

Submitted via Regulations.gov  
November 13, 2023

Melanie Fontes Rainer, Director  
Office for of Civil Rights  
Department of Health and Human Services  
Room 509F, HHH Building  
200 Independence Avenue SW, Washington, DC 20201

Attention: Disability NPRM - RIN 0945-AA15  
Comment on Proposed Rule on Nondiscrimination on the Basis of Disability in Health and Human Services Programs or Activities

Dear Director Fontes Rainer:

The Asian & Pacific Islander American Health Forum (APIAHF) strongly supports the U.S. Department of Health and Human Services (HHS) Office of Civil Rights' proposed rule to update the prohibitions against discrimination based on disability in all programs and activities conducted by the federal government, or federally funded, under Section 504 of the Rehabilitation Act of 1973.<sup>1</sup> The proposed updates will improve access and quality of care and services, and advance racial equity, for the approximately 1.4 million Asian Americans and Native Hawaiians and Pacific Islanders with disabilities.<sup>2,3</sup>

With a national network of over 180 community-based organizational partners in over 40 states and territories, APIAHF is the nation's oldest and largest health advocacy organization dedicated to improving the health and well-being of over 25 million Asian Americans (AAs) and Native Hawaiians and Pacific Islanders (NHPIs) across the U.S. and its territories. APIAHF influences policy, mobilizes communities, and strengthens programs and organizations to improve the health of AAs and NHPIs.

Approximately 1 in 6 NHPIs have a disability, and approximately 1 in 10 AAs have a disability.<sup>4</sup> One study reported the highest rates of disability among Pacific Islanders (PIs), Vietnamese, and Filipinos.<sup>5</sup> Another study reported the highest rates of disability among Laotians, Hmong, Cambodians, Vietnamese, and Pacific Islanders.<sup>6</sup> A study on Hawaii reported the highest rates of disability among Native Hawaiians.<sup>7</sup> The states with the highest rates of disabilities among working age AAs and PIs are South Dakota

---

<sup>1</sup> Discrimination on the Basis of Disability in Health and Human Service Programs or Activities, 88 Fed. Reg. 63392 (September 14, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-09-14/pdf/2023-19149.pdf>

<sup>2</sup> <https://www.prnewswire.com/news-releases/recognizing-asian-americans-with-disabilities-in-honor-of-aapi-heritage-month-301299593.html>

<sup>3</sup> Asian Americans with Disabilities Initiative, Asian Americans with Disabilities Resource Guide, 2022, <https://www.aadinitiative.org/resources>

<sup>4</sup> <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>

<sup>5</sup> <https://blog.dol.gov/2022/07/12/disability-data-snapshot-asian-americans-and-pacific-islanders>

<sup>6</sup> Cho Y, Hummer RA. Disability status differentials across fifteen Asian and Pacific Islander groups and the effect of nativity and duration of residence in the U.S. Soc Biol. 2001;48(3-4):171-195

<sup>7</sup> Seto J, Davis J, Taira DA. Examining the association between different aspects of socioeconomic status, race, and disability in Hawaii. J Racial Ethn Health Disparities. 2018;5(6):1247-1253

(9.6%), Idaho (9.1%), West Virginia (8.7%), Vermont (8.7%), Mississippi (8.1%), New Mexico (8.0%), Montana (7.8%), and Oklahoma (7.7%).<sup>8</sup> Given the lower overall populations of AAs and PIs and fewer community-based resources and organizations focused on AAs and PIs in these states, strong federal protections against discrimination based on disability - as well as race<sup>9</sup>- are especially vital.

