



November 13, 2023

The Honorable Xavier Becerra  
U.S. Department of Health and Human Services  
Attention: Disability NPRM, RIN 0945-AA15  
200 Independence Avenue, SW  
Room 509F, HHH Building  
Washington, DC 20201

**RE: Discrimination on the Basis of Disability in Health and Human Service Programs or Activities**

Dear Secretary Becerra:

On behalf of the American Speech-Language-Hearing Association, I appreciate the opportunity to comment on the U.S. Department of Health and Human Services' proposed rule regarding the prohibition of "Discrimination on the Basis of Disability in Health and Human Service Programs or Activities" in the context of Section 504 of the Rehabilitation Act of 1973.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 228,000 members and affiliates who are audiologists; speech-language pathologists (SLPs); speech, language, and hearing scientists; audiology and speech-language pathology assistants; and students. Audiologists and SLPs are critical members of a care team who are specially trained to identify areas of strength and weakness in communication needs. Our mission is to make effective communication, a human right, accessible and achievable for all.

ASHA appreciates the Department of Health and Human Services' commitment to protecting the civil rights of individuals with disabilities through the systematic updating of these regulations for the first time in decades. We generally support the Department's proposed changes to Section 504 of the Rehabilitation Act including "new requirements prohibiting discrimination in the areas of medical treatment; the use of value assessments; web, mobile, and kiosk accessibility; and requirements for accessible medical equipment, so that persons with disabilities have an opportunity to participate in or benefit from health care programs and activities that is equal to the opportunity afforded others." Furthermore, ASHA supports updates to the "definition of disability and other provisions to ensure consistency..." and making "other clarifying edits, including updating outdated terminology and references." However, we'd like to offer the following suggestions to strengthen the proposed regulation.

Through screening, assessment, intervention, and caregiver training, audiologists and SLPs serve the needs of individuals with a wide variety of communication disorders and help improve individual health and educational outcomes. As specialists in communication issues, they are experienced with the use of augmentative and alternative communication (AAC) and working with American Sign Language (ASL) interpreters. Audiologists and SLPs can provide individuals with disabilities critical training and consultative support on the use of auxiliary aids and services. Training on the use of AAC provided to individuals, families/caregivers, and providers is critical for effective communication between the individual and their care team to make autonomous medical decisions. In addition, when providing training or educational services, it is necessary for individuals to have resources that allow them to be as independent as possible.

## Communications

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ASHA appreciates the Department's request for comments "on the importance of providing information in plain language for individuals with cognitive, developmental, intellectual, or neurological disabilities" and "...whether plain language is more appropriately considered a reasonable modification that an individual must request, or if it should be considered an auxiliary aid or service." **ASHA supports the use of plain language and specifically requests that it be classified as an auxiliary aid to the extent practicable.** It should not be incumbent on individuals with communication disorders to communicate their needs for reasonable modification. In addition to plain language, other communication assistive devices and supports such as AAC, pictures, or gesturing should be accommodated. This could include step-by-step instructions, visual images of procedures or steps, and access to alternative communication options as needed. Adequate time should be provided to individuals with disabilities to process given information and respond verbally or non-verbally. It is important to support the self-determination and independence of individuals with disabilities. Not all people choose to disclose their disability, nor should they have to in order to access public services.

## Crisis Standards of Care and Value Assessment Methods

ASHA supports both the "Crisis Standards of Care" that ensure criteria for allocating scarce medical treatments do not discriminate against people with disabilities as well as the "Value Assessment Methods" framework, which prohibits a value assessment method that assigns a greater value for extending the life of people without disabilities than to extending the life of people with disabilities.

## Accessible Medical Equipment

We also support the adoption of "Standards for Accessible Medical Diagnostic Equipment." These standards apply to several assessment methods for audiologists and SLPs including modified barium swallow studies (MBSS) and fiberoptic endoscopic evaluation of swallowing (FEES) to diagnose swallowing disorders (dysphagia), and rotary chairs for vestibular testing. It is important that professionals, such as audiologists and SLPs, are included where their scope of work is a vital part of such decision making and support for individuals with disabilities. For example, when use of a radiographic fluoroscopic machine or room is not feasible due to disability, limited mobility, transportation, or positioning, an SLP may implement a C-Arm in place of MBSS.

## Definitions

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ASHA generally supports the proposed rule's updated definitions. However, we offer the following feedback on selected definitions that most closely align with the audiology and speech-language pathology scopes of practice.

