



Leaders in Aging Well at Home

November 13, 2023

Melanie Fontes Rainer, Director  
Office for Civil Rights  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

**RE: Section 504 of the Rehabilitation Act of 1973 Proposed Rule**

Dear Director Fontes Rainer:

USAgings applauds the Department of Health and Human Services (HHS), the Office of the Secretary and the Office of Civil Rights (OCR) for its efforts to update the section 504 regulation to promote equity and enhance safeguards for people with disabilities. We greatly appreciate the opportunity to provide comments and help inform the final section 504 rule.

USAgings is the national association representing and supporting the network of Area Agencies on Aging (AAAs) and advocating for Title VI Native American Aging Programs (Title VI programs) that help older adults and people with disabilities live with optimal health, well-being, independence and dignity in their homes and communities. Our members are the local leaders that develop, coordinate and deliver a wide range of home and community-based services (HCBS), including information and referral/assistance, case management, home-delivered and congregate meals, in-home services, caregiver supports, case management, long term care ombudsman programs and more to millions of Americans each year.

We commend OCR/HHS for updating the regulations regarding Section 504 of the Rehabilitation Act of 1973 to bolster protections and promote equity for people with disabilities. Across multiple areas, the proposed rule updates protections against discrimination for people with disabilities including web and mobile accessibility, medical treatment, disability integration, accessible medical equipment and more. Furthermore, the proposed rule updates the rule's definition of disability to bring it in line with modern standards and the realities of those living with disabilities.

According to the U.S. Census Bureau, approximately 24 percent of older Americans living with a disability are ages 65 to 74 years old and 46 percent are age 75 and older.<sup>i</sup> As such, updates to this rule are especially important to USAgings and its members and we are pleased to provide our views. The following are our comments and recommendations regarding the policies included in the Section 504 proposed rule.

## Definitions

### **Updated “Disability” Definition**

USAgings applauds HHS’s update of an outdated definition and replacement of “handicap” with “disability” in the proposed rule, reflecting more contemporary and respectful language. Furthermore, USAgings supports this update as it covers a broader range of specific disorders to include those with physical, intellectual, mental and other types of disabilities.

### **§ 84.10, New Definition of “Most Integrated Setting”**

USAgings believes in preventing discrimination against or segregation of people with disabilities and therefore supports the HHS’ proposed definition for “Most Integrated Setting” in which individuals with disabilities have the opportunity to interact with non-disabled people to the fullest extent possible; can access community activities and programs; and have choice in daily life activities. Our members live out this value in their provision of home and community-based services (HCBS) to older adults, older adults with disabilities and other people with disabilities and their commitment to offering person-centered HCBS whether it is funded by Medicaid, Older Americans Act or other programs. **We have questions, however, about how the “most integrated setting” language in another section (§ 84.76) of the proposed rule may impact non-Medicaid AAA programs that focus on specific populations, such as those living with dementia.**

### **Subpart I: Web, Mobile, and Kiosk Accessibility**

USAgings supports the principles behind HHS’s efforts to ensure the “programs and activities of recipients of federal financial assistance” (i.e., any organization that receives federal funding from HHS, directly or indirectly) ensure any web content, mobile apps and kiosks are accessible for individuals living with disabilities. Increasingly, internet access and digital literacy are needed to fully participate in civic life. Just as USAgings members have worked to breach the digital divide and get older adults connected to social, health and other online activities, so, too, do we want to ensure all people with disabilities have equal access to information and assistance. There are, however, some practical considerations for federally funded entities such as AAAs, Title VI programs and their service providers that HHS should be reflected in the final rule—and we provide additional information below.

### **§ 84.84, Requirements for Web and Mobile Accessibility**

**While we salute the effort to ensure people with disabilities have access to information and other resources on the internet, adding this requirement on all HHS-funded entities will, for many USAgings members, create added cost and complication.** While USAgings members do all they can to ensure access to information and services to the consumers they aim to serve, for many agencies this would be a new level of accessibility and one that will require a financial and

time investment. That's why we appreciate HHS's recognition of the fact that some funded agencies may not be able to meet these standards due to financial and administrative burdens and that others may simply need a longer timeline to comply.

USAgings appreciates the proposed longer three-year timeline small recipients (14 staff members or less) would have for compliance before the guidelines are finalized. For recipients with 15 or more staff members, the proposed rule provides a two-year implementation timeline, which we expect to be sufficient time for most recipients to comply with the guidelines.

As we noted, small AAAs and Title VI programs, not to mention the Aging Network's tens of thousands of service providers who receive federal HHS funding via their AAA and Title VI programs' contracts or grants, may not have the financial resources to hire or contract services to ensure compliance with this new standard. USAgings appreciates and supports the proposed language that allows exception from compliance for recipients who prove it would result in undue financial and administrative burdens or would fundamentally alter the nature of a program or activity. However, the compliance exception process outlined in the proposed rule is vague and does not provide details on how compliance would be measured.

