

# Anti-Discrimination Statutes



## Rehabilitation Act Regulations

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(10/4)



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# Written resources

- Powerpoint slides
- Regulations, 45 CFR part 84, <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-84>
- Final rule + commentary, 89 FR 40066, <https://www.federalregister.gov/documents/2024/05/09/2024-09237/nondiscrimination-on-the-basis-of-disability-in-programs-or-activities-receiving-federal-financial>
- HHS Fact Sheet, <https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973/ocr-detailed-504-fact-sheet/index.html>



# Anti-Discrimination Laws

## LAWS

- Civil Rights Act Title VI
- Americans with Disability Act
- Age Discrimination Act
- Affordable Care Act § 1557
  - HHS issued new rules on 5/6/24.
  - Effective 7/5/24
  - (45 CFR part 92; 89 FR 37522)
- **Rehabilitation Act § 504**
  - **HHS issued new rules on 5/9/24.**
  - **Effective 7/8/24**
  - (45 CFR part 84; 89 FR 40066)
- State discrimination laws



Apply if receive federal  
money, e.g., funds from  
HHS, Medicare/Medicaid

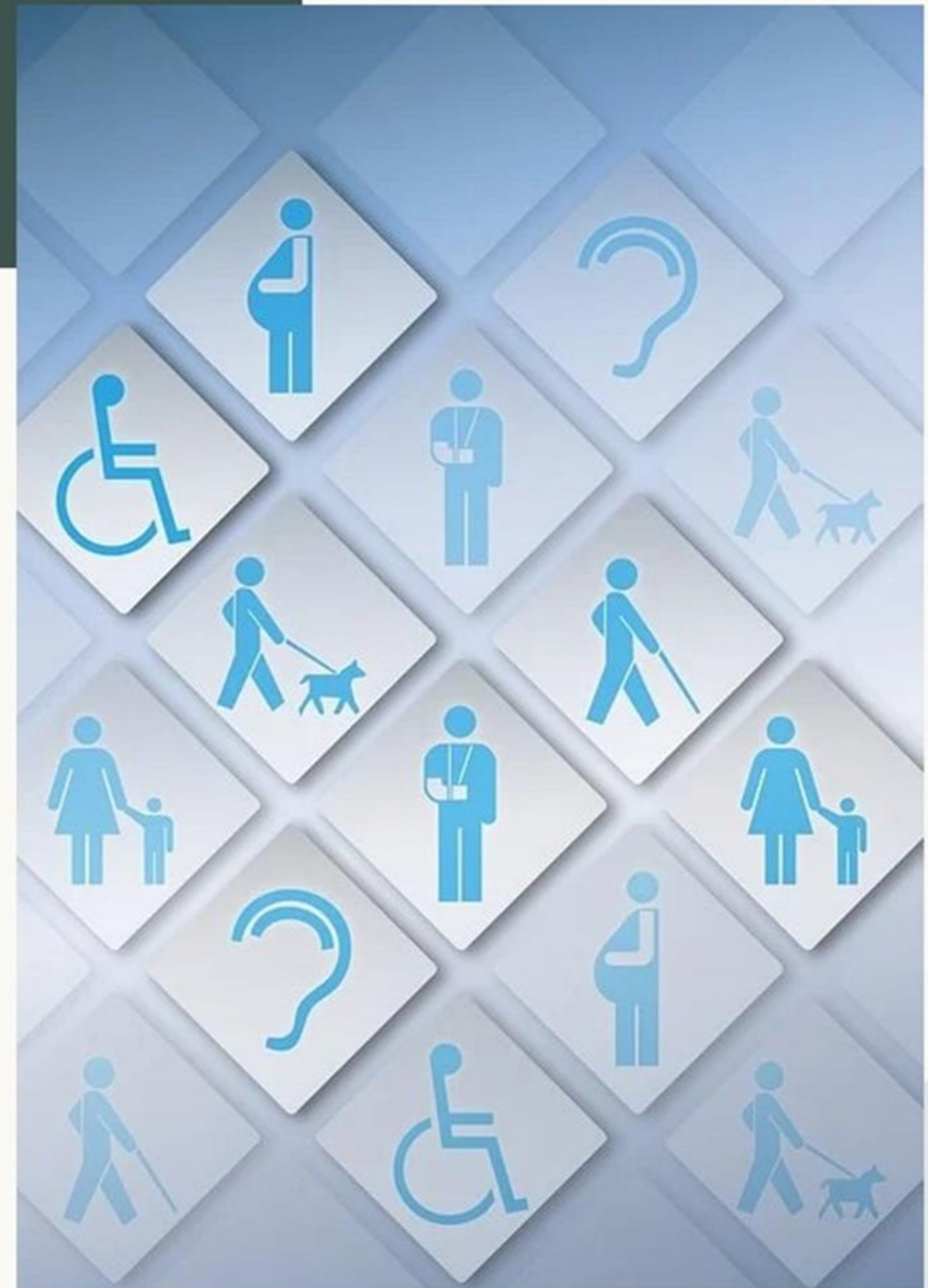
## RISKS

- Persons with disabilities
- Persons with limited English proficiency
- Sex discrimination
- Physical access
- Websites
- Facilities and equipment
- Service animals
  - Service animals and mini-horses
  - Not emotional support animals



# Rehab Act Rule: 45 CFR part 84

- Must comply with all anti-discrimination statutes and regs.
  - They each have some differences.
  - New Rehab Act Rules designed to track ADA Rules.
- New Rehab Act Rules focus on:
  - Discrimination in medical treatment decisions.
  - Care provided in most integrated setting.
  - Web content, apps and kiosks.
  - Accessible medical diagnostic equipment.
  - Mobility devices.
- Rehab Act Rule still includes other items, e.g.,
  - Facility accessibility.
  - Communication and telecommunication.
  - Service animals.





# Rehab Act Rule: Application

- Applies to **recipients of federal financial assistance**, *i.e.*,
