



Bazelon Celebrates Critical Civil Rights Protections for People with Disabilities in New HHS Rule Implementing Section 504 of the Rehabilitation Act

The Bazelon Center commends the U.S. Department of Health & Human Services (HHS) for issuing the new [Section 504 Final Rule, *Discrimination on the Basis of Disability in Health and Human Service Programs or Activities*](#). The rule updates and strengthens the lead regulation implementing Section 504 of the Rehabilitation Act of 1973, a federal law that prohibits disability discrimination in programs and activities that receive Federal financial assistance or that are administered by a Federal agency.

Last fall, the Bazelon Center co-authored coalition [comments with members of the Consortium for Constituents with Disabilities](#) (CCD) that responded to HHS' then-proposed Section 504 rule. The comments included key Bazelon Center priorities, including the right to full integration of people with disabilities in the community and protections for children and parents with disabilities in the child welfare system. We are pleased to see our recommendations reflected in the rule.

I. Support for Full Community Integration

The HHS Section 504 rule incorporates the U.S. Supreme Court's ruling in *Olmstead v. L.C.* (Lois Curtis) that people with disabilities have a right to live and receive services in their homes and community and to be free from segregation and unnecessary institutionalization. The rule reflects that segregation in any form is discrimination.

- 1. Affirms that the “most integrated setting” is one that affords choice and autonomy.** Reflecting feedback from Bazelon and partners, the HHS 504 rule defines “most integrated setting” broadly as: “a setting that provides individuals with disabilities the opportunity to interact with nondisabled persons to the fullest extent possible. These settings provide opportunities to live, work, and receive services in the greater community, like individuals without disabilities; are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual’s choosing; and afford individuals choice in their daily life activities.” This updated definition aligns with longstanding Department of Justice [Olmstead guidance](#), as well as widely accepted [Key Principles for Community Integration for People with Disabilities](#).
- 2. Recognizes the many forms of segregation.** The rule recognizes that an entity’s practices, as well as its policies, can result in segregation, and that settings like group

homes that are located in the community can still be segregated and discriminatory. The new definition notes that “segregated settings include, but are not limited to, congregate settings populated exclusively or primarily with individuals with disabilities, and may be characterized by regimentation in daily activities, a lack of privacy or autonomy, or policies or practices limiting visitors or limiting individuals’ ability to engage freely in community activities and to manage their own activities of daily living.”

3. Affirms protection for people at serious risk of unnecessary institutionalization.

The rule also affirms that Section 504 protects individuals at serious risk of unnecessary institutionalization. HHS notes that the existing regulations implementing Section 504 and the Americans with Disabilities Act (ADA) “create an unambiguous, affirmative obligation to *avoid* discrimination” including unnecessary institutionalization.

These updates and clarifications affirm the rights of people with disabilities to be free from segregation and unnecessary institutionalization, and to receive services in the most integrated setting, which is almost always their homes and communities.

II. Explicit Protections for Children and Caregivers with Disabilities

Section 504 of the Rehabilitation Act and the ADA apply to “any and all services” of the child welfare system. Child welfare agencies may not discriminate against children or caregivers on the basis of disability.

The updated Section 504 rule requires child welfare agencies to “place qualified individuals with disabilities in the most integrated setting appropriate to the needs of the child.” They “may not engage in the unnecessary or unjustified segregation of children with disabilities, such as default placement in institutional or other congregate care,” which “should never be considered the most appropriate long-term placement for children.” Children with disabilities must be supported to live in the most integrated setting, which “is almost always the family home or a foster care setting.” An entity cannot require a child with a disability to be placed outside the family home in order to receive necessary services.

In response to CCD’s comments, HHS made explicit that:

1. Section 504 applies to family preservation services and reunification efforts.

These services must be “equal to that afforded to persons without disabilities” and “facilitate the full range of services and supports” a family may need to keep parents and children together.

2. Parenting assessments must measure parenting ability, not a parent’s disability.

Under the rule, recipients of federal funds must “ensure that tests, assessments, and other evaluation tools and materials” used for the purpose of assessing or evaluating parenting ability “are tailored to assess actual parenting needs,” “may not be based on a single intelligence quotient or measure of the person’s disability,” and must be “fully

accessible to people with disabilities.” This requirement applies to AI-based assessments.

3. **All assessments must be individualized.** The rule further clarifies that all assessments of children and caregivers, regardless of their purpose, “must be individualized and based on the best available objective evidence,” not on stereotypes about people with disabilities.

The updated HHS rule advances the rights of people with disabilities to live in the most integrated setting and to be free from discrimination in the child welfare system. We encourage you to share these important updates as we work to ensure the promise of these laws is fully realized.

[Read the Final Rule](#), which will take effect on July 8, 2024.

[Read the Final Rule Fact Sheet](#), which summarizes key updates.

[Learn more about the protections of Section 504 of the Rehabilitation Act.](#)