



February 12, 2024

SUBMITTED ELECTRONICALLY

The Honorable Rebecca B. Bond
Chief, Disability Rights Section
Civil Rights Division
Attn: RIN: 1190-AA78
200 Independence Avenue, SW
Washington, DC 20201

Re: Joint ITEM/CPR Coalition Comments on Proposed Rule Updating Title II Regulations: Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities (RIN: 1190-AA78)

Dear Chief Bond:

The undersigned members of the Independence Through Enhancement of Medicare and Medicaid (“ITEM”) Coalition and the Coalition to Preserve Rehabilitation (“CPR”) appreciate the opportunity to provide comments to the Department of Justice (“DOJ”) in response to its landmark proposed rule that would establish specific requirements governing Medical Diagnostic Equipment (“MDE”) offered by State and local government entities (“Proposed Rule”).¹ The Proposed Rule represents a commendable effort on behalf of the DOJ to improve health equity by addressing equitable access to MDE for people with disabilities. This Proposed Rule provides the necessary direction for State and local governments to comply with their duties to provide accessible MDE and refrain from discrimination based on a person’s disability under title II of the Americans with Disabilities Act (“ADA”).

The ITEM Coalition is a national consumer- and clinician-led coalition advocating for access to and coverage of assistive devices, technologies, and related services for persons with injuries, illnesses, disabilities, and chronic conditions of all ages. Our members represent individuals with a wide range of disabling conditions, as well as the providers who serve them, including limb loss and limb difference, multiple sclerosis, spinal cord injury, brain injury, stroke, paralysis, cerebral palsy, spina bifida, hearing, speech, and visual impairments, myositis, and other life-altering conditions. CPR is a coalition of national consumer, clinician, and

¹ Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities, 89 Fed. Reg. 2183 (January 12, 2024) (to be codified at 28 CFR 35), <https://www.govinfo.gov/content/pkg/FR-2024-01-12/pdf/2024-00553.pdf>

membership organizations that advocate for policies to ensure access to rehabilitative services so that individuals with injuries, illnesses, disabilities, and chronic conditions may regain and/or maintain their maximum level of health and independent function. CPR is comprised of organizations that represent patients – as well as the providers who serve them – who are frequently inappropriately denied access to rehabilitative therapies and other services in a variety of settings.

The ITEM and CPR Coalitions submit this joint comment letter in strong support of the overarching goal of ensuring nondiscrimination in the provision of health programs and activities, and many of the undersigned members also plan to offer comments either individually or through other coalitions in response to the full scope of the Proposed Rule. We urge the DOJ to expeditiously finalize this rule to protect the ability of all individuals to access the health care services they need without fear or impact of discrimination.

Standards for Accessible Medical Diagnostic Equipment

People with disabilities experience barriers to accessing medical care due to inaccessible MDE. The Proposed Rule would establish standards for accessible MDE to help ensure that vital health care programs and activities are equally available to individuals with disabilities. More specifically, the Proposed Rule would establish standards and requirements for MDE, the purchasing or acquiring of new MDE, adapting existing MDE, and training requirements for medical staff. The Proposed Rule adopts the U.S. Access Board’s Standards for Accessible MDE (“MDE Standards”) published in 2017 and sets general accessibility requirements for programs and activities that State and local entities provide through or with the use of MDE. In other words, a State or local government entity cannot deny services that it would otherwise provide to a patient with a disability because the entity lacks accessible MDE. This concept is consistent with federal disability non-discrimination laws that have been in effect for decades.

Accessibility of medical equipment has been a longstanding priority for members of the ITEM and CPR Coalitions, and we thank the DOJ Civil Rights Division for including this issue in the Proposed Rule and committing to enforce these accessibility standards. In previous communications, the ITEM Coalition and other stakeholders, including the National Council on Disability, have noted that millions of Americans with disabilities encounter serious barriers to accessing medical care when equipment, especially diagnostic equipment, is not accessible to them. In particular, items such as examination tables and chairs, weight scales, mammography machines, MRI machines, and imaging equipment, are often unusable by people with certain disabilities. Oftentimes, patients with disabilities are refused treatment or are unable to undergo necessary parts of their examination due to inaccessibility and the failure to provide reasonable accommodations, such as a safe transfer or the concurrent use of a ventilator, to ensure these patients can access the care they need.

This can result in undiagnosed and untreated conditions, not to mention inconvenience, burden, and embarrassment when people cannot receive care in a provider’s office or other health care setting. Further, the increased use of at-home diagnostic tools, such as blood pressure monitors, thermometers, pulse oximeters, glucose monitors, and other technologies has underscored the need for such equipment to be accessible to and usable by people with disabilities. As one

example, individuals with low vision or blindness, or persons with learning disabilities cannot be expected to read the solely visible output of such devices during a telehealth visit.