  - “any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the Department provides or otherwise makes available assistance in the form of ... funds [or] any other thing of value by way of grant, loan, contract, or cooperative agreement.”  
(45 CFR 84.10)
- Applies to “federally funded health and human services programs, such as hospitals, health care providers participating in CHIP and Medicaid programs, state and local human or social service agencies, and nursing homes.” (<https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973/part-84-final-rule-fact-sheet/index.html>)



# Rehab Act Rule: Application

- Applies to **persons with disabilities**, *i.e.*,
  - A physical or mental impairment that substantially limits one or more of the major life activities of such individual
  - A record of such an impairment; or
  - Being regarded as having such an impairment.
  - NOT homosexuality or bisexuality.

(45 CFR 84.4)

- “The definition of ‘disability’ shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of section 504.”

(45 CFR 84.1(b), 84.4(a)(2)(i))

*For example:*

- *Deaf or blind*
- *Intellectual disability*
- *Missing limb*
- *Mobility impairment*
- *Disease, e.g., cancer, diabetes, epilepsy, HIV, long-COVID, etc.*
- *Major depressive disorder, bipolar, PTSD, TBI, OCD, etc.*
- *Obesity*
- *Others*

(45 CFR 84.4)



# Rehab Act Rules: Discrimination

- May not discriminate against person on the basis of disability.
- Must generally accommodate persons with disability so as to ensure they can access and receive the benefits of program services and activities unless:
  - Person poses a direct threat. (45 CFR 84.75)
  - Action would fundamentally alter nature of services or impose unreasonable burden.  
(See, e.g., 45 CFR 84.22, 84.68(b)(7), 84.78, 84.81, and 84.88)
    - Recipient has burden of proof.
    - Must consider all recipient's resources.
    - Must be accompanied by written statement explaining decision.
    - Must take other steps to maximize benefit to persons with disability.

