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June 28, 2022

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Ave., SW  
Washington, D.C. 20201

RE: Adoption of Standards for Accessible Medical Diagnostic Equipment to Address the Health Care Needs of People with Mobility Disabilities

Dear Secretary Becerra:

I write to express my support for the U.S. Department of Health and Human Services' (HHS) and the U.S. Department of Justice's (DOJ) efforts to pursue rulemaking to adopt the January 9, 2017, *Standards for Accessible Medical Diagnostic Equipment* (AMDE Standards) developed by the Architectural and Transportation Barriers Compliance Board (Access Board).<sup>1</sup> Among other responsibilities, HHS and DOJ work to ensure compliance with our nation's civil rights laws so that individuals of all backgrounds have an equal opportunity to participate in, and have full access to, the day-to-day activities that many take for granted. One such activity is the receipt of health care services. The nondiscrimination requirements in the regulations for *Section 1557 of the Affordable Care Act* (Section 1557) and *Section 504 of the Rehabilitation Act* (Section 504)

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<sup>1</sup> See Standards for Accessible Medical Diagnostic Equipment, 82 Fed. Reg. 2810 (Jan. 9, 2017) (codified at 36 C.F.R. pt. 1195); see also See U.S. Dep't of Health and Hum. Servs., Office of Civil Rights, *Rulemaking on Discrimination on the Basis of Disability in Critical Health and Human Services Programs or Activities*, RIN: 0945-AA15, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=0945-AA15> (announcing that "[t]his proposed rule would revise regulations under section 504 of the Rehabilitation Act to address unlawful discrimination on the basis of disability in . . . accessible medical equipment."); U.S. Dep't of Justice, Civil Rights Division, *Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture*, RIN: 1190-AA78, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1190-AA78> (stating that "[t]he Department plans to publish a . . . ANPRM that solely addresses the accessibility of medical diagnostic equipment (MDE) under titles II and III of the ADA, given the specialized nature of MDE"; and that the Department is seeking public input on "whether there are any issues relating to the potential adoption of the [Access Board's ADME Standards] in the ADA regulation").

require that health care providers that receive federal financial assistance provide full and equal access to their health care services and facilities.<sup>2</sup> While many Americans can access health care services without issue, individuals with physical disabilities continue to face unique challenges receiving these services if their health care provider does not have accessible medical equipment.<sup>3</sup> This equipment can include, for example, “examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals.”<sup>4</sup> Access to such equipment is often vital in order to access health care services. Therefore, I encourage HHS and DOJ to advance their civil rights missions by engaging in rulemaking that will ensure that individuals with physical disabilities have consistent and reliable access to this medical equipment.

A May 2021 report from the National Council on Disability (NCD) highlighted some of the challenges that individuals with physical disabilities face when trying to access health care services. The report indicated that “[t]he lack of accessible medical equipment contributes significantly to the fact that people with physical disabilities utilize the health care system for disease management versus disease prevention. . . . [and,] [c]ompared with their nondisabled peers, people with physical disabilities are less likely to receive recommended preventive health care services.”<sup>5</sup> The NCD report also noted that the existing nondiscrimination regulations under Section 1557 and Section 504 are insufficient because they “do not require health care providers to have accessible MDE in their facilities”;<sup>6</sup> they merely direct them to “provide reasonable modifications of policies, practices, or procedures; program accessibility; and barrier removal.”<sup>7</sup> Moreover, although both HHS and DOJ have acted in the past to address inaccessible medical equipment—HHS has taken corrective action in response to complaints alleging disability discrimination related to inaccessible medical equipment and DOJ has implemented initiatives that have marginally improved access to such equipment—the widespread lack of ADME in health care facilities demonstrates that a more systemic, direct approach is needed and long overdue.<sup>8</sup>

The 2010 *Affordable Care Act* included a provision requiring the Access Board to develop ADME Standards within two years of the date of enactment.<sup>9</sup> Thereafter, in July 2010, DOJ

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<sup>2</sup> See 45 C.F.R. § 92.2 (Section 1557); 28 C.F.R. § 41.51 (Section 504).

<sup>3</sup> See, e.g., National Council on Disability, *Enforceable Accessible Medical Equipment Standards – A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities* (May 20, 2021), [https://ncd.gov/sites/default/files/Documents/NCD\\_Medical\\_Equipment\\_Report\\_508.pdf](https://ncd.gov/sites/default/files/Documents/NCD_Medical_Equipment_Report_508.pdf) (hereinafter 2021 NCD Report).

<sup>4</sup> 29 U.S.C. § 794f(b).

<sup>5</sup> 2021 NCD Report, *supra* note 3, at 24.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 25.

<sup>8</sup> *Id.* at 24-25.

