



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Washington, D.C. 20507**

Office of  
Legal Counsel

August 28, 2017

SUBMITTED VIA E-MAIL

Office of Management and Budget  
Attn: Desk Officer for SSA  
725 17th Street NW  
Washington, DC 20503

Social Security Administration  
OCLA  
Attn: Reports Clearance Director  
3100 West High Rise  
6401 Security Blvd.  
Baltimore, MD 21235

Re: Medical Permit Parking Application Forms, SSA-3192, SSA-3193, and SSA-3194; Docket  
No. SSA-2017-0033

Dear Sir or Madam:

Thank you for the opportunity to comment on the Social Security Administration's (SSA's) Medical Permit Parking Application forms, published in the Federal Register on June 27, 2017.<sup>1</sup>

As you know, the EEOC enforces the federal laws that prohibit employment discrimination based on race, color, religion, sex, national origin, age, disability, and genetic information.<sup>2</sup> These laws also prohibit retaliation for filing a charge or complaint of discrimination, participating in a discrimination proceeding, or opposing discrimination.<sup>3</sup> Further, the EEOC coordinates and leads the federal government's efforts to eradicate unlawful employment discrimination.<sup>4</sup>

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<sup>1</sup> 82 Fed. Reg. 29,136 (June 27, 2017).

<sup>2</sup> See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq.; Titles I and V of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq.; Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794a; the Equal Pay Act of 1963, 29 U.S.C. § 206(d); and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq.

<sup>3</sup> 42 U.S.C. § 2000e-3(a); 29 U.S.C. § 623(d); 42 U.S.C. § 12203(a); 29 U.S.C. § 791(f) (incorporating, among other provisions, the anti-retaliation provision of the Americans with Disabilities Act of 1990, as amended, into the Rehabilitation Act); 29 U.S.C. § 215(a)(3); 42 U.S.C. § 2000ff-6(f).

<sup>4</sup> Exec. Order No. 12,067, 43 Fed. Reg. 28,967 (June 30, 1978).

As indicated below in greater detail, we recommend that SSA revise the Medical Permit Parking Application forms to prevent any unintended conflicts with the Rehabilitation Act.

First, we are concerned that Form SSA-3193, as currently written, would result in SSA's receipt of a significant amount of information unrelated to medical parking applicants' disabilities and need for accommodation.<sup>5</sup> Employers may request reasonable documentation about an employee's disability and its functional limitations that require reasonable accommodation.<sup>6</sup> Employers must, however, tailor their requests for medical documentation and related information to request only the documentation and information necessary to establish that the individual has a covered disability and needs a reasonable accommodation. In general, employers may not request medical records and information about medications or other forms of treatment because such records and information are likely to include information unrelated to the disability at issue and the need for accommodation.<sup>7</sup>

Form SSA-3193 requires physicians of employees and contractors seeking medical parking as a reasonable accommodation to provide copies of the two most recent office notes, as well as relevant diagnostic reports, such as cardiac reports, pulmonary function tests, x-ray reports, or MRI reports. It also requires physicians to provide information regarding "current treatment, including medications, physical therapy, and other active management."<sup>8</sup> Form SSA-3192 incorporates these requirements by reference. The breadth of information sought requires physicians to include information that far exceeds the information required to confirm that the employee has a covered disability and needs medical parking.

We recommend that SSA remove the request for medical records and current treatment from these forms. As a substitute for this language, SSA could request that the physician explain the employee's disability, limitation(s), and need for medical parking. SSA could also request that the physician sufficiently explain the medical justification(s) for his or her response and avoid conclusory statements. We believe that by carefully tailoring its requests, SSA can ensure that it receives the information required to determine the need and eligibility for medical parking in a manner consistent with the requirements of the Rehabilitation Act.

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<sup>5</sup> See Form SSA-3193 (requesting copies of the two most recent office notes, as well as relevant diagnostic reports, such as cardiac reports, pulmonary function tests, x-ray reports, or MRI reports, and requesting "current treatment, including medications, physical therapy, and other active management"); see also Form SSA-3192 (incorporating Form SSA-3193 by reference).

<sup>6</sup> See EEOC, *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* (2000), 2000 WL 33407181, at \*9, <https://www.eeoc.gov/policy/docs/guidance-inquiries.html> [hereinafter *Disability-Related Inquiries Guidance*] (explaining what constitutes reasonable documentation); EEOC, *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* (2002), 2002 WL 31994335, at \*6-\*7, <https://www.eeoc.gov/policy/docs/accommodation.html> [hereinafter *Reasonable Accommodation Guidance*] (same).

<sup>7</sup> See *Disability-Related Inquiries Guidance*, *supra* note 6, at \*10; *Reasonable Accommodation Guidance*, *supra* note 6, at \*6; see also *Disability-Related Inquiries Guidance*, *supra* note 6, at \*9 (stating that requesting information about employees' use of prescription medication is usually prohibited because it is not job-related and consistent with business necessity in most instances).

<sup>8</sup> See Form SSA-3193, Question 9.

Second, we recommend that SSA revise the description of “disability” and related language to ensure that it is consistent with the changes made by the ADA Amendments Act of 2008 (ADAAA).<sup>9</sup> Forms SSA-3192 and SSA-3193 currently state that employees “must have a physical or mental impairment that **substantially limits** their mobility or ability to walk to be eligible for the reasonable accommodation of medical parking.” These forms also request medical documentation “supporting the severity of the impairment” or “relevant to determining the severity of [the] patient’s impairment.”

While it is true that impairments must substantially limit a major life activity to be considered covered disabilities under the Rehabilitation Act, the ADAAA lowered the threshold for establishing a substantial limitation from the standards originally established by courts and in the original ADA regulations. Under the ADAAA, an impairment is no longer required to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting.”<sup>10</sup> Instead, Congress directed that the phrase “substantially limits” be construed broadly in favor of expansive coverage.<sup>11</sup>

We are concerned that the use of bold font in the phrase “substantially limits,” coupled with the reference to the “severity” of the impairment, may erroneously imply that impairments must severely or significantly restrict a major life activity to be covered under the Rehabilitation Act. Accordingly, we suggest that SSA remove the bold font on “substantially limits” and replace the reference to the “severity” of the impairment with alternative language. For example, SSA could replace the references to “severity” mentioned above with “information or explanation sufficient to allow the SSA to determine whether the impairment is a covered disability under the Rehabilitation Act, and whether medical parking and/or other reasonable accommodations are available and would be effective,” or words to that effect.

Again, thank you for the opportunity to comment on these forms. Please feel free to contact me at [lisa.schnall@eeoc.gov](mailto:lisa.schnall@eeoc.gov) or (202) 663-4845 with questions or comments.

Sincerely,  
Lisa Schnall  
Senior Attorney Advisor  
Office of Legal Counsel  
Equal Employment Opportunity Commission

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<sup>9</sup> ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553; *see also id.* at § 7 (revising the Rehabilitation Act to incorporate by reference the definitions of “disability” and “individual with a disability” in the Americans with Disabilities Act).

<sup>10</sup> ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2(b)(4), 122 Stat. 3553 (rejecting the “demanding standard” established in Supreme Court cases); 29 C.F.R. § 1630.2(j)(1)(ii) (“An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.”).

<sup>11</sup> *Cf.* Pub. L. No. 110-325, § 2(b)(1) (declaring Congress’s intent that “a broad scope of protection be available under the ADA”).