(See 45 CFR 84.81 and 84.88)



# Rehab Act Rule: Enforcement

- Same enforcement procedures as apply to Title VI of the Civil Rights Act of 1964
  - HHS (OCR) conducts complaint investigations and compliance reviews.
  - Agency may force corrective action through settlement agreements.
  - Possible loss of federal funding.
  - Possible civil or administrative penalties by DOJ.
  - Private lawsuits for injunctive relief and/or damages.

## HHS Office for Civil Rights Issues Notice of Violation to Puerto Rico Psychiatric Hospital for Failure to Comply with Federal Civil Rights Laws on Disability

*OCR takes enforcement action against San Juan Copestrano Hospital to strengthen access to health services and ensure effective communication for individuals who are deaf or hard of hearing*

Today, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) announced the issuance of a Letter of Finding and Notice of Violation against the San Juan Copestrano Hospital, following a thorough investigation, for violating disability civil rights laws when it failed to provide a patient with a sign language interpreter, under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (Section 1557).

\*Effective communication is essential for the health and safety of every patient.

On 9/12/24, HHS asserted claims against a hospital for failing to provide a sign language interpreter; handwritten notes, lip reading, or gestures were insufficient.



# Anti-Discrimination Laws: Recent OCR Enforcement

Date	Alleged Conduct	Resolution
10/10/24	Maryland failed to accommodate persons with disability in programs	Policy and training
9/12/24	Psych hospital failed to provide sign language interpreter.	Policy and training
8/5/24	Imaging network denied mammography patient who used wheelchair.	Policy and training
6/21/24	Puerto Rico agency failed to provide sign language interpreters.	Policy and training
6/4/24	ENT practice failed to provide aids to persons with hearing challenges.	Policy and training
11/13/23	SNF allegedly denied admission to individuals because they were taking Suboxone or methodone to treat opioid use disorder.	Policy and training
8/30/23	Home Health agency denied home health care services based on HIV status	Policy and training
8/8/23	Pa DHS denied application as foster parent because she receives SUD medication	Policy and training
6/16/23	CVS and Walgreens failed to fill prescriptions for methotrexate and misoprostol unrelated to abortion	Policy and training
5/15/23	MCR Health failed to provide auxiliary aid to deaf wife who accompanied patient.	Policy and training
3/23/23	Dearborn OBGYN refused request for sign language interpreter, cancelled appointment and terminated her as patient	Policies, training \$7,500 in damages



# Rehab Act Rules: 15+ Employees

- If have 15+ employees, must:
  - Designate at least one person to coordinate efforts to comply.
  - Adopt a grievance procedure.

(45 CFR 84.7)



# Rehab Act Rules: Notice and Signage

- Must make available info regarding requirements as necessary to apprise patients of protections against disability discrimination.  
(45 CFR 84.8)
- Must implement procedures to ensure interested persons with impaired vision or hearing can obtain info as to existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.  
(45 CFR 84.22(f))
- Must provide signage at all inaccessible entrances directing persons to accessible entrance or facilities.  
(45 CFR 84.480(b))
- Recipients that provide notice concerning benefits, services, consents, etc., must take steps necessary to ensure persons with disabilities are not denied effective notice.  
(45 CFR 84.52)



# Rehab Act Rules: Medical Treatment

- No person with a disability shall be subject to discrimination in medical treatment under any program or activity that receives federal financial assistance, including allocation or withdrawal of any good, benefit or service.

(45 CFR 84.6)

- Cannot use any measure, assessment or tool that discounts the value of life extension on the basis of disability to deny or afford unequal opportunity to qualified individuals with disabilities.

(45 CFR 84.57)

- “[R]ecipients cannot deny or limit clinically appropriate treatment to a qualified individual with a disability when the denial is based on bias or stereotypes, a belief that the individual will be a burden on others, or a belief that the life of an individual with a disability has a lesser value than the life of a person without a disability.”
- Beware crisis standards of care, organ donor criteria, medical futility, withdrawal of life-sustaining treatment, “better off dead”, clinical research, etc.

