Professional SOLUTIONS

Americans with Disabilities Act (ADA):

What Medical Professionals and Staff Need to Know

What is the ADA?

The ADA, a federal law in effect since 1990, is intended to provide a comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The ADA provides that "no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." Title III of the ADA applies to public entities, including hospitals, medical offices, and dental offices, which are considered to be "public accommodations" under the law. The requirements of the ADA apply to owners, operators, landlords and tenants; each is equally responsible for complying with the ADA. Nearly all commercial facilities are covered by the ADA and as such, are required to "reasonably" modify their policies and procedures when necessary to serve and communicate effectively with customers with disabilities.

What is a "Disability"?

According to the ADA, the following individuals are considered to have a disability:

- A person who has a physical or mental impairment that substantially limits one or more of that person's major life activities*;
- A person who has a history of such an impairment; or
- A person who, while not actually having a physical or mental impairment, is "regarded" or perceived as having such impairment.
- To achieve the goals of the ADA, "disability" is broadly defined. Physical impairment includes: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine.

Examples of physical or mental impairments include, but are not limited to, contagious and noncontagious diseases and conditions such as:

- Orthopedic, visual, speech and hearing impairments
- Cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, quadriplegia, paraplegia
- Cancer, heart disease, diabetes
- Mental retardation, emotional illness, specific learning disabilities
- HIV (whether symptomatic or asymptomatic) and TB
- Drug addiction, including Opioid Use Disorder (OUD), and alcoholism

*Major life activities include functions such as caring for oneself, performing manual tasks such as walking, seeing, hearing, speaking, breathing, learning and working

Enforcement

The United States Attorney General is authorized to investigate complaints and bring a civil action in any situation where a pattern or practice of discrimination is believed to exist or where a matter of general public importance is raised. In a civil action, the court may grant temporary or permanent injunctive relief, award monetary damages to persons adversely affected by the discriminatory practices, and, to vindicate the public interest, assess a civil penalty against the entity, in amounts up to $100,000.

The Federal ADA laws may be in addition to state and local accessibility laws, which are also subject to local enforcement efforts and private actions by citizens.

It is unlawful to retaliate against or coerce in any way any person who made, or is making, a complaint under the ADA or is otherwise exercising his or her rights under the law.

ADA Obligations

Examples of public accommodations required by Title III of the ADA include:

- Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
- Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.
- Make reasonable modifications in policies, practices and procedures that deny equal access to individuals with disabilities unless a fundamental alteration would result in the nature of goods and services provided.
- Furnish auxiliary aids when necessary to ensure effective communication, such as American Sign Language interpreters for deaf patients, and for deaf companions when appropriate, unless an undue burden or fundamental alteration would result.
- Remove architectural and structural communication barriers in existing facilities where readily achievable or provide alternative measures when removal is not achievable.

In providing goods and services, a public accommodation may not use eligibility requirements that exclude or segregate individuals with disabilities, including, for example, cancelling or rescheduling appointments based on the availability of auxiliary aids, scheduling HIV-positive patients for the last appointment of the day, etc., unless the requirements are necessary for the operation of the public accommodation. Additionally, requirements that tend to screen out individuals with disabilities are also prohibited. Safety requirements may be imposed only if they are necessary for the safe operation of a place of public accommodation and based on actual risks and not on speculation, stereotypes or generalizations about individuals with disabilities.

The ADA in Health Care Settings

The Department of Justice's Barrier-Free Health Care Initiative of 2012 continues to utilize the ADA to target health care providers and is designed to ensure that people with disabilities, and their companions, have access to medical information and physical access to medical buildings. Pursuant to this Initiative, in the last several years, the government has brought enforcement actions against numerous health care providers, including hospitals, nursing facilities, physician's offices, and dental clinics, for violating the ADA's mandate to provide effective communication and access to people with disabilities. The most common enforcement actions in recent years involve providing effective interpreters for deaf patients and/or deaf companions and refusing to treat patients with HIV or OUD.

These government enforcement actions offer a sobering but important reminder of the obligations health care practitioners have for their patients, and patient families. Guidelines and requirements for ADA compliance, as reflected in the government's Settlement Agreements with dental and medical practitioners, are summarized in the attached Table.

