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February 12, 2024

Chief Rebecca Bond
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
150 M St. NE, 9th Floor
Washington, DC 20002

RE: Proposed Rule - RIN 1190-AA78 - Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities

Dear Chief Bond,

The Obesity Action Coalition (OAC) is pleased to submit comments on the Proposed Rule on Nondiscrimination on the Basis of Disability Accessibility of Medical Diagnostic Equipment (MDE) of State and Local Government Entities. OAC's comments will focus on people living with obesity, especially those with severe obesity and mobility limitations, who often encounter barriers to accessibility of medical equipment in hospitals and health care facilities.

The OAC is the leading national non-profit dedicated to serving people living with obesity through awareness, support, education, and advocacy. Our vision is to create a society where all individuals are treated with respect and without discrimination or bias regardless of their size or weight. We strive for those affected by the disease of obesity to have the right to access safe and effective treatment options. OAC has a strong and growing membership of more than 80,000 individuals affected by obesity from across the United States.

Obesity rates continue to rise in the United States, where the Centers for Disease Control and Prevention (CDC) reported that 42% of people live with obesity and over 9% of the population (approximately 12.5 million) live with severe obesity.¹ Severe obesity is often defined as Class 3, BMI of 40 or above.² We know that people with severe obesity experience the majority of issues with equitable access to medical programs, equipment, and services.

We understand that obesity itself is not universally considered a disability, but it can lead to health conditions that may be classified as disabilities. When obesity leads to a physical or mental impairment that substantially limits

¹ Centers for Disease Control and Prevention, Adult Obesity Facts. 2022. <https://www.cdc.gov/obesity/data/adult.html>

² Centers for Disease Control and Prevention, Defining Adult Overweight and Obesity. 2022. <https://www.cdc.gov/obesity/basics/adult-defining.html>

one or more major life activities, it may be considered a disability under the Americans with Disabilities Act (ADA). If an individual's obesity is severe and leads to significant limitations in their ability to perform daily activities or work, it may be covered under the ADA. The determination of whether obesity qualifies as a disability often depends on individual circumstances and the extent it impacts a person's life.

OAC supports the Disability Rights Section proposal to adopt specific technical standards and requirements under the ADA to ensure that MDE used by public entities such as hospitals and other health care facilities is accessible to individuals with disabilities, including people living with obesity. We agree that without accessible MDE, individuals with disabilities may not be afforded an equal opportunity to receive medical care, including routine examinations, which can have serious implications for their health.

Personal Accounts from the Lived Experience

Ms. Sarah Bramlette, a member of the OAC National Board of Directors, lives with severe obesity. She is unable to get recommended cancer screenings due to the weight limits of the MRI machines. Based on her personal risk estimate, it is recommended she get an annual breast MRI, in addition to an annual mammogram. Sarah's mother and aunt both had breast cancer and she is concerned she will not be able to get a timely diagnosis which could impact treatment options and outcomes. The hospital has an MRI machine that can accommodate patients up to 600lbs, however, the machine used for breast MRIs only has a capacity of 250lbs. In addition to weight limits, the size of the opening is made smaller due to the apparatus used to position patients. It is unacceptable that Sarah can not access high risk breast cancer screening.

A [NBC news article](#) from 2021 told the story of Ms. Laura Baker. Ms. Baker was a friend to many in the OAC community. A retired special education teacher from Santa Barbara, California, Ms. Baker was 18 months into a brain cancer diagnosis when she needed a CT of her brain and there wasn't a machine that was accessible to her - because of her obesity. The article goes on, "Baker died nine months later, in July 2020, leaving behind her husband, John, and daughter, Katie. It's not known if a CT scan would have helped to prolong her life, but to Baker and her loved ones, the situation amounted to yet another example of how the nation's health care system fails people like her."

General Comments - Section-by-Section Analysis

Issue 3: The Department seeks public comment on whether different scoping requirements should apply to different types of MDE (e.g., requiring a higher percentage of accessible exam tables and scales than accessible x-ray machines.

OAC recommends ensuring that MDE that is built for higher "weight capacity" is generally accessible to proposed paragraph (b)(1) providing the general requirements of physician's offices, clinics, emergency rooms, hospitals, outpatient facilities, multi-use facilities, and other medical services, programs, and activities that do not specialize in treating conditions that affect mobility.

People living with obesity may have size and/or mobility limitations and also receive services at locations referenced in paragraph (b)(2), including rehabilitation facilities that specialize in treating conditions that affect

mobility; outpatient physical therapy facilities; and other medical services, programs, and activities. These facilities need to be accessible for people who live in larger bodies regardless of mobility ability.

Issue 7: The Department seeks public comment on whether additional requirements should be added to ensure dispersion (e.g., requiring at least one accessible exam table and scale in each department, clinic, or specialty, or requiring each department, clinic and specialty to have a certain percentage of accessible MDE).

OAC requests that “weight capacity” be added to the requirements for adequate MDE dispersion.

Issue 11: The Department seeks public comment on the potential impact of the requirements in paragraph (c) on people with disabilities and public entities, including the impact on the availability of accessible MDE that will be available for purchase and lease.

People living with obesity, especially severe obesity, forgo medical diagnostic testing often because there is not a machine or equipment in the vicinity that can accommodate their size, regardless of their mobility status. OAC membership survey data (2020-2023) found that lack of equipment or accommodations was a barrier faced in access to obesity care.

Issue 12: The Department seeks public comment on whether the proposed exception set forth in section 35.211 (f) is needed.

OAC agrees that public entities should address access barriers resulting from a lack of accessible MDE in their existing inventory of equipment. Obesity and severe obesity are prevalent and growing chronic diseases. Entities should be equipped to accommodate such a significant percent of the American population.

Issue 13: The Department seeks information about other ways that public entities can make their services, programs, and activities readily accessible to and usable by individuals with disabilities when proposed section 35.211 does not apply.

OAC suggests that public entities collect data on locations of MDE that can service people that require high weight capacity equipment. The public entity should be required to disclose the information (publish), set up an appointment, and provide transportation or reimbursement for mileage.

Issue 17: If this rule were to apply to medical equipment that is not used for diagnostic purposes...Are there particular types of non-diagnostic medical equipment that should or should not be covered?

OAC encourages the Department to consider blood pressure cuffs, wheelchairs, waiting room seating, bedside commodes, and patient gowns or other garments as non-diagnostic medical equipment. Many patients with larger body sizes and those who have limited mobility constraints are not able to use standard issue non-diagnostic equipment.

Closing Remarks

Weight based-discrimination is very common for people living with obesity. The rates of severe obesity continue to rise. Healthcare needs to be accessible and equipped to serve people in larger bodies. People living with obesity deserve high quality healthcare.

Thank you for the opportunity to provide comments on RIN 1190-AA78 - Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities. We would be happy to answer questions or discuss our comments. Please contact OAC's Director of Policy Strategy & Alliances, Dr. Tracy Zvenyach, PhD, at tzvenyach@obesityaction.org

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Nadglowski, Jr.", written in a cursive style.

Joseph Nadglowski, Jr.
OAC President and CEO