



560 W. Lake St. 312.440.4300  
Sixth Floor Fax: 312.440.0559  
Chicago, IL USA Toll-free: 888.243.3368  
60661-6600 agd.org

February 12, 2024

Ms. Rebecca B. Bond  
Chief, Disability Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

RIN 1190-AA78

Dear Ms. Bond:

On behalf of our 40,000 members, the Academy of General Dentistry (AGD) is pleased to offer comments on the proposed rulemaking on the “Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities.”<sup>1</sup>

AGD dentists provide a full range of dental care to patients across all demographic and socio-economic segments throughout the country. The AGD’s comments are focused on applications of the rule pertinent to dental facilities.

The Department of Justice proposes to revise Title II ADA regulations, 28 CFR part 35, to adopt standards for Medical Diagnostic Equipment (MDE) issued by the Architectural and Transportation Barriers Compliance Board, 36 CFR part 1195, known as the MDE standards.

### **Technical Challenges with the Proposed Rule**

A thirty-day comment period is insufficient if federal agencies and departments seek to receive substantive feedback from stakeholders. Comment periods from other agencies and departments typically run sixty to ninety days in length and generate greater feedback from interested stakeholders.

A primary obstacle to responding in such a short time frame was the number of broken links in the proposed rule published in the Federal Register. The inability to access the vital information available through those links was a significant disservice to communities of interest wanting to respond. Many of the broken links relate back to content on the Architectural and Transportation Barriers Compliance Board, which is a critical element of the proposed rule.

Professional dental and medical associations, like the AGD, have a vested interest in advocating for their members on matters such as this. The failure to make the information on the proposed rule readily accessible to the volunteers and staff supporting those advocacy efforts was a significant hardship. Additionally, both clinicians and association staff have substantial workloads, required meetings to attend, and other time-limited activities with which to contend.

---

<sup>1</sup> Notice of Proposed Rule Making. Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities. <https://www.ada.gov/assets/pdfs/mde-nprm.pdf>

## **Disabilities/Accessibility**

The AGD notes that there are a multitude of disabilities that could be categorized as disabling: neurocognitive/neurological, hearing, sight, mobility issues, etc. Since the Americans with Disabilities Act was signed into public law in 1990, businesses, including dental and medical practices, have purchased MDEs to accommodate disabled patients.

Title 36 Part 1195 M101.3 states, "The MDE Standards do not address the applicability of scoping or technical requirements to existing diagnostic equipment."<sup>2</sup> Furthermore, from the proposed rule, "Section 35.212(a)(1) makes clear, however, that a public entity is not required to make each piece of its existing MDE accessible."

Each capital purchase for a dental practice, such as cone beam computed tomography (CBCT) and magnetic resonance imaging (MRI) equipment, can require a financial commitment ranging from tens of thousands to millions of dollars. Disability accommodations are always factored into the design of these types of MDE which, as a rule, are in use for many years, are not easily replaced, and can accommodate most persons with disabilities.

Additionally, it is essential to recognize that facilities currently unable to accommodate care for a patient with a particular disability provide the patient with information about an alternate site where treatment can be provided. Reasonable limits on the ratio of accessible equipment compared to equipment for use on patients not covered under the Americans with Disabilities Act must also be accommodated.

### **Scoping requirements subsection 35.211(b)**

AGD notes the following scoping requirements in the proposed rule: "(b) Scoping requirements. (1) General requirement for medical diagnostic equipment. Where a service, program, or activity of a public entity, including physicians' offices, clinics, emergency rooms, hospitals, outpatient facilities, and multi-use facilities, utilizes MDE, at least 10 percent of the total number of units, but no fewer than one unit, of each type of equipment in use must meet the Standards for Accessible MDE."

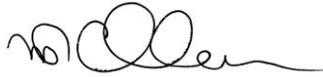
## **Closing**

The AGD thanks the Department of Justice for considering our comments on "Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities." Please contact Daniel J. Buksa, JD, CAE, Associate Executive Director, Public Affairs, by phone at (312) 440-4328 or via email at [daniel.buksa@agd.org](mailto:daniel.buksa@agd.org) if you would like to discuss our response in greater detail.

---

<sup>2</sup> <https://ecfr.gov/current/title-36/chapter-XI/part-1195>

Sincerely,

A handwritten signature in black ink, appearing to read 'Merlin Ohmer', with a long horizontal flourish extending to the right.

Merlin Ohmer, DDS, MAGD  
Academy of General Dentistry President

MO: jk

CC: Colleen Lawler, CAE, IOM  
Executive Director  
Academy of General Dentistry

Darren Greenwell, DMD, MAGD  
Dental Practice Council Chair

Daniel Buksa  
Associate Executive Director, Public Affairs