How do the ADA requirements and guidelines affect my medical practice?

You must treat a patient or prospective patient who is disabled, pursuant to the guidelines above, the same as you would treat a nondisabled patient.

1. You must know your patient or prospective patient is disabled. A thorough medical history should be obtained for all patients, including:
    - Chief complaint (reason for visit)
    - Current and past medical history
    - Family and social history
    - Assessment of patient's mental status to determine legal consent competency

    Consultation with the patient's primary physician may aid in determining:
    - Timing and sequence of medical treatment
    - Physical and mental disabilities and competency
    - Use of or need of restraints
    - Sedation implications
    - Drug interactions

2. If a disabled patient requires a procedure for which you would normally refer to a specialist to have performed, you may refer the disabled patient. The necessity of referral is uniform, regardless of disability without violating the ADA. Healthcare providers cannot refer away a patient with HIV to an immunology or infectious disease specialist unless the patient is in need of specific medical treatment from such a specialist.

Best Practices for ADA Compliance

TRAINING	Mandatory, annual training for all professionals, staff, receptionists, schedulers, phone operators, and new hires, on the requirements of Title III of the ADA, including sensitivity training on interacting with individuals with disabilities, and techniques for assisting individuals with effective communication, and physical access and transfer to exam tables and chairs.
POLICIES	Adopt and distribute non-discrimination policies reflecting compliance with the ADA. Incorporate the policies in employment contracts. Consider posting the policy on the practice's website.
SIGNAGE	Post signs, visible to patients, families, and staff in all waiting rooms and exam rooms as to the availability of auxiliary aids, and qualified interpreters when necessary for effective communication, at no cost to the patient. Signs should assure patients that their service animals are also welcome.
EFFECTIVELY COMMUNICATE	Adopt an Effective Communication Assessment Form to enable employees to make an assessment when patients call for an appointment or at the initial visit, whichever is first, as to whether a patient who is deaf or hard of hearing requires appropriate auxiliary aids and services. Never tell patients they are required to bring their own auxiliary aids, such as interpreters or assistants to transfer them onto medical exam tables. Make arrangements in advance of a patient's appointment to have the
PHYSICAL ACCESS	Have wheelchair accessible parking; clear striping and signage in the parking lot; ramp access to the office building. In the office suite, widen doorways as necessary; have sufficient room in the waiting area for patients and their equipment; the check in/ reception area should be accessible to patients in wheelchairs; clear passageways between the waiting area to the exam room; allow maneuvering space for patients to ambulate/ approach the exam chairs and tables; install grab bars as necessary. Patients must be offered the same options and availability in scheduling appointments as offered to other patients. For example, it is discriminatory for a practice to require a patient to schedule appointments for the last appointment of the day because the patient has HIV.

EQUIPMENT & CHAIRS	Medical equipment should not be a barrier to individuals with disabilities. Examination rooms should have features that make it possible for patients with mobility disabilities, including those who use wheelchairs, to receive appropriate medical care. Staff should be trained on proper patient handling and transfer techniques to access chairs and equipment as necessary. It is discriminatory for staff to refuse to assist patients in accessing examination equipment.
AUXILIARY AIDS & SERVICES FOR DEAF PATIENTS & COMPANIONS	Includes a wide range of products including note takers, written materials; telephone handset amplifiers; assistive listening devices; closed caption decoders; text telephones (TTYs); and other devices. Practitioners are required to provide individuals who are deaf or hard of hearing and their companions with appropriate auxiliary aids and services, including qualified interpreters where necessary to ensure effective communication unless an undue burden or a fundamental alteration of the services to be provided would result. This should be at no cost to the patient or family. The term “companion” includes a person who is one of the following: (a) a person whom the patient designates to communicate with healthcare personnel on his or her behalf regarding the patient’s condition or care or to help the patient act on the information, advice or instructions provided by healthcare facility; (b) a person legally authorized to make health care decisions on behalf of the patient; or (c) such other family member, friend, or associate of a patient who, along with the patient, is an appropriate person with whom the healthcare facility should communicate. Circumstances when it may be necessary to provide such auxiliary services, including an interpreter, include: discussion of patient history, explaining the diagnosis, treatment options, and other procedures; discussing a recommendation for treatment; obtaining informed consent for treatment; providing instructions for medications; post-treatment care and follow up activities. Generally the determination of whether to provide such aids or services, which aids are appropriate, and the timing, duration and frequency with which they will be provided should be made by the practice in consultation with the person with a disability.