The ITEM and CPR Coalitions are pleased that the DOJ is finally proposing to adopt the U.S. Access Board's Standards for accessible MDE. Adopting these long over-due standards into regulation by an enforcement authority such as the DOJ will have a much more significant impact on providers and patients than the MDE standards have had in the past. Individuals frequently continue to encounter inaccessible MDE when they seek medical care. Accessible medical equipment is available and reasonable accommodations can be made in instances where providing accessible equipment would present an undue burden. However, the proliferation of inaccessible equipment persists, resulting in a clear discriminatory impact on individuals with disabilities.

The enforcement of these existing standards is a key first step to ensuring that State and local entities do not discriminate in the provision of their health programs and activities with regards to accessible medical equipment. Making these standards enforceable would meaningfully decrease barriers to access for individuals with mobility, balance, strength, and respiratory impairments. However, to truly ensure nondiscrimination, equipment must be made accessible across the disability population. We urge the DOJ to consider additional medical equipment accessibility standards to account for the needs of individuals with visual, sensory, and other functional limitations. Finally, we note that the Access Board standards are limited (by legislative design) to a relatively narrow category of diagnostic equipment used primarily in physician's offices or hospitals.

We urge the DOJ to ensure that the title II regulations consider the full range of medical equipment that must be made accessible, including at-home diagnostic tools, telehealth equipment, and other equipment frequently used in the health care setting. The development of such additional standards should not delay the adoption of the existing Access Board standards, which have been widely available for years and now must be made enforceable to ensure meaningful access to health programs and activities covered under title II.

Requirements for Accessible MDE

The ITEM and CPR Coalitions support the DOJ's proposal requiring that physician offices, clinics, emergency rooms, hospitals, outpatient facilities, multi-use facilities, and other medical programs that do not specialize in conditions that affect mobility must ensure that at least 10% of MDE, but no fewer than one unit of each type of equipment, are compliant with the MDE Standards. Newly purchased, leased, or otherwise acquired MDE after the effective date of this rule must be accessible until this requirement is satisfied. Additionally, the Proposed Rule includes a dispersion requirement. It states that 10% of MDE meeting the standards must be dispersed proportionally across the entity. The proposed rule also addresses facilities that specialize in treating persons with conditions that affect mobility and requires that at least 20% of each type of MDE used, but no fewer than one unit of each type of MDE, must be in place to comply with MDE Standards. While we would prefer these requirements to be as high as 100%, we note this dispersion requirement constitutes a low bar for compliance and believe it is more than reasonable to avoid undue burden.

We appreciate the opportunity to comment on this Proposed Rule and further commend the DOJ's continued efforts to enhance accessibility of MDE and prevent discrimination against individuals with disabilities in health care. A strong final rule will make significant strides in achieving this goal. Should you have any further questions regarding this letter, please contact the ITEM and CPR Coalition Co-Coordinator at Peter.Thomas@PowersLaw.com or Michael.Barnett@PowersLaw.com or by calling 202-466-6550.

Sincerely,

The Undersigned Members of the ITEM and CPR Coalitions

American Association for Homecare
Access Ready, Inc.
Alexander Graham Bell Association for the Deaf and Hard of Hearing
All Wheels Up
ALS Association*
American Association of People with Disabilities
American Association on Health and Disability
American Cochlear Implant Alliance
American Congress of Rehabilitation Medicine
American Medical Rehabilitation Providers Association
American Music Therapy Association
American Speech-Language-Hearing Association
American Spinal Injury Association (ASIA)
American Therapeutic Recreation Association
Association of Academic Physiatrists
Association of Rehabilitation Nurses
Amputee Coalition*
Autistic Women & Nonbinary Network
Blinded Veterans Association
Brain Injury Association of America*
Center for Medicare Advocacy*
Christopher and Dana Reeve Foundation*
CureLGMD2i
Cure SMA
Falling Forward Foundation*
International Eye Foundation
International Registry of Rehabilitation Technology Suppliers
Lakeshore Foundation
Long Island Center for Independent Living, Inc.
Muscular Dystrophy Association
National Association for Home Care & Hospice
National Association for the Advancement of Orthotics and Prosthetics
National Association of Rehabilitation Research and Training Centers

National Multiple Sclerosis Society*

Perkins School for the Blind

RESNA

Spina Bifida Association*

Team Gleason*

The Simon Foundation for Continence

The Support Sight Foundation

The Viscardi Center

United Cerebral Palsy

United Spinal Association*

VisionServe Alliance

Indicates ITEM and CPR Coalition Steering Committee Member*