(HHS Fact Sheet, <https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973>)



# Rehab Act Rules: Communication

- Must take appropriate steps to ensure communications with persons and companions with disability are as effective as communications with others.
  - Furnish appropriate auxiliary aids and services if necessary.
  - Type of auxiliary aid will vary by circumstances.
  - Give **primary consideration** to request of patient or companion.
- “Companions” = a family member, friend, or associate of an individual seeking access to a program or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate.

(45 CFR 84.77)



# Rehab Act Rules: Communication

- Auxiliary aids include:
  - Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
  - Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
  - Acquisition or modification of equipment or devices; and
  - Other similar services and actions.

(45 CFR 84.10)



# Rehab Act Rules: Communication

- May not:
  - Require person to bring another individual to interpret.
  - Rely on adult accompanying individual to interpret except:
    - In emergency involving imminent threat and no other interpreter available; or
    - Individual with disability specifically requests accompanying adult to interpret, person agrees to interpret, and reliance on such person is appropriate under circumstances.
  - Rely on a minor child except in emergency involving imminent threat and no other interpreter available.

(45 CFR 84.77)



# Rehab Act Rules: Communication

- If rely on qualified interpreters via video remote interpreting services, ensure:
  - Real-time, full-motion video and audio over appropriate connection that provides high quality video images.
  - Sharply delineated image large enough to for both parties to see each other's face, arms, hands and fingers.
  - Clear, audible transmission of voices.
  - Adequate training to users of technology.

(45 CFR 84.77)



# Rehab Act Rule: Telecommunications

- If use telephone with patients, must use text telephones (TTYs) or equally effective system to ensure communication with persons who are deaf or hard of hearing or have speech impediment.
- If use automated attendant system (e.g., voicemail and messaging), must provide real time communication with person using auxiliary aids.

(45 CFR 84.78)



# Rehab Act Rule: Kiosks

- No qualified person individual with a disability shall, on the basis of disability, be denied benefits of or otherwise be subjected to discrimination under any program or activity of a recipient provided through a kiosk.

(45 CFR 84.83)

- “Recipients can [comply] by ensuring that the kiosks they use are accessible to people with disabilities or by implementing procedures that allow people with disabilities who cannot use kiosks because of inaccessible features to access their programs without using a kiosk. For example, a recipient with insufficiently accessible kiosks may be required to allow people with disabilities to go directly to the personnel at the main desk to register for necessary services.”

(HHS Fact Sheet)



# Rehab Act Rule: Web and Mobile Accessibility

- Web content and mobile apps must be readily accessible by persons with disabilities.
  - **May 11, 2026:** If have 15+ employees, recipients must ensure web content and mobile apps comply with Level A and Level AA criteria specified in Web Content Accessibility Guidance (WCAG) 2.1.
  - **May 10, 2027:** All recipients must comply with Level A and Level A WCAG 2.1
- Exceptions
  - Doing so would result in a fundamental alteration of the program or undue financial and administrative burdens.
  - Archived web content that satisfies certain conditions.
  - Preexisting conventional electronic documents that are not currently used in the program.
  - Content posted by a third party unless due to a contract, or other arrangement to post.
  - Password protected content about an individual but must still accommodate persons with disabilities.
  - Social media posts that predate the deadlines specified above.
  - Noncompliance has minimal impact on access.

(45 CFR 84.85 and 84.89)



# Rehab Act Rules: Accessibility

- May not exclude qualified individual with a disability because of inaccessible facilities.

(45 CFR 84.21)

- **Existing facilities as of 1977:**

- Not necessarily required to make existing facilities accessible.
- Not required to act if would fundamentally alter nature of program or result in undue burden.
- May need to acquire equipment, reassign services to accessible buildings, assign aids, arrange home visits, etc.
- If recipient has less than 15 employees, may confer with individual and, if unable to accommodate, refer to another provider.

(45 CFR 84.22)

- **Construction and alterations after 1977:**

- Ensure compliance with applicable accessibility standards.
- Specific requirements differ for public entities v. private entities.