However, neither the proposed rule nor the preamble section describes how HHS (through its compliance framework) would approve or deny the written statement that describes how the guidelines would result in undue financial and administrative burdens. **USAgings highly encourages HHS to make these requirements and this process clearer in its final rule.**

While USAgings appreciates the flexibility outlined in the proposed rule, there are lingering questions about how compliance would ultimately work. The NPRM notes HHS is seeking to develop a compliance framework based on stakeholder and public feedback on the proposed regulation. **USAgings would like to share our questions on the development of the compliance framework:**

- Does HHS plan to include the framework as part of the final rule? Or would it be developed following the final rule?
- Will the compliance framework approve or deny written statements from recipients that state they cannot comply with the guidelines due to undue financial or administrative burden? Will these written statements be evaluated or taken in good faith? If HHS denies a written statement (i.e., the department deems that the recipient should be able to comply and the letter does not, in the government's view, justify an exception from compliance), will the recipient be forced to comply with the rule?
- Will the final rule include guidelines for what must be included in the written statement from a recipient proving due to undue financial or administrative burden? Will the recipient be required to outline their finances and staffing structure? What kind of specific information is the department looking for? USAgings highly encourages the final rule to include clear and precise requirements or recommendations for what kind of information should be

included in the written statement to ensure recipients with undue financial and/or administrative burdens can accurately describe their barriers to compliance.

- Are there consequences for non-compliant recipients that HHS deems able to meet the guidelines? The proposed rule does not seem to mention any consequences, such as the revocation of HHS funding or similar actions, for non-compliant recipients.

While USAging does not recommend any specific framework for compliance, we encourage HHS to keep the proposed flexibilities in place for the final rule's compliance framework and extend them to ensure recipients are not burdened with compliance if they are unable to meet the guidelines due to budgetary constraints. If a recipient is not fully compliant with the guidelines but is making a good faith effort to conform, USAging encourages HHS' compliance framework to outline the non-compliant sections and give the recipient ample time and opportunity to correct any issues on websites and/or mobile apps.

## **Subpart F: Health, Welfare, and Social Services**

### **§ 84.56, Medical Treatment and § 84.57, Value Assessment Methods**

USAging applauds the proposed language to prevent discrimination against individuals with disabilities in medical treatment under any program or activity that receives federal financial assistance. This would help to reinforce that the life of a person with a disability does not have lesser value than that of a person without a disability and support preventing stereotypes or biases about individuals with disabilities.

The proposed rule explicitly addresses numerous discriminatory actions such as denial of medical treatment and denial of treatment for a symptom or condition separate from the individual's existing disability. The proposed language would prohibit unequal treatment options for those with a disability and ensure individuals with disabilities consent to any treatment before it occurs. The language also prevents the use of any value assessment method, measure, assessment or tool that discounts the value of life extension on the basis of disability to deny or afford an unequal opportunity, aid, benefit, or service to qualified individuals with disabilities.

**USAging also believes that HHS should consider other rulemaking opportunities to prohibit ageist and/or discriminatory practices that devalue the lives of older adults or anyone with serious health conditions or otherwise impede their access to health care or social care.**

## **Subpart G: General Requirements**

### **§ 84.76, Integration**

USAgings supports HHS' efforts to outline in greater detail the obligations of HHS federal funding recipients to serve individuals with disabilities in the most integrated setting appropriate for each person's needs.

USAgings agrees that individuals with disabilities should be able to receive long-term care and other services and supports in the most integrated setting; however, given the breadth of HHS-funded programs and activities, we have some questions and potential concerns about how this update would impact programs designed for certain subpopulations of older adults.

- **First, the rule does not adequately address the scope of applicability of this rule.** USAgings believes the final rule must provide clarity on what type of HHS-funded programs and activities are subject to this mandate? For example, does the integration mandate apply to Older Americans Act programs? Medicaid HCBS programs such as adult day services? Medicare or Medicare Advantage services? USAgings believes the final rule should specify the types of HHS programs that are subject to the integration mandate.
- **Second, regarding the practical application of such a provision,** does the mandate only refer to a person's primary services, such as whether they live in an institutional setting or receive services in their home, or does it apply to all HHS-funded endeavors? For example, if a AAA offers a program specifically geared towards older adults living with Alzheimer's or other dementias, would that be considered segregation and violate the scope of the integration mandate? Would a fall-prevention program aimed at a specific set of older adults based on their health risks fall under this mandate? A diabetes self-management program that is only open to those with the disease? Programs like the aforementioned are critical for providing healthy aging and HCBS in a person-centered way and to address a subpopulation's specific needs. USAgings does not see these offerings as segregated settings for many reasons, but HHS must provide clarification to avoid confusion and potential loss of valuable resources to people with disabilities, particular those who are older, have chronic health conditions and/or are living with dementia.

### **Conclusion**

USAgings appreciates the opportunity to provide our perspective. We look forward to HHS consideration of our views, recommendations and questions outlined in this comment letter. We welcome future conversations and collaboration to ensure individuals with disabilities do not face discrimination in accessing health care, social care or other resources supported by HHS funding.

If you or your staff have any questions about our comments, please contact our policy team: Amy Gotwals, Chief, Public Policy and External Affairs,

[agotwals@usaging.org](mailto:agotwals@usaging.org); Olivia Umoren, Director, Public Policy and Advocacy, [oumoren@usaging.org](mailto:oumoren@usaging.org); and Seth Ickes, Public Policy Associate, [sickes@usaging.org](mailto:sickes@usaging.org).

Sincerely,

A handwritten signature in black ink that reads "Sandy Markwood". The signature is written in a cursive, flowing style.

Sandy Markwood  
Chief Executive Officer

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<sup>i</sup> The U.S. Census Bureau, *2021 American Community Survey*, 2021, <https://data.census.gov/table?q=disability>