



October 3, 2022

*Submitted electronically via [www.regulations.gov](http://www.regulations.gov)*

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

RE: Nondiscrimination in Health Programs and Activities Proposed Rule (HHS-OS-2022-0012, RIN 0945-AA17)

Dear Director Fontes Rainer:

On behalf of Access Ready, we thank you for the opportunity to submit comments on the Department of Health and Human Services (HHS) Office for Civil Rights' (OCR) proposal to update the regulations regarding Section 1557 of the Affordable Care Act, Nondiscrimination in Health Programs and Activities. Access Ready is an independent, non-profit, cross-disability education and advocacy organization promoting a policy of inclusion and accessibility of information and communication technology (ICT). Access Ready's strategies include technical findings, policy discussions, best practices, and advocacy efforts made available to the public through its website ([www.accessready.org](http://www.accessready.org)), its social media stream, and other public relations efforts. Access Ready believes that inaccessible ICT presents a clear, growing, and present danger to the civic, economic, and social welfare of people with disabilities.

Our comments focus on two issues in the rule particularly relevant to accessibility of ICT covered under Section 1557, but we applaud the Department for its broader efforts to ensure nondiscrimination with this proposed rule. Access Ready also strongly supports the comprehensive comments submitted by the Consortium of Constituents with Disabilities (CCD) and the Independence Through Enhancement of Medicare and Medicaid (ITEM) Coalition; Access Ready serves as a member of both coalitions.

#### Accessibility of ICT for Individuals with Disabilities

The proposed rule seeks feedback on a potential expansion of requirements to provide accessible ICT for people with disabilities. Section 1557 currently requires covered entities to provide accessible ICT in connection with their health programs and activities, but there are no specific standards incorporated in the regulation to determine whether entities are in compliance with these requirements. The current regulations also note that recipients of federal funding and State Exchanges that provide their services through websites must comply with Title II of the

Americans with Disabilities Act. Now, the proposed rule seeks comments on whether the Section 1557 rule should require covered entities to comply with specific accessibility standards.

Access Ready and other stakeholders have consistently urged the Administration to ensure that entities covered by a range of accessibility mandates procure, design, maintain, and use websites, mobile applications, online systems, and other forms of ICT that are accessible to and usable by the widest range of people with disabilities possible. Such mandates apply to covered entities under Section 1557, but also entities receiving federal funding under Section 504 of the Rehabilitation Act, state and local governments under Title II of the Americans with Disabilities Act (ADA), and public accommodations under Title III of the ADA. However, these regulations largely do not incorporate specific, clear, and enforceable accessibility standards, save for the requirements of Section 508 of the Rehabilitation Act, applicable to federal agencies.

The lack of clear, enforceable standards has unfortunately resulted in a widespread lack of accessible ICT, despite requirements to provide such technology. Particularly in the health care sector, there is an increasing reliance on ICT to provide services, including the dramatic expansion of telehealth and other virtual treatment options; the use of online patient portals for accessing health records, scheduling appointments, and communicating with providers; the proliferation of electronic check-in and billing kiosks in providers' offices; and the reliance on electronic forms for collecting patient information; among many others. When this technology is not provided in an accessible format, individuals with disabilities are unable to receive equal access to their health care benefits, with a discriminatory effect that only exacerbates the pre-existing health care disparities faced by many people with disabilities.

OCR notes in the proposed rule that “many covered entities are currently relying on Section 508 standards promulgated by the Access Board or Web Content Accessibility Guidelines (WCAG) to ensure that their ICT is accessible,” but in practice, patients with disabilities find that this is often not the case. Ensuring that covered entities must comply with such standards, rather than making compliance voluntary (and thus leading to additional confusion about whether ICT is actually accessible or how to make ICT accessible) is a critical step towards ensuring that people with disabilities are able to access the health care services to which they are entitled.

We urge OCR to include specific, clear, and enforceable ICT accessibility and usability standards in the Section 1557 regulations that align with widely accepted standards that already exist, including the U.S. Access Board's Section 508 standards and the international WCAG 2.1 Levels A and AA. We also urge OCR to incorporate language clarifying that compliance should relate to the currently accepted version of WCAG as well as successor standards as they are finalized and published. Further, we encourage OCR to ensure that the regulations continue to make clear that ICT encompasses not only websites, but mobile applications, online systems, and other forms of ICT – all of which should be made accessible to individuals with disabilities. Lastly, requirements without enforcement are often ignored – OCR should establish and communicate to covered entities clear consequences for failures to comply with and implement these requirements across their health programs and activities.

We also note that these recommendations would also apply to other sectors that are not covered by the Section 1557 regulations, and encourage OCR to work with other facets of the Department

of Health and Human Services as well as other agency partners to ensure that accessibility standards are incorporated and standardized across other forthcoming rulemakings, including the update of the Section 504 standards and the Department of Justice's pending proposed rule on Title II of the ADA.

### Accessibility of Medical Equipment for People with Disabilities

The proposed rule also includes a brief request for comment regarding accessibility of medical diagnostic equipment and whether OCR should incorporate the U.S. Access Board's standards for accessible MDE as an enforceable standard for covered entities.

As noted in the ITEM Coalition's letter on this proposed rule, which Access Ready signed, accessibility of medical equipment is a longstanding issue and priority for the disability community. People with disabilities consistently encounter significant barriers to accessing their health care services, not only with regards to health care ICT detailed above, but with medical equipment they or their providers expect to use during the provision of health care. Access Ready supports the enforcement of the Access Board standards as an important first step, but notes that these standards, finalized in 2017 but never incorporated by an enforcement authority, are limited in a number of aspects.

The Access Board standards, by design, are limited to accessibility for individuals with mobility, balance, strength, and respiratory impairments. They are primarily aimed at ensuring that equipment is accessible for individuals who use wheelchairs or have otherwise limited mobility. This is of course a major issue in physicians' offices and other health care settings across the country, when exam tables, diagnostic machines (including x-ray, mammography, and MRI machines, among others), weight scales, and more are functionally unable to be used by people with mobility impairments, an all-too-common occurrence. However, the standards do not encompass any accessibility considerations for individuals with other disabilities, such as blindness or visual impairment, other sensory impairments, or cognitive disabilities. The standards are also limited in their application to a relatively narrow category of MDE used in physician's offices or hospitals. This excludes a wide range of important equipment, including telehealth equipment, at-home diagnostic tools, and more.

OCR should move forward quickly with incorporating the 2017 Access Board standards to help advance accessibility for individuals with mobility impairment – these standards have been published for years and yet voluntary compliance is much too infrequent. We support the enforcement of these standards in the final Section 1557 rule and in future rulemaking by the Department. While additional action should not delay action on the current standards, we strongly urge the Department to develop additional accessibility standards and take further action to ensure that accessibility of medical equipment applies to individuals with all types of disabilities, as well as the full range of equipment that is used to carry out health programs or activities.

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Thank you for your attention to these comments. If you have further questions or if we can provide any additional information, please contact Douglas George Towne, Chair and Chief Executive Officer, by email at [chair-ceo@accessready.org](mailto:chair-ceo@accessready.org) or by phone at 727-531-1000.

Sincerely,

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