<sup>9</sup> See Section 4203, Pub. L. No. 111-148; see also 29 U.S.C. § 794f(a). The Access Board failed to meet the ACA’s two-year deadline to develop ADME Standards, but in December 2013, it issued the final report of the Medical Diagnostic Equipment Accessibility Standards Advisory Committee, which identified medical equipment among the reasons for people with disabilities to be susceptible to experiencing substandard care. See 2021 NCD Report, *supra* note 3, at 21-22.

published an Advanced Notice of Proposed Rulemaking (ANPRM) related to accessible medical equipment under Titles II and III of the *Americans with Disabilities Act*, but it failed to issue further rulemaking to implement any standards.<sup>10</sup> Additionally, in 2015, HHS announced its plan to issue regulations or policies requiring covered entities to comply with the Access Board's AMDE Standards once they were finalized; the agency confirmed these plans in a separate rulemaking in 2016.<sup>11</sup>

Subsequently, on January 9, 2017, the Access Board published its final rule establishing the ADME Standards; unfortunately, however, the Obama Administration failed to adopt these standards before the transition to the Trump Administration.<sup>12</sup> As a result, when the Trump Administration issued Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs*, which significantly restricted the implementation of any new policies or regulations, it undermined future rulemaking on the ADME Standards.<sup>13</sup> For example, in December 2017, the Trump-era DOJ withdrew the July 2010 ANPRM, stating that it was "reevaluating whether regulation of accessibility of non-fixed equipment and furniture [was] necessary and appropriate."<sup>14</sup> Additionally, in June 2020, the Trump-era HHS issued a final rule revising Section 1557 but failed to adopt the 2017 ADME Standards in the rule.<sup>15</sup> Thus, it is incumbent upon the Biden-era HHS and DOJ to now take up and complete this important work.

Ensuring equal access to health care services for individuals with physical disabilities is crucial now more than ever, especially as Americans continue to recover from the pandemic. HHS' and DOJ's adoption of the Access Board's 2017 AMDE Standards would ensure the expansion of equity protections for physically disabled individuals who need medical care, including potentially lifesaving diagnostic and preventive care. Therefore, I strongly support both agencies' adoption of the 2017 ADME Standards through their ongoing rulemaking.

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<sup>10</sup> See 2021 NCD Report, *supra* note 3, at 22-23; *see also* Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture, 75 Fed. Reg. 43452 (July 26, 2010).

<sup>11</sup> See Nondiscrimination in Health Programs and Activities, 80 Fed. Reg. 54172, 54187 (Sept. 8, 2015) ("OCR considered adding specific language regarding accessibility standards for medical diagnostic equipment. However, we are aware that the United States Access Board is currently developing standards for accessible medical diagnostic equipment and, therefore, are deferring on proposing specific accessibility standards for medical equipment at this time. Once the United States Access Board standards are promulgated, OCR intends to issue regulations or policies that require covered entities to conform to those standards."); *see also* Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31375, 31422 (May 18, 2016) (to be codified at 45 C.F.R. pt. 92).

<sup>12</sup> See Standards for Accessible Medical Diagnostic Equipment, 82 Fed. Reg. 2810 (Jan. 9, 2017) (to be codified at 36 C.F.R. pt. 1195).

<sup>13</sup> See Reducing Regulation and Controlling Regulatory Costs, Exec. Order No. 13771, 82 Fed. Reg. 9339 (Jan. 30, 2017).

<sup>14</sup> Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 Fed. Reg. 60932, 60932-33 (Dec. 26, 2017) (to be codified at 28 C.F.R. pt. 36).

<sup>15</sup> See Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37160, 37162-64 (June 19, 2020). There were some indications, however, that the Trump Administration was interested in pursuing rulemaking on the 2017 ADME Standards. See U.S. Dep't of Health and Hum. Servs., *Press Release: OCR Seeks Information on Addressing Disability Discrimination in Health Care and Child Welfare Contexts* (Jan. 15, 2021), [OCR Seeks Information on Addressing Disability Discrimination | HHS.gov](https://www.hhs.gov/press-releases/stories/2021/01/15-ocr-seeks-information-on-addressing-disability-discrimination-in-health-care-and-child-welfare-contexts) (seeking information on disability discrimination with respect to several topics including the availability of accessible medical equipment).

The Honorable Xavier Becerra

June 28, 2022

Page 4

Thank you for your attention to this matter. If you have any questions or wish to discuss this matter further, please contact Tanisha Wilburn, Director of Labor/Health Oversight for the Committee on Education and Labor, at [Tanisha.Wilburn2@mail.house.gov](mailto:Tanisha.Wilburn2@mail.house.gov), or Carrie Hughes, Director of Health and Human Services for the Committee on Education and Labor, at [Carrie.Hughes@mail.house.gov](mailto:Carrie.Hughes@mail.house.gov). Please direct all official correspondence and information relating to this request to the Committee's Chief Clerk, Rasheedah Hasan, at [Rasheedah.Hasan@mail.house.gov](mailto:Rasheedah.Hasan@mail.house.gov).

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Chairman