



Rights Without Remedies Are No Rights At All

We applaud the U.S. Department of Health and Human Services (HHS) for issuing its February 4, 2022 guidance [FAQs for Healthcare Providers during the COVID-19 Public Health Emergency: Federal Civil Rights Protections for Individuals with Disabilities under Section 504 and Section 1557](#).

The guidance provides long overdue clarification of the obligations of healthcare providers under section 504 of the Rehabilitation Act of 1973 (Rehab Act) and section 1557 of the Affordable Care Act of 2010 (ACA). We understand HHS's effort here: to educate covered entities about their obligations to foster compliance with these civil rights laws. However, meaningful and consistent enforcement has been absent. Since the enactment of section 504 of the Rehabilitation Act and the enactment of the ACA, this is a significant barrier to health care equity for people with disabilities.

According to a recent [Kaiser Family Foundation Report](#), "over 201,000 residents and staff in long-term care facilities have died from COVID-19." The lack of monitoring and enforcement of disability civil rights laws such as, Section 504 and Section 1557 is a significant factor resulting in the disproportionate impact of COVID-19 on people with disabilities in these facilities. The repetitive failure to prevent infection and to provide proper PPE, testing, vaccination, boosters, air filtration, physical distancing, adequate staffing, public health data systems, and contact tracing in nursing facilities, long term care facilities, group homes, jails and carceal facilities, and other congregate facilities has led to the vastly disproportionate death of people with disabilities throughout this pandemic.

We expect HHS Office for Civil Rights (OCR) to implement a transparent and consistent plan to enforce the obligations delineated in the guidance.

The plan must include:

- Specifications for budgetary and staff resources dedicated to responding to and resolving existing complaints,
- Selection of additional facilities without complaints to assess compliance followed by swift enforcement of any requirements, and
- Providing training on these requirements to healthcare providers that receive federal funds.



President Biden made clear his expectation of civil rights enforcement when he issued Executive Order 13995, [*Ensuring an Equitable Pandemic Response and Recovery*](#). This executive order “expressly requires federal agencies, including HHS, to “assess pandemic response plans and policies to determine whether personal protective equipment, tests, vaccines, therapeutics, and other resources have been or will be allocated equitably.” The order further mandates federal agencies to “strengthen enforcement of anti-discrimination requirements pertaining to the availability of, and access to, COVID-19 care and treatment.” Most notably, the executive order “reinforces OCR’s core mission of enforcing Title VI and Section 1557 and provides a specific mandate to ensure equal access to COVID-19 vaccination. As the Department’s civil rights law enforcement agency, OCR has a particularly important role in ensuring that equity is at the center of all its enforcement efforts.”

We note that OCR Director Pino stated that “OCR will continue our robust enforcement of federal civil rights laws that protect people with disabilities from discrimination.” In light of the devastating loss of disabled lives over the past two years and the ongoing failure to prevent infection in federally funded facilities, enforcement has been far from robust. Disabled and multiply-marginalized disabled people in facilities continue to lose their lives to COVID-19 at disproportionately higher rates than their peers outside of facilities, in large part due to lack of enforcement.

We request a meeting with Director Pino to learn the details of the plan to implement robust enforcement of all obligations in the guidance as well as a plan describing the process for implementing enforcement mechanisms for executive order 13995 and all applicable civil rights laws. We look forward to collaborating with you to strengthen enforcement of the rights of disabled people during this public health emergency.

Sincerely,

Participants from The Partnership’s Daily COVID-19 Disability Rights Call