Similar to other persons with disabilities, AAs and NHPs with disabilities experience stigma, stereotyping, generalizations, and discrimination based on their disabilities.<sup>10,11</sup> Such discrimination can be compounded by the current pervasive anti-Asian sentiment, fueled by xenophobia and myths about AAs being “perpetual foreigners”.<sup>12</sup> On the other hand, there are seemingly contradictory, parallel myths about AAs being a “model minority” or “healthy immigrants”, rendering AAs with disabilities even more invisible and overlooked. There continues to be a great need for data and research about the health and well-being, and the access and utilization of health and other services by diverse, disaggregated AAs and NHPs with disabilities.<sup>13,14</sup>

The proposed rule is consistent with the statutory text of the Rehabilitation Act, Congressional intent, legal precedent, and the Biden-Harris Administration’s priority to advance equity, and specifically to advance equity, justice, and opportunity for AAs and NHPs.<sup>15</sup>

#### Proposed Section 84.56: Support Explicit Prohibition Against Discrimination Based on Disability in Medical Care and Treatment

APIAHF supports how proposed rule addresses current pervasive discrimination on the basis of disability in accessing medical care and treatment, which leads to significant health disparities and poorer health outcomes for individuals with disabilities. This pattern of discrimination can be found in a wide variety of contexts – including preventative screenings, primary care, chronic care, and referrals to specialists, as well as life-sustaining treatments, organ transplantation, and crisis standards of care when resources are limited. These crisis standards of care were especially relevant during the COVID-19 pandemic and many health care organizations did not have adequate or appropriate standards, policies, and procedures in place to address the needs of

---

<sup>8</sup> <https://blog.dol.gov/2022/07/12/disability-data-snapshot-asian-americans-and-pacific-islanders>

<sup>9</sup> Waldman K, Stickley A, Araujo Dawson B, Oh H. Racial discrimination and disability among Asian and Latinx populations in the United States. *Disabil Rehabil.* 2022;44(1):96-105

<sup>10</sup> <https://www.psychologytoday.com/us/blog/disability-is-diversity/202207/disabled-asian-american-and-proud>

<sup>11</sup> Mereish EH. The intersectional invisibility of race and disability status: an exploratory study of health and discrimination facing Asian Americans with disabilities. *Ethn Inequalities Health Soc Care.* 2012;5(2):52-60

<sup>12</sup> Yi SS, Kwon SC, Suss R, Đoàn LN, John I, Islam NS, Trinh-Shevrin C. The mutually reinforcing cycle of poor data quality and racialized stereotypes that shapes Asian American health. *Health Aff.* 2022;41(2):296-303

<sup>13</sup> Hasnain R, Fujiura GT, Capua JE, Bui TTT, Khan S. Disaggregating the Asian “Other”: Heterogeneity and methodological issues in research on Asian Americans with disabilities. *Societies.* 2020;10(3):58

<sup>14</sup> Yang H, Leung P, Wang J, Shim N. Asian Pacific Americans: The need for ethnicity-specific disability and rehabilitation data. *J Policy Studies.* 1996;7(1):33-54

<sup>15</sup> <https://www.hhs.gov/about/whiaanhpi/index.html>

individuals with disabilities.<sup>16</sup> The proposed rule ensures that medical treatment decisions by entities that receive federal financial assistance are not based on biases or stereotypes about individuals with disabilities, judgments that an individual will be a burden on others, or beliefs that the life of an individual with a disability has less value than the life of a person without a disability.

#### Proposed Section 84.57: Support Explicit Prohibition Against Discrimination Based on Disability in Value Assessments

Value assessment methods can play an important role in determining whether a particular intervention such as a medicine or treatment will be provided, and under what circumstances. Such assessments are an increasingly significant tool for cost containment and in quality improvement efforts. However, there is a significant risk that value assessment methods may discriminate against individuals with disabilities when they place a lower value on extension of life for individuals with disabilities, and when such methods are used to limit access or deny aids, benefits, or services to individuals with disabilities. APIAHF supports the proposed rule's prohibition against such discriminatory use of such methods.

#### Proposed Section 84.60: Support Explicit Prohibition Against Discrimination Based on Disability in Child Welfare Programs and Activities

Children, parents, caregivers, foster parents, and prospective parents with disabilities may encounter a wide range of discriminatory barriers when accessing critical child welfare programs and activities that are designed to protect children and strengthen families.<sup>17,18</sup> These barriers are compounded for AAs and NHPIs with disabilities who also experience cultural and linguistic barriers to appropriate services.<sup>19</sup> APIAHF supports the proposed rule's detailed requirements to ensure nondiscrimination in a wide variety of contexts, including parent-child visitation, reunification services, child removals and child placements, guardianship, parenting skills programs, foster and adoptive parent assessments, and in and out-of-home services.

