



Civil Rights in Healthcare

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Agenda

1. 504 Case
2. Civil Rights Laws in Healthcare Settings
3. Reasonable Accommodations
4. Language Access: Disability
5. Language Access: National Origin
6. AGO Guidance, including re: Immigration Enforcement in Healthcare Settings



Disclaimer

- This is a general presentation; it does not cover everything.
- It does not constitute legal advice.
- If you need specific legal advice, consult an attorney.



“504 Case”

- Originally called *Texas v. Becerra*
 - Now, Kennedy has replaced Becerra
- 17 states brought the case: Texas, Alaska, Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, South Carolina, South Dakota, Utah, and West Virginia



Section 504 of the Rehabilitation Act of 1973

- Section 504 prohibits disability discrimination by the federal government and those who receive federal funds
- Operates in health care as well as other areas, including education, housing, and transportation



Claims Related to Gender Dysphoria

- In May 2024, new regulations issued by HHS clarified that gender dysphoria may be considered a disability, citing a ruling in a 4th Cir. case
- Complaint argues that this regulation violates statutory language that exempts the following from the definition of disability:
“transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders”



Claims Related to Gender Dysphoria (continued)

The complaint specifically alleges that required accommodations “likely include using employees’ preferred names and pronouns that do not align with their biological, immutable sex, allowing employees to dress as a member of the opposite sex in violation of dress codes prohibiting unprofessional or inappropriate clothing, and allowing employees to use sex-segregated bathrooms and locker rooms that do not align with their biological, immutable sex.”



Claims Related to Integration

- May 2024 regulation “mandates” “integration” and demands that programs or activities be administered “in the most integrated setting appropriate to the needs of a qualified person with a disability”
- Complaint argues that regulation overreads level of integration required by *Olmstead*



Claims Related to Integration (continued)

The complaint specifically alleges that there is a “broad and nebulous requirement to provide unlimited community-based services in every setting to eliminate institutionalization (regardless of whether it is appropriate in a given case) or even any serious risk of institutionalization (regardless of whether that risk is ever imminent or realized).”



Claims Related to Constitutionality

- Count 3 of the Complaint specifically alleges that Section 504 is unconstitutional
- Arguments are focused on the Spending Clause of the U.S. Constitution



Current Status of 504 Case

- Joint Status Report filed February 19, 2025
- Plaintiff States declared that they do not intend to seek to have Section 504 found unconstitutional on its face, rather they are bringing an “as applied” challenge
- Plaintiff States have not dismissed any claims raised in their Complaint



Current Status of 504 Case (continued)

- Litigation deadlines are stayed while the federal government considers its position in light of Executive Order “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”
- No current opportunity for other states to act or intervene
- Mass. AGO is closely monitoring the litigation and is prepared to take action to defend the civil rights of Mass. constituents



Civil Rights in Healthcare: Current (Federal) Law

- Disability discrimination is prohibited
- Section 504
 - Applies to healthcare facilities that receive federal funds, such as Medicaid and Medicare
- ADA
 - Healthcare facilities run by public/government entities covered by Title II
 - Healthcare facilities run by private/nonprofit entities covered by Title III



Civil Rights in Healthcare: Current (Mass.) Law

The Massachusetts Public Accommodation Law prohibits:

- making any distinction, discrimination, or restriction in admission to or treatment in
- a healthcare facility, including dental and medical offices, pharmacies, clinics, hospitals, and nursing homes
- based on race, color, religious creed, national origin, ancestry, sex, gender identity, sexual orientation, deafness, blindness, or any physical or mental disability

G. L c. 272, §§ 92A, 98, and 98A



Physical Accessibility in Healthcare Settings

- Accessible facilities
 - Post-ADA, accessibility standards for new construction and certain renovations
 - Building codes, which include accessibility requirements, apply
 - Pursue “readily achievable barrier removal” for preexisting healthcare facilities (i.e. facilities constructed before 1990 that have never been substantially renovated)
- Accessible medical equipment
 - New rule published August 2024 set standards for accessible medical equipment in Title II facilities (e.g. newly purchased equipment must be accessible)



Reasonable Accommodations

- Required to make reasonable accommodations
- Reasonable accommodations: Modifications or changes to policies, practices, and procedures to provide equal access to facilities and services for people with disabilities
- Obligation is limited if accommodation requested is:
 - not necessary,
 - an undue financial burden, or
 - a fundamental alternation of the service.



Reasonable Accommodations in Healthcare Settings

Examples from ADA National Network:

- Granting an early appointment to a patient with anxiety so that fewer people will be in the office and noise will be minimal.
- Modifying a policy requiring patients to complete their own paperwork, so that staff can complete intake paperwork for a person with a brain injury or dyslexia who requests the assistance to fill out the paperwork.
- Allowing a service dog that has been trained to alert their handler with a seizure disorder at the onset of a seizure to be present in an exam room.



Language Access: Disability

- Duty to provide effective communication
- Examples from ADA National Network:
 - Qualified sign language interpreter for a scheduled appointment with a Deaf person who uses sign
 - Large print materials for a person with low vision
 - Digital accessibility of websites, health records, etc.



Language Access: National Origin

- If a provider receives federal funds, such as Medicaid or Medicare, they must provide meaningful access to people with limited English proficiency (LEP).
- Relevant laws:
 - Title VI of the Civil Rights Act of 1964
 - Section 1557 of the Patient Protection and Affordable Care Act
 - Session Law – Acts of 2000, Chapter 66, “An Act Requiring Competent Interpreter Services in the Delivery of Certain Acute Health Care Services”



Language Access Services – National Origin

- Language access services must be:
 - free of charge,
 - accurate and timely, and
 - protect the privacy and independent decision-making ability of the individual with LEP.
- Services include: qualified interpreters and translated materials.



Guidance on Immigration Enforcement in Healthcare Settings

- General Information for Massachusetts Service Providers Regarding Immigration Enforcement
Available at: <https://bit.ly/41fXN8k>
- Information for Massachusetts Healthcare Providers Regarding Immigration Enforcement and Access to Care and Assistance Programs
Available at: <https://bit.ly/4h17MUZ>



Healthcare Guidance

- Protections under state and federal privacy laws (e.g. HIPAA) apply
- Collecting only that information necessary for treatment protects patients
- Limiting access to private areas protects patients
- Important to understand the documents that law enforcement may present and what they mean
- Important to have clearly communicated policies and procedures as well as point people



Other Related Guidance

- Multi-State Guidance Concerning Diversity, Equity, Inclusion, and Accessibility Employment Initiatives
Available at: <https://bit.ly/41pcNR9>
- Other guidance on a variety of topics available on the AGO's website
 - <https://www.mass.gov/info-details/resources-for-immigrants-in-massachusetts>
 - <https://bit.ly/4i8bi0X> (DEIA in higher education)



AGO Resources

- MA AGO Website:
<https://www.mass.gov/orgs/office-of-the-attorney-general>
- MA AGO Hotline:
(617) 727-2200