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# It's All Over But the Crying: Damages for Emotional Injuries Not Available Under Certain Anti-Discrimination Statutes

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Healthcare facilities and other entities receiving federal financial assistance can breathe a little easier after a U.S. Supreme Court decision issued last week barring the recovery of emotional damages for certain discrimination claims.

Many federal anti-discrimination statutes allow recovery for emotional injuries such as humiliation, mental anguish, anxiety, depression, and other non-physical symptoms a plaintiff claims to have suffered as a result of discrimination. Federal appeals courts have been split on whether such damages are available to plaintiffs bringing discrimination claims under the Rehabilitation Act of 1973 (Rehab Act) and Patient Protection and Affordable Care Act (ACA). These statutes allow individuals receiving services from entities that accept federal financial assistance, such as healthcare providers receiving reimbursement through Medicare and Medicaid, to bring suit for discrimination associated with those services based on certain protected characteristics. The Supreme Court has now decided the issue, holding that emotional injuries are not recoverable under either the Rehab Act or ACA.

Pursuant to its authority to fix the terms on which it disburses federal money, Congress enacted four statutes prohibiting recipients of federal financial

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assistance from discriminating based on certain protected grounds. Title VI of the Civil Rights Act of 1964 forbids race, color, and national origin discrimination in federally funded programs or activities. Title IX of the Education Amendments of 1972 similarly prohibits sex-based discrimination. The Rehab Act bars funding recipients from discriminating because of disability. Finally, the ACA outlaws discrimination on any of the preceding grounds as well as age, by healthcare entities receiving federal funds.

In *Cummings v. Premier Rehab Keller*, a plaintiff who is deaf and legally blind sued her physical therapy provider claiming it failed to provide an American Sign Language (ASL) interpreter or other adequate interpretive services during her physical therapy sessions. While the Rehab Act and ACA allow a plaintiff to seek non-monetary relief – such as injunctive relief to halt or remediate the discriminatory practice – Cummings also sought to recover for emotional injuries associated with the alleged discrimination under these statutes. In a 6-3 decision authored by Chief Justice John Roberts, the Supreme Court agreed that damages for emotional injuries are not recoverable under the Rehab Act or ACA, and upheld the Fifth Circuit Court of Appeals' dismissal of Cummings' damage claims on that basis.

The impact of this decision on healthcare facilities and other entities who receive federal financial assistance is likely to be significant, as emotional injuries are often the only “damages” a patient or other consumer of services is able to support when bringing claims under these federal anti-discrimination statutes. The rejection of emotional injury damages by the Supreme Court in *Cummings* means those cases alleging discrimination under the Rehab Act and ACA where injunctive relief is not at issue will likely be dismissed for lack of recoverable damages, without the need for any analysis of whether discrimination did or did not occur. Practically speaking,

the *Cummings* opinion will also deter many plaintiffs and plaintiffs' counsel from bringing such cases, as the unavailability of monetary damages acts as a deterrent to incurring the time and expense of bringing such claims.

Healthcare providers and other entities who receive federal financial assistance should continue to take care to eliminate discrimination from their services and ensure that all patients and consumers receive a consistently high standard of care, regardless of any protected characteristics. Such entities should also take note that injunctive relief – in the form of a court-ordered change to their practices or policies – remains available to plaintiffs who claim to have suffered discrimination under the Rehab Act and ACA. However, such entities can take comfort in the fact that a mere agreement to accept federal funds does not create liability for emotional damages when a patient or other consumer feels slighted but is not physically harmed by an alleged failure to accommodate their disability or other protected characteristic.

Overall, healthcare providers and other entities receiving federal funds should brush up on all applicable laws, to ensure their policies and procedures are fully compliant. If you have any questions or for further assistance with developing compliant policies and practices, contact your Akerman attorney.

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