



November 13, 2023

U.S. Department of Health and Human Services, Office for Civil Rights
Attention: Disability NPRM, RIN 0945-AA15
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically via: <https://www.regulations.gov/commenton/HHS-OCR-2023-0013-0001>

Dear Director Fontes Rainer,

LeadingAge appreciates the intent of the Office of Civil Rights (OCR) to update the regulations governing Section 504 of the Rehabilitation Act to further outline prohibited discriminatory practices.

The mission of LeadingAge is to be the trusted voice for aging. We represent more than 5,000 mission driven aging services providers that touch millions of lives every day. Alongside our members and 38 state partners, we use applied research, advocacy, education, and community-building to make America a better place to grow old. Our membership encompasses the entire continuum of aging services. We bring together the most inventive minds to lead and innovate solutions that support older adults wherever they call home.

As advocates for high quality long-term services and supports across the aging services continuum, LeadingAge applauds OCR's goals of improving access to services and providers available to serve individuals with disabilities by strengthening regulations protecting them against discrimination.

LeadingAge is supportive of the proposed rule. We appreciate the need to codify many of the provisions included, and support efforts to extinguish discrimination based on disability. With very careful consideration, we have concerns about possible interpretations of the definition of disability particularly when used to determine compliance with the integration mandate (Subpart G 84.76). We are fully supportive of the availability of services to all populations in settings of their choosing, specifically allowing access to the greater community and activities of their own selection. Our members' experience with a similar requirement in the Home and Community Based Settings Final Rule¹ (the Rule) has been fraught with challenges. Our members are committed to person centered planning that promotes dignity and fulfilling activities aligned with aging individuals' goals.

There is friction with the Rule when a prescriptive approach to person centered planning is assumed to be optimal for a broad and diverse range of people and needs. The Rule has been interpreted to require 'field trips,' 'opportunities for gainful employment or volunteering,' and 'unrestricted access to visitors' for the entire population of people receiving home and community-based services under Medicaid. LeadingAge is supportive of these integrative activities for populations in which they are appropriate and desired; we are not supportive of requiring providers of services to older adults with advanced

¹ <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-441#441.301>

dementia or other aging-specific limitations to undergo a planning process that offers' these activities to their participants only to check boxes on someone's grid. This is not person centered.


As we review the current rule in question, we have related concerns that integration could be viewed under a similar lens. Older adults are not all the same, and their needs and wants vary from younger populations with limitations from a physical or developmental/intellectual disability. This is not to be stretched to assume that we aren't supportive of community services and integration for older adults, but rather to caution against an overly prescriptive notion of integration. Services available to all populations have made strides to bridge the gaps between acuity levels. The system, over recent decades, has transitioned towards more inclusive and community-integrated services, offering less institutional options and more person-centered care even in hospitals and nursing homes. LeadingAge and our members are grateful for this evolution.

As we continue this transformation, we want to stress that person centeredness and integration with community must be understood as philosophical paradigms with conceptual frameworks that are malleable to truly reflect individuality. Creating a floor through regulation is laudable and we urge ongoing flexibility as providers remain nimble to both safely serve older adults and promote person centered planning as a central tenet of service delivery.

Conclusion

LeadingAge thanks the Director for the opportunity to submit comments on proposed changes to Section 504 of the Rehab Act. We hope HHS will use LeadingAge as a trusted resource and stakeholder in the aging services space both for this rule and in the future.

Sincerely,



Georgia Goodman
Director, Medicaid Policy
LeadingAge
ggoodman@leadingage.org