(45 CFR 84.23)



# Rehab Act Rules: Mobility Devices

- Must allow individuals with mobility disabilities to use:
  - Manually powered aids in areas open to pedestrian use.
    - E.g., wheelchairs, walkers, crutches, canes, braces, etc.,
  - Power-driven mobility devices unless demonstrate that class of device cannot be operated in accordance with legitimate safety requirements.
    - Consider type, size, weight, speed of device; facility's volume of pedestrian traffic; facility design and operations; safety measures; risk of harm to others.
- May not ask person using device about nature or extent of disability.
- May ask person using power-driven device credible assurance that device is required because of disability.

(45 CFR 84.74)



# Rehab Act Rule: Accessible Medical Equipment

- May not discriminate against persons with disabilities in use of medical diagnostic equipment (MDE), *e.g.*, exam tables, exam chairs, weight scales, mammography equipment, X-ray machines and other radiological equipment, etc.)

(45 CFR 84.92 and 84.93)

- All MDE purchased, leased or lease renewed after **7/8/24** must satisfy Standards for Accessible MDE unless and until scoping standards set forth below are satisfied:
  - **General:** if use MDE, at least 10% but no fewer than 1 of each type of MDE must meet Standards.
    - *E.g.*, physician offices, clinics, hospitals, ERs, outpatient facilities, etc.
  - **Programs that specialize in treating mobility:** at least 20% but no fewer than 1 of each type of MDE must meet the standards.

(45 CFR 84.92).

- Consider reassignment of services to alternate accessible locations, home visits, delivery of services at alternate accessible sites, or the purchase, lease, or other acquisition of accessible MDE.



# Rehab Act Rule: Exam Tables

- By **7/8/2026**:
  - If use an exam table, must have at least 1 exam table that meets MDE Standards.
  - If use a weight scale, must have at least 1 weight scale that meets MDE standards.

(45 CFR 84.92(c))



# Rehab Act Rule: Summary

## *By 7/8/24*

- Cannot discriminate based on disability, i.e., must provide meaningful access to persons with disability, e.g., facility accessibility, interpreters, auxiliary aids, service animals, etc.
- Newly purchased or leased medical diagnostic equipment (MDE) must meet accessibility standards.
- At least 1 or 10% of MDE must meet Standards for Accessible MDE.

## *By 5/11/26*

- If have 15+ employees, must ensure web content and mobile apps comply with Web Content Accessibility Guidelines (WCAG) unless fundamental alteration or undue burden.

## *By 7/8/26*

- At least one exam table and weight scale must meet Standards for Accessible MDE.

## *By 5/10/27.*

- All recipients must ensure web content and mobile apps comply with WCAG.

(45 CFR part 92)



# Rehab Act Rules: Service Animals





# Rehab Act Rules: Service Animals

- Service animal =
  - A Service animal that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, which works or tasks must be directly related to the disability.
  - Miniature horse that has been individually trained to work or perform tasks for individual with disability.
- NOT other animals
- NOT animals that provide emotional support, comfort or companionship.

(45 CFR 84.10 and 84.73(i))



# Rehab Act Rules: Service Animals

- Must permit person with disability to use service animal unless:
  - Service animal is out of control and handler does not take effective action to control it; or
  - Service animal is not housebroken.
- Must allow service animal to accompany individual with disability in all areas where members of public, participants in programs, or invitees are allowed to go.

(45 CFR 84.73)

- Service animal usually allowed in areas such as admissions and discharge offices, emergency room, inpatient and outpatient rooms, examining and diagnostic rooms, clinics, rehab therapy areas, cafeteria and vending areas, pharmacy, restrooms, and all other areas of the facility where health care personnel, patients, and visitors are permitted without added precaution.
- May generally exclude a service animal from limited-access areas that employ general infection-control measures, such as operating rooms and burn units.

(89 FR 40114)

- Tracks ADA rules.



