Comment tracking # lsj-m9x4-v1h4

FISA Foundation champions equity, justice, safety and inclusion for women, girls, and people with disabilities, combatting systemic racism that impedes progress for these populations in southwestern Pennsylvania.

February 12, 2024

Rebecca B. Bond
Chief
Disability Rights Section
Civil Rights Division
U.S. Department of Justice

Re**: RIN 1190–AA78**
Docket No. CRT 143 AG Order No. 5852-2024
Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities

Dear Chief Bond:

Thank you for the opportunity to comment on the Department of Justice (DOJ) Notice for Proposed Rulemaking (NPRM) applying to Title II of the Americans with Disabilities Act (ADA), 28 CFR part 35, in the draft, *"Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities*." I am the Executive Director of FISA Foundation, a charitable grantmaking foundation based in Pittsburgh with a primary focus on improving the health and wellbeing of people with disabilities. Since the Foundation's inception more than twenty-five years ago, FISA has advocated for quality and equitable healthcare and full community inclusion for people disabilities. FISA fully supports this critically important proposed rule that will further protect the rights of people with disabilities to access healthcare by strengthening the regulations implementing Title II of the ADA.

While healthcare access has been included in the ADA from the beginning, further clarification is necessary as people with disabilities continue to experience serious and pervasive barriers to appropriate, accessible health care. For more than two decades, FISA Foundation has heard from disabled people who are examined in their wheelchairs because no adjustable-height exam tables are available; people who have not been weighed in years for lack of accessible scales; disabled women who cannot get mammograms because they cannot stand. The clarification offered by the proposed rule is urgently needed to provide predictable and reliable physical accessibility to medical and diagnostic equipment.

In particular, we endorse adoption of the Access Board's MDE accessibility standards for diagnostic and medical equipment, particularly the updated 2023 recommendation for a 17" height to allow easy transfer to exam tables, chairs, and other surfaces.

FISA supports rapid implementation requirements (60 days) of enactment of this proposed rule. Disabled people have been discriminated against in healthcare settings for far too long, including since the passage of the ADA. While we understand that implementation of the rule could create short term supply-chain issues, this temporary inconvenience is not a reason to extend the compliance deadline.

However, we do have concerns regard the scoping requirements, and believe that the stipulated minimums of 10% or 20% will not adequately ensure the desired access to disabled people. If healthcare institutions covered under this proposed rule only purchase the minimum accessible MDE, disabled people will only be able to use a small percentage of available machines. Just as curb cuts, which were designed to improve access for people with disabilities, yielded unanticipated benefits for those without disabilities, it is likely that accessible MDE will have similar unanticipated benefits for the broader population. The value provided by adjustable height exam tables and similar equipment is expected to extend to various demographics, such as older adults, pregnant individuals, and many other groups. This will potentially escalate demand and, in turn, pose challenges to access and long waiting times for those with mobility disabilities. We concur with other disability advocacy groups that all newly purchased MDE should be accessible.

Barriers to healthcare apply not just to diagnostic equipment. When Access Board technical standards could reasonably apply to other specialized medical equipment including dialysis chairs, infusion chairs for chemo, obstetrics tables, etc., we believe that the standards should be extended, and these types of medical equipment should fall under the proposed rule.

The requirement that staff be trained in using the equipment, facilitating safe transfers, and assisting with positioning, as well as carrying out program access obligation with respect to existing MDE, is critically important to the effectiveness of this effort to make programs, services, and activities that use MDE actually accessible to individuals with disabilities. However, we believe further guidance is necessary in this area as unprepared and biased staff have created barriers even when equipment is accessible.

I applaud the U.S Department of Health and Human Services for strengthening these protections that will help to ensure that people with disabilities are protected from discrimination in healthcare and human service settings.

Sincerely,

Kristy Trautmann
Executive Director

KT/smc