

Office for Civil Rights; Section 504 of the Rehabilitation Act of 1973; Notice of Exercise of Authority Under 45 CFR 84.52(d)(2) Regarding Recipients With Fewer Than Fifteen Employees

AGENCY: Office for Civil Rights, HHS.

ACTION: Notice of exercise of authority under 45 CFR 84.52(d)(2) regarding recipients with fewer than fifteen employees pursuant to section 504 of the Rehabilitation Act of 1973.

SUMMARY: Pursuant to 45 CFR 84.52(d)(2), the Director of the Office for Civil Rights may require recipients with fewer than 15 employees to provide auxiliary aids where the provision of such aids would not significantly impair the ability of the recipient to provide its benefits or services. The United States Department of Health and Human Services (HHS) is announcing that it is exercising its authority under 45 CFR 84.52(d)(2) of the regulation implementing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a), to require recipients with fewer than fifteen employees to provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from their services. This is not a new requirement; Title III of the Americans with Disabilities Act (ADA) already requires public accommodations of all sizes to provide auxiliary aids and services to persons with disabilities where necessary to ensure effective communication and Title II of the ADA extends the same requirement to state and local government entities. The vast majority of entities that receive federal financial assistance from HHS thus are already required to provide auxiliary aids and services to persons with disabilities where necessary to ensure effective communication.

DATES: This guidance is effective immediately.

FOR FURTHER INFORMATION CONTACT:

Sheila Foran or Ronald Copeland at the Office for Civil Rights, Room 506F, U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Washington, D.C. 20201, telephone 202-619-0403; TDD 1-800-537-7697. Arrangements to receive the notice in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform recipients of federal financial assistance from HHS that the Office for Civil Rights (OCR) will require recipients with fewer than 15 employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services, and will investigate complaints against health and social services providers with fewer than 15 employees for failure to provide auxiliary aids to individuals with disabilities under Section 504. Determinations of whether the provision of an auxiliary aid or service would impose an undue burden on a small provider will be made on a case-by-case basis. The fact that the provision of any particular auxiliary aid would result in an undue burden does not relieve the provider from the duty to furnish an alternative auxiliary aid, if available, that would not result in such a burden.

OCR has concluded that, in the interest of uniformity and consistent administration of law, Section 504's auxiliary aids requirement should be applied to covered entities with fewer than 15 employees, as is the case under the Americans with Disabilities Act of 1990. Title III of the ADA specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation. 42 U.S.C. 12182. The term "public accommodation" includes professional offices of health care providers, hospitals, pharmacies, and other service establishments. Under Title III of the ADA, privately operated public accommodations are obligated to provide appropriate auxiliary aids and services, regardless of their size, where necessary to ensure effective communication with individuals with disabilities, unless they can demonstrate that taking such steps would fundamentally alter the nature of their program, services or activities, or would result in an undue burden. *See* 42 U.S.C. 12182(b)(2)(A)(iii). The ADA requires public accommodations, including health and social service providers, to furnish appropriate auxiliary aids to ensure effective communication with individuals with disabilities without the imposition of a surcharge to cover the cost of such measures.

OCR believes that exercising its authority under 45 CFR 84.52(d)(2) is consistent with Congress' intent to ensure consistency between Section 504 and the ADA. 42 U.S.C. 2117(b) of the Americans with Disabilities Act addresses coordination between agencies with enforcement authority under the ADA and Section 504 of the Rehabilitation Act of 1973. Consistent with that provision, agencies must ensure that administrative complaints filed under both the ADA and Section 504 are dealt with in a manner that prevents the imposition of inconsistent or conflicting standards for the same requirements. *See, e.g.*, 42 U.S.C. ss. 12117(b), 12134(b) and 12201(a). Other evidence of Congress' desire for consistent enforcement standards can be found in several amendments to Title V of the Rehabilitation Act of 1973. For example, Section 102(f) of the Rehabilitation Act Amendments of 1992, Pub. L. 102-569, incorporated the exclusions from the term "individual with disability" that are set forth in the ADA. Also, Section 504 of the Rehabilitation Act Amendments of 1992 amended the Rehabilitation Act of 1973 by adding a new subsection to clarify that the standards used for determining whether Section 504 has been violated in a complaint alleging employment discrimination are the same standards applied under the ADA.

As noted above, Title III of the ADA does not require a public accommodation to provide auxiliary aids and services if it can demonstrate that taking such steps would fundamentally alter the nature of the services being offered or result in an undue burden. The undue burden defense established under the ADA evidences that Congress favored a case-by-case approach for determining a public accommodation's obligation to provide auxiliary aids rather than a broad exemption for small providers. OCR believes that requiring recipients with fewer than 15 employees to provide auxiliary aids under the Section 504 regulation at 45 CFR 84.52(d)(2), where the provision of such aids would not significantly impair the ability of the recipient to provide its benefits or services, is consistent with the legislative scheme intended by Congress under the ADA.

Most of the entities that receive federal financial assistance from HHS are also subject to the effective communication requirements established under the ADA. OCR is confident that the enforcement of Section 504's auxiliary aids requirement can be applied in a manner that will not unduly burden small providers. OCR will enforce Section 504 as it applies to recipients' responsibilities under the notice through procedures provided for in the Section 504 regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance and technical assistance. OCR will always provide recipients with a complete opportunity to come into voluntary compliance with Section 504 prior to initiating formal enforcement proceedings, and will provide technical assistance to help entities resolve complaints in a collaborative fashion with OCR.

Dated: December 6, 2000.

Thomas E. Perez,

Director, Office for Civil Rights.

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