### §84.10 Definitions of Web; Mobile App; and Kiosk Accessibility Changes

Thank you for the requirements to "take appropriate steps to ensure effective communication, including through the provision of appropriate auxiliary aids and services, which include accessible electronic and information technology..." This may be especially important for individuals who access web-based content from agencies in their home or educational environments and will help standardize accessibility in schools and other educational facilities that support child and adult learners. This may also positively impact access for members of the public who consume and use digital services from agencies or businesses that rely on electronic and web-based content. **To further enhance these requirements, ASHA recommends**

**including references to specific communication disorders (e.g., hearing loss, aphasia) and appropriate aids and services (e.g., whiteboard), to the extent practicable.**

Of note, the proposed Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standard of accessibility does not offer the feature to ensure that accessibility in languages other than English will be supported. WCAG 2.2, released on October 5, 2023, better supports accessibility in different languages. **ASHA recommends that the Department adopt the WCAG 2.2 level AA standards of accessibility** to ensure that standards of accessibility extend to supporting Americans with disabilities who also use and understand languages other than English.

#### **§84.4 Definition of Disability**

While ASHA understands that section 84.4 is intended to provide an illustrative and non-exhaustive list of examples of disorders or conditions, we recommend the Department consider additional examples of physical or mental impairment within its definition of disability, such as “expressive and receptive language impairment” and “cognitive impairment,” to highlight often overlooked invisible disabilities.<sup>1</sup> In addition, we recommend the Department consider changing the term “hearing impairment” to “auditory impairment” because it would be more inclusive of other diagnoses of the auditory system, such as tinnitus and hyperacusis. It would also be valuable to include “vestibular disorders” that can negatively impact an individual’s ability to safely maintain balance or participate in activities of daily living.

#### **§84.72 Personal Devices and Services**

To clarify the types of communication devices and services that fall under “personal devices and services:” versus those that fall under “auxiliary aids and services,” ASHA suggests adding “dedicated speech-generating devices” following “hearing aids” on the list of devices. However, it is important to note that any type of AAC, including low tech options that do not generate speech, can and should be provided to support understanding and expression when required. For example, picture-based communication boards and visual representations may be used to support communication, when appropriate.

#### **§84.73 Service Animals**

ASHA recommends including under section 84.73(f) the example of “carrying an individual’s speech-generating device” between “wheelchair,” and “, or providing assistance”, to read “...pulling a person’s wheelchair, carrying an individual’s speech-generating device, or providing assistance with stability or balance...”. This addition provides a more inclusive example of individuals who should not be questioned regarding the nature or extent of their disability when using a service animal.

#### **§84.74 Mobility Devices**

ASHA encourages clarification under section 84.74(a) to include any additional accessories that are attached to the mobility aid that support the individual’s specific needs, such as speech-generating devices, eye gaze screens, and other accessories necessary to communicate in these public areas.

#### **Subpart H—Communications, §84.77 General**

Under section 84.77(c)(ii), we suggest deleting “facilitate” after “interpret or” and before “communication,” and inserting the word “support” in place of “facilitate”, to read “When the individual with a disability specifically requests that the accompanying adult interpret or support

communication...” This reflects the most current evidence-based and valid techniques to aid in the communication of a person with a disability. In addition, ASHA supports including language in this section to ensure that efforts to provide alternative means of communication have been exhausted.

#### **§84.78 Telecommunications**

ASHA recommends under section 84.78(a) inserting “, have unreliable speech” after “hard of hearing” and before “or have speech impairments” to read “Where a recipient communicates by telephone with applicants and beneficiaries, text telephones (TTYs) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing, have unreliable speech, or have speech impairments.”

#### **§84.80 Information and Signage**

Finally, we suggest adding “language” after “vision” and before “hearing” to include individuals with language disorders (e.g., aphasia). This would read “A recipient shall ensure that interested persons, including persons with impaired vision, language disorders (e.g., aphasia), or hearing can obtain information as to the existence and location of accessible services, activities, and facilities.”

Thank you for your willingness to engage with a range of stakeholders to seek input on updating the U.S. Department of Health and Human Services’ regulations implementing Section 504 of the Rehabilitation Act of 1973. ASHA appreciates the opportunity to lend our members’ expertise to help further inform this process. If you or your staff have questions, please contact Rebecca Bowen, ASHA’s director of health care policy for value & innovation, at [rbowen@asha.org](mailto:rbowen@asha.org), or Bill Knudsen, ASHA’s director of education policy, at [bknudsen@asha.org](mailto:bknudsen@asha.org).

Sincerely,



Robert M. Augustine, PhD, CCC-SLP  
2023 ASHA President

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<sup>1</sup> Davis, N. A. (2005). Invisible Disability. *Ethics*, 116(1), 153–213. <https://doi.org/10.1086/453151>