#### Proposed Section 84.10: Support Internet and Mobile Accessibility and Auxiliary Aids and Services for Effective Communications

As technology becomes a more widespread way to deliver health and human services programs and activities, particularly through internet websites, mobile phone applications, and self-service kiosks, it is vital to ensure that web content and mobile applications are readily accessible to, and usable by, individuals with disabilities. APIAHF supports the proposed rule's definitions of what accessibility means for internet and mobile applications, and the specific technical standards for compliance with Section 504, that use the same standards in a recently proposed rule from the Department of Justice under Title II of the Americans with Disabilities Act.

---

<sup>16</sup> Ne'eman A, Stein MA, Berger ZD, Dorfman D. The treatment of disability under crisis standards of care: An empirical and normative analysis of change over time during COVID-19. *J Health Polit Policy Law*. 2021;46(5):831-860

<sup>17</sup> Cooc N, Yang M. Multiple Voices for Ethnically Diverse Exceptional Learners. 2017;17(1):3-19

<sup>18</sup> Payakachat N, Long CR, McElfish PA, Narcisse MR, Felix HC, Bursac Z, Hudson TJ. Prevalence, health and resource utilization, and unmet healthcare needs of Native Hawaiian and Pacific Islander children with developmental disabilities. *Am J Intellect Dev Disabil*. 2019;124(3):234-247

<sup>19</sup> Choi KH, Wynne ME. Providing services to Asian Americans with developmental disabilities and their families: mainstream service providers' perspective. *Community Ment Health J*. 2000;36(6):589-595

APIAHF also supports the proposed rule's requirement of effective communications with individuals with hearing, vision, and speech impairments through the provision of auxiliary aids and services such as qualified interpreters, text telephones, and information in Braille, large print, or electronically for use with a computer screen-reading program. As an organization that has vigorously advocated for equal access to all forms of communications for individuals who speak, read, or write languages in addition to English (who are identified as "limited English proficient" or LEP), APIAHF strongly advocates for similar equal access for individuals with disabilities.

Proposed Sections 84.91, 84.92, and 84.70: Support Accessible Medical Equipment

People with disabilities continue to experience barriers to accessing medical care because of inaccessible medical equipment. Exam tables that are not height adjustable, mammography machines that require a person to stand, and weight scales that do not accommodate wheelchairs are preventable barriers that result in inequities and exclusion from basic health services for individuals with disabilities, contributing to poor health outcomes. APIAHF supports the proposed rule's standards for accessible medical diagnostic equipment, a significant and concrete step toward ensuring the elimination of these preventable barriers and reducing health disparities experienced by people with disabilities. APIAHF specifically supports the requirements that, within two years of the rule's effective date, recipients of federal funding that use an examination table in their program or activity have at least one accessible exam table, and recipients that use a weight scale in their program or activity have at least one accessible weight scale. Moreover, facilities and equipment required to be accessible to individuals with disabilities must be maintained in operable working order at all times.

Proposed Section 84.10: Support Programs and Activities in Most Integrated Settings Appropriate

The current Section 504 regulation requires federally funded programs and activities to be administered in the most integrated setting appropriate to the needs of the person with a disability. APIAHF supports the proposed rule's incorporation of principles established through longstanding U.S. Supreme Court and other court decisions that require the provision of community-based services to persons with disabilities when such services are appropriate, the affected persons do not oppose community-based treatment, and the placement in a community setting can be reasonably accommodated. The proposed rule will help federally funded programs better understand and comply with their obligations under Section 504, and provide more detail about the right to be served in the most integrated setting appropriate for individuals with disabilities.

Thank you again for the opportunity to provide comments on this vital proposed rule. Please contact Joyce Liu (jliu@apiahf.org), APIAHF Policy and Strategic Communications Manager, for questions or comments.

Sincerely,

Juliet K. Choi, JD  
President and CEO