

November 3, 2023

Melanie Fontes Rainer
Director, Office for Civil Rights
Department of Health and Human Services Office for Civil Rights
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically via www.regulations.gov

Re: *Discrimination on the Basis of Disability in Health and Human Service Programs or Activities*
[Docket Number: HHS–OCR–2023–0013]

Dear Director Fontes Rainer:

Premier Inc. appreciates the opportunity to submit comments to the Department of Health and Human Services (HHS) in response to the proposed rule on Section 504 of the Rehabilitation Act of 1973 regarding *Discrimination on the Basis of Disability in Health and Human Service Programs or Activities* [Docket Number: HHS–OCR–2023–0013].

Premier applauds HHS for taking a comprehensive approach to advancing equity and strengthening protections for individuals with disabilities and we look forward to working with HHS to build upon existing safeguards for individuals with disabilities. Premier also supports HHS' proposals to align Section 504 regulations with requirements under the Americans with Disabilities Act (ADA), as differing requirements between the two laws have resulted in confusion about regulatory compliance.

The proposed rule includes several topics Premier believes to be essential such as:

- Advancing high-quality care for individuals with disabilities and countering discrimination due to biases and stereotypes;
- Prohibiting value assessment methods from discounting the value of life on the basis of a disability;
- Making care more accessible and usable by individuals with disabilities by standardizing web content and mobile applications and updating medical equipment standards; and
- Ensuring nondiscriminatory protections for critical child welfare programs and activities that are designed for children and strengthen families.

Premier also encourages further public education and research in certain areas and collaboration between the Administration and Congress to improve care for individuals with disabilities.

I. BACKGROUND ON PREMIER INC.

Premier is a leading healthcare improvement company and national supply chain leader, uniting an alliance of 4,350 hospitals and approximately 300,000 continuum of care providers to transform healthcare. With integrated data and analytics, collaboratives, supply chain solutions, consulting and other services, Premier enables better care and outcomes at a lower cost. Premier's sophisticated technology systems contain robust data gleaned from nearly half of U.S. hospital discharges, 812 million hospital outpatient and clinic encounters and 131 million physician office visits. Premier is a data-driven organization with a 360-degree view of the supply chain, working with more than 1,300 manufacturers to source the highest quality and

most cost-effective products and services. Premier's work is closely aligned with healthcare providers, who drive the product and service contracting decisions using a data driven approach to remove biases in product sourcing and contracting and assure access to the highest quality products.

A Malcolm Baldrige National Quality Award recipient, Premier plays a critical role in the rapidly evolving healthcare industry, collaborating with healthcare providers, manufacturers, distributors, government, and other entities to co-develop long-term innovations that reinvent and improve the way care is delivered to patients nationwide. Headquartered in Charlotte, North Carolina, Premier is passionate about transforming American healthcare.

II. ADVANCING CARE

People with disabilities often encounter biases or stereotypes when seeking medical care, particularly when people without disabilities misunderstand the quality of life for those living with disabilities. While healthcare providers' intent is to provide equal care for all patients, unconscious biases can emerge in caring for individuals with disabilities. As noted in the proposed rule, a recent [study](#) found that portions of practicing physicians overestimate the negative impact a disability has on an individual's quality of life. In addition, a National Academy of Medicine [study](#) found that during COVID-19 many healthcare facilities' crisis standard of care plans fell short in addressing the needs of individuals with disabilities due to unpredictable pressure, further highlighting the negative impact of bias.

Premier welcomes added provisions in the proposed rule to address the pattern of discrimination found in a wide variety of contexts including organ transplantation, life-sustaining treatment, crisis standards of care that are triggered when resources are limited, and participation in clinical research to ensure nondiscrimination for individuals with disabilities. While these added provisions are necessary, Premier believes this should be paired with increased public education to counter misperceptions on the quality of life of individuals with disabilities.

Value Assessment Methods: Value assessment methods are a tool for research purposes and for physicians to contain costs and expand quality improvement efforts. HHS proposes to clarify that a healthcare provider receiving federal reimbursement should not use any measure, assessment, or tool that discounts the value of life extension on the basis of disability to deny or afford an unequal opportunity to qualified individuals with disabilities with respect to the eligibility or referral for, or provision or withdrawal of any aid, benefit, or service. Premier applauds HHS for clarifying the use of these methods to ensure individuals with disabilities are protected from discrimination.

Value assessment methods are intended to inform treatment decisions and guide payments for the benefit of the patient, but the methodology must be transparent and readily available. Transparency is vital for building trust in these frameworks and assessments; therefore, Premier believes that these assessments should be promptly obtainable for patients to examine and comprehend. Transparency is essential for all patients but particularly for those with disabilities who may have lost trust in these methodologies due to previous experiences. Premier agrees with HHS's targeted enforcement to focus on methods that discount the value of life extension, as people with disabilities have documented this to be a primary error in these frameworks. As described in the proposed rule, poor methodologies lead to poor outcomes, and this clarification on value of life extensions will certainly lead to better outcomes for those with disabilities.

Additionally, however, it is important to note that value assessment methods may also be utilized by payers to support prior authorization or utilization management methodologies. Premier urges HHS to also clarify that payers who support any federal healthcare programs should not use any measure, assessment, or tool that discounts the value of life extension on the basis of disability to deny or afford an unequal opportunity

to qualified individuals with disabilities with respect to the eligibility or referral for, or provision or withdrawal of any aid, benefit, or service.