# Rehab Act Rules: Service Animals

- May not ask about nature or extent of person's disability that requires service animal.
- May only ask following 2 questions:
  1. Is animal required because of a disability?; and
  2. What work or task the animal is trained to perform?
- May not ask for documentation or proof that service animal has been certified, trained or licensed as a service animal.
- May not require payment of surcharge but may require payment for damage if other persons with pets are required to pay for damage.

(45 CFR 84.73)



# Rehab Act Rules: Service Animals

- Service animal must be under control of handler.
  - Have a harness, leash or other tether unless disability prevents handler from using same or doing so interferes with Service animal's work or task, or
  - Voice controls, signals or other effective means of control.
- Recipient is not responsible for care or supervision of service animal.  
(45 CFR 84.73(d)-(e))
- May allow family or friend come in and care for the animal while at the facility.



<https://www.ada.gov/topics/service-animals/>



#### ADA Information Line

Talk to us at 800-514-0301 | 1-833-610-1264 (TTY)

- M, W, F: 9:30am - 12pm and 3pm - 5:30pm ET
- Tu: 12:30pm - 5:30pm ET, Th: 2:30pm - 5:30pm ET

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## Service Animals

The ADA explains what businesses and state/local governments must do to make sure that they do not discriminate against a member of the public with a disability who uses a service animal.

Generally, businesses and non-profits that are open to the public as well as state/local governments must allow service animals to go most places where the public can go. This is true even if they have a “no



# Additional Resources





<https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973/index.html>

Section 1557	+
Hill-Burton	
Section 1553	
Special Topics	+
HHS Nondiscrimination Notice	

- Final Rule
- Fact Sheet
- Detailed Fact Sheet
- YouTube video
- Webinar

## OCR Finalizes Section 504 Rule to Strengthen Protections Against Disability Discrimination

On May 1<sup>st</sup> 2024, OCR finalized a rule that prohibits discrimination on the basis of disability. This rule, titled *Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance*, advances equity and bolsters protections for people with disabilities under Section 504. Reflecting over 50 years of advocacy by the disability community, the Section 504 Final Rule clarifies and strengthens civil rights protections for people with disabilities, addresses discrimination in medical treatment, adds enforceable standards for accessible medical diagnostic equipment, and ensures accessible web content and mobile apps. The rule advances the promise of the Rehabilitation Act and helps protect people with disabilities from experiencing discrimination in any program or activity receiving funding from HHS because of their disability. To learn more, follow the links below:

- Read the [Final Rule](#)
- Read the [Fact Sheet \(en español\)](#)
  - Read the [Detailed Fact Sheet](#)
- Read the [Press Release](#)
- Director's YouTube video in [English](#) [↗](#) | [Spanish](#) [↗](#)
- [Social Media Toolkit: Section 504 - Disability Rights are Civil Rights - PDF](#)



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HART.COM/HEALTHCARE](https://www.hollandhart.com/healthcare)

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- White papers
- Other

The screenshot shows the Holland & Hart website's Healthcare section. At the top, the logo and navigation links for 'People' and 'Capabilities' are visible, along with a search bar. The main header features the word 'Healthcare' in large white text on a dark background, with a sub-navigation bar containing 'Overview', 'Expertise', 'People', and 'News and Insights'. Below this, the 'Areas of Focus' section includes three icons: a computer monitor for 'WEBINAR RECORDINGS', an open book for 'PUBLICATIONS', and a caduceus for 'IDAHO PATIENT ACT TIMELINE'. To the right, there are buttons for 'Mergers and Acquisitions' and 'Real Estate'. Further down, a 'Primary Contacts' section features a portrait of Kim Stanger. The footer contains the Holland & Hart logo.

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# Healthcare

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Mergers and Acquisitions Real Estate

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**IDAHO PATIENT ACT TIMELINE**

gal advice.

and highly regulated. In an ultra-  
l issues so they can focus on

:back Statute, HIPAA,  
ig; mergers, acquisitions, and joint  
; government investigations and  
ax; employee benefits; and  
our healthcare clients face that we

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# Questions?



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