QUALIFIED INTERPRETERS FOR DEAF PATIENTS & COMPANIONS	The practice should not rely on friends or family members to interpret, except in an emergency. Do not rely on a minor child or a patient to interpret except in an emergency involving an imminent threat to the safety of an individual or the public and where no interpreter is available. Maintain a list and the contact information of qualified interpreters or interpreter agencies to ensure that qualified interpreter services are available. Be cognizant of the type of sign language method the patient uses; whether foreign language signing is required; or, whether a qualified oral interpreter is required for patients and companions who rely primarily on lip reading for effective communication. Interpreter services can be provided through video remote interpreting (VRI). However, VRI may not be used when it is not effective due to a patient's health (for example, when the patient is bed-ridden or in such pain or positioning that VRI is not appropriate). Interpreter services should be made available free of charge to the patient; though it is permissible to seek insurance reimbursement, when available.
SERVICE ANIMALS	Under Title III of the ADA, a service animal is a dog that has been trained to perform work or tasks for the benefit of a person with a disability. Generally, Title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go. Title III entities may ask only two questions to determine if an animal is a service animal: (1) "Do you need the animal because of a disability?" and (2) "What work or tasks has this animal been trained to perform?" A dog or other animal whose sole function is to provide comfort or emotional support (emotional support animals or ESAs) do not qualify as service animals under the ADA. However, some state and local laws provide certain protections for owners of ESAs.
SPECIAL CONSIDERATIONS FOR PATIENTS WITH OPIOID USE DISORDER (OUD)	Protection from discrimination because of OUD (or any drug use disorder covered by the ADA) is not applicable if an individual is currently using illegal drugs. However, drugs that are part of MAT (medication assisted treatment for substance dependence) such as methadone, Buprenorphine (Suboxone), and naltrexone are not illegal drugs and a healthcare facility cannot discriminate against anyone using these drugs as part of a medical treatment plan to treat OUD.
PATIENT COMPLAINTS	Acknowledge, investigate and seek to resolve any patient or family member complaint promptly.

WEBSITE ACCESSIBILITY	Healthcare providers and offices with websites should take steps to ensure that all features of their websites are accessible for people with disabilities who use specialized software to navigate web pages. Some suggestions to make this possible include (1) Use headings and subheadings in the HTML code throughout your web page, (2) Ensure keyboard control and navigation for users who are not using a mouse (links should be clickable through use of a keyboard only), (3) Add clear labels and error messages that screen readers can understand, (4) Include metadata text in all graphics, (5) Write descriptive call to actions so that all buttons and text links indicate what will happen when a user clicks on them, regardless of context provided by other images. The Web Content Accessibility Guidelines (WCAG) is a framework developed in cooperation with individuals and organizations around the world, with a goal of providing a single shared standard for web content accessibility that meets the needs of individuals, organizations, and governments internationally. Although its standards have not been formally adopted by the DOJ, healthcare providers and offices may want to use a WCAG 2.0 Markup Validation Service to get an idea of where your site currently stands in regards to web accessibility. For more information on the WCAG 2.0 guidelines, go to https://www.w3.org/WAI/standards-guidelines/wcag/.

Resources

1. For information and technical assistance with the ADA, visit the Government's homepage: http://www.ada.gov/.
2. ADA Information Telephone Line: 800-514-0301 (voice); 800-514-0383 (TDD)
3. To learn more about the Barrier-Free Health Care Initiative and recent Settlement Agreements, visit: https://www.ada.gov/usao-agreements.htm
4. In 2010, the DOJ first began an attempt to promulgate regulations about the accessibility of Web information and services. If promulgated, those regulations would indicate what a healthcare entity (or telehealth or telemedicine company) must do in order to make sure their website is accessible for individuals with disabilities. However, in December 2017 the executive branch formally withdrew the previously announced rulemaking actions and the federal government is currently determining whether such regulations are appropriate.