

## Blog Post

# U.S. Supreme Court Holds Healthcare Entities Not Liable for Emotional Injury Damages 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” that include humiliation, trauma, 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 the Patient Protection and Affordable Care Act (ACA). The U.S. Supreme Court has now decided the issue, holding that emotional injuries are not recoverable under either the Rehab Act or the ACA.

The Court’s opinion directly impacts the potential liability exposure for healthcare entities that receive payments from federal payors such as Medicare and Medicaid. Pursuant to its authority to fix the terms upon which it disburses federal money, Congress enacted four statutes prohibiting recipients of

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federal financial assistance from discriminating against patients 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 by healthcare entities receiving federal funds based on any of the preceding grounds as well as age. Notably, on May 10, 2021, the Biden Administration announced that the prohibited discrimination in Title IX and the ACA based on “sex” includes discrimination based on sexual orientation or gender identity in light of the U.S. Supreme Court’s decision in *Bostock v. Clayton County* (2020).

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. In a 6-3 decision authored by Chief Justice John Roberts, the U.S. Supreme Court agreed that damages for emotional injuries are not recoverable under the Rehab Act or the ACA and upheld the Fifth Circuit Court of Appeals’ dismissal of Cummings’s damages claims on that basis.

The impact of this decision upon 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 U.S. Supreme Court

in *Cummings* means those cases alleging discrimination under the Rehab Act and the 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 discourage 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 entities should continue to take care to eliminate discrimination from their services and to ensure that all patients and consumers receive a consistently appropriate standard of care, regardless of any protected characteristics. Injunctive relief – in the form of a court-ordered change to practices or policies – remains available to plaintiffs who claim to have suffered discrimination under the Rehab Act or the ACA. However, healthcare entities can take comfort in the fact that mere agreement to accept federal funds does not create potential liability for emotional damages when patients or other consumers feel slighted but are not physically harmed by alleged failures to accommodate their disabilities or other discrimination.

Overall, healthcare providers 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 need further assistance with developing compliant policies and practices, contact your Akerman attorney.

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