Premier additionally believes that there are further steps that can be taken to advance and ensure access to the appropriate care for those with disabilities:

- **Harness the Power of Social Determinants of Health Data:** Premier encourages a federal effort to scale the use of social determinants of health (SDOH) to inform data-driven policies that solve limited access and disparities in care for people who are disabled. This approach could be leveraged to collect, standardize and analyze national data to understand disparities in care for disabled individuals, identify best practices and improve health outcomes for disabled individuals.
- **Develop a Disability Care Blueprint:** Last year, the Administration released a [maternal health blueprint](#), informed by the Premier-operated [Maternal Morbidity and Mortality Data and Analysis Initiative](#), to better quantify the challenges and opportunities for public-private partnership to improve maternal and infant health in the country. Premier encourages collaboration between the Administration, Congress and private stakeholders to create a similar blueprint on disability policy. Such a framework would highlight opportunities for public-private partnership to improve disability care and provide a roadmap to monitor success.
- **Invest in Maternal Care for Women with Disabilities:** A [study](#) last year found that women with disabilities were significantly more likely to experience adverse pregnancy outcomes than those without disabilities. Specifically, pregnancies for women with disabilities were more likely to be characterized by smoking during pregnancy, delayed entry into prenatal care, preterm birth and low birthweight, according to the study. Premier encourages HHS to continue to educate Congress and the public about this occurrence and to appropriate funds to better study and combat this phenomenon.
- **Ensure Access During Natural Disasters:** During recovery efforts for Hurricane Ian, Premier became aware of a lack of emergency services and shelters that can accommodate the specialized needs for individuals with disabilities. For example, many individuals with disabilities and their families in the path of the hurricane were unable to evacuate their homes as shelters did not have the necessary infrastructure and support services needed to care for these individuals. This unfortunately resulted in these individuals having to shelter in place and hope for the best. Premier encourages federal agencies and relief organizations to provide appropriate funding to ensure that emergency efforts during a natural disaster account for the needs of disabled individuals and their families.

III. MAKING CARE MORE ACCESSIBLE AND USABLE

Following the COVID-19 pandemic, the use of telehealth and electronic healthcare services, such as web content and mobile applications, has become even more prevalent. When web-based platforms are not accessible, it isolates individuals with disabilities. These are now essential tools in modern healthcare, and Premier applauds HHS for proposing specific standards which would help to remove barriers and increase accessibility for individuals with disabilities, while adding exceptions for small entities.

Premier supports the proposal to add a new Section 504 provision to address the lack of accessible medical equipment for people with disabilities. Without accessible medical examination tables, dental chairs, radiological diagnostic equipment, scales and rehabilitation equipment, individuals with disabilities do not

have an equal opportunity to receive medical care. Individuals with disabilities may be less likely to get routine preventative medical care than people without disabilities because of barriers to accessing that care. This rule establishes standards for medical diagnostic equipment (MDE) and requires that all recipients of federal assistance have an accessible exam table. Premier supports the implementation of a buffer period to allow entities to adjust within two years of the rule's effective date. Additionally, Premier agrees that staff should be able to successfully operate accessible MDE and assist with transfers and positioning of individuals with disabilities.

Premier has identified further initiatives which would make care more accessible and usable for those with disabilities:

- **Promoting Telehealth:** Telehealth is now a fundamental part of the U.S. healthcare system, and several studies demonstrate its ability to improve patient access to high quality care and strengthen continuity beyond the COVID-19 pandemic. Premier appreciates the flexibilities granted to providers to innovate care and applauds HHS for its [guidance](#) explaining how telehealth intersects with non-discrimination laws such as the Americans with Disabilities Act (ADA). Premier supports sustained research in this space and will continue to urge lawmakers to codify statutes that equitably improve access to care through technology.
- **Allow Professionals to Operate at the Top of Their License:** Earlier this year, CMS released a comprehensive [Behavioral Health Strategy](#), which includes recommendations and goals to strengthen quality and equity and improve access to mental health and substance use disorder services. Central to these goals is expanding access to mental healthcare by allowing licensed professional counselors (LPCs) and licensed marriage and family therapists (LMFTs) to furnish behavioral health services under general rather than direct supervision, and to create new coding and payment for behavioral health integration billed by clinical psychologists (CPs) and clinical social workers (CSWs).

Premier supports measures to improve access, quality and equity in behavioral healthcare for beneficiaries. Premier urges HHS to continue to study the challenges Americans are facing in accessing mental health services, particularly those in rural or underserved areas where a large portion of services is provided by these types of practitioners.

IV. ENSURING PROTECTIONS FOR CHILD WELFARE PROGRAMS

Premier applauds HHS for adding a section on child welfare to expand on and clarify the obligation to provide nondiscriminatory child welfare services. This is an important step to promote equity in healthcare, as individuals with disabilities are commonly excluded from health programs and activities, creating sizeable health disparities. As mentioned in the proposed rule, parents with disabilities are more likely to have their children removed from custody based on the presumption of unfitness. We must ensure that both parents and children with disabilities are not unfairly treated in this space and spend additional resources to determine how to properly administer services for these individuals. Although the added protections in the proposed rule will help to break down these barriers, Premier urges HHS to continue to educate lawmakers and the public about this critical issue.

IV. CONCLUSION

In closing, Premier appreciates the opportunity to submit comments to HHS in response to the proposed rule on Section 504 of the Rehabilitation Act of 1973 regarding *Discrimination on the Basis of Disability in Health and Human Service Programs or Activities*. Premier looks forward to continuing to work with the Administration to inform policies that support the needs of individuals with disabilities and their families. If you have any questions regarding our comments or need more information, please feel free to contact me at soumi_saha@premierinc.com or 732-266-5472.

Sincerely,

A handwritten signature in black ink, appearing to read "Soumi Saha", with a long horizontal flourish extending to the right.

Soumi Saha, PharmD, JD
Senior Vice President of Government Affairs
Premier Inc.