with questions.

###