February 12, 2024

SUBMITTED ELECTRONICALLY

The Honorable Rebecca B. Bond
Chief, Disability Rights Section
Civil Rights Division
Attn: RIN: 1190-AA78
200 Independence Avenue, SW
Washington, DC 20201

Re: Muscular Dystrophy Association Comments on Proposed Rule Updating Title II Regulations: Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities (RIN: 1190-AA78)

Dear Chief Bond:

In service of the neuromuscular disease (NMD) patient community, the Muscular Dystrophy Association (MDA) thanks the Department of Justice (DOJ) for the opportunity to comment on the DOJ's Proposed Rule entitled "Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities" ("Proposed Rule") [1]. The proposed rule would establish specific requirements governing Medical Diagnostic Equipment ("MDE") offered by State and local government entities. These requirements would improve health equity by prioritizing access to MDE for people with disabilities by providing the necessary direction for State and local governments to comply with their duties to refrain from discrimination based on a person's disability under Title II of the Americans with Disabilities Act ("ADA").

MDA is the #1 voluntary health organization in the United States for people living with muscular dystrophy, ALS, and related neuromuscular diseases. For over 70 years, MDA has led the way in accelerating research, advancing care, and advocating for the support of our community. MDA's mission is to empower the people we serve to live longer, more independent lives.

Neuromuscular diseases are diseases that affect individuals' muscles, limbs, and mobility and often lead to reliance on a wheelchair or other assistive mobility device. This often presents obstacles to safe and effective medical care. Given the frequency of use of mobility devices in the NMD community, there is a high potential for injury for patients when transferring to and

[1] Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities, 89 Fed. Reg. 2183 (January 12, 2024) (to be codified at 28 CFR 35), https://www.govinfo.gov/content/pkg/FR-2024-01-12/pdf/2024-00553.pdf

from their mobility device to examining tables, MRIs, etc. The proposed rule by DOJ takes significant steps to reduce that risk to patients.

We firmly support DOJ's proposed rule which would codify actions previously taken by the Architectural and Transportation Barriers Compliance Board (ATBCB or "Access Board"). After two research studies, in May 2023, the Access Board issued an NPRM proposing a 17-inch low transfer height. The reports strongly support a 17-inch low transfer height to ensure access and minimize the risk for individuals with disabilities, providers, and staff that manually transfer for those that use mobility devices.[2] Upon presentation of this evidence, the Access Board voted to send the low transfer height final rule to the U.S. Office of Management and Budget. In light of these actions by the Access Board, we recommend that DOJ follow the Access Board's recommendation in their final rule.

Despite the positive steps taken by both the Access Board and DOJ with regard to minimum transfer heights, it is notable that the Access Board's standards are limited by their narrow jurisdiction.[3] Here, DOJ has rightfully taken a leading role by proposing that the standards laid out by the Access Board be applied as broadly as possible. The Proposed Rule would establish standards and requirements for: the purchasing or acquiring of new MDE, adapting existing MDE, and training requirements for medical staff. These requirements are an excellent first step. We also applaud DOJ's proposal that these minimum height standards should apply across physician offices, clinics, emergency rooms, hospitals, outpatient facilities, multi-use facilities, and other medical programs that do not specialize in conditions that affect mobility.[4] Further, the rule states that no fewer than 10%, or now fewer than one compliant unit of each type, of units offered by these facilities should be compliant with the proposed rule six months after implementation.[5] For facilities that *do* specialize in treating persons with conditions that affect mobility DOJ raises the requirement to 20%.[6] We understand that in setting these percentages, DOJ is attempting to advance equity for those who need accessible medical equipment while also attempting to avoid supplying an undue burden to manufacturers and facilities subject to this rule. We would, nonetheless, ask, that even 100% compliance is not attainable, that DOJ consider a more equitable percentage. Finally, we encourage DOJ to consider as many different DME modalities and settings as possible. This will ensure that DME is as accessible as possible for all patients irrespective of what kind of diagnostic equipment needs to be accessed or where that equipment is located.

MDA is committed to ensuring that individuals with neuromuscular diseases and other disabilities can safely obtain medical care. We appreciate this opportunity to provide comment on DOJ's Notice of Proposed Rulemaking for Standards for Accessible Medical Diagnostic Equipment. For questions regarding MDA or the above comments, please contact MDA's Director of Access Policy, Joel Cartner at 336-409-4000 or jcartner@mdausa.org.

[2] ATBCB-2023-0001-0001 (May 23, 2023).
[3] *Id.*
[4] Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities, 89 Fed. Reg. 2183 (January 12, 2024) (to be codified at 28 CFR 35),
[5] *Id.*
[6] *Id.*

Sincerely,

Joel Cartner, Esq.
Director, Access Policy
Muscular Dystrophy Association