

Accessible Healthcare

Legal, Human, and Practical Issues

Wendy Strobel Gower
Director, Northeast ADA Center
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Cornell University



Disclaimer



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People with Disabilities



- Experience both health disparities and specific problems in gaining access to health care, including health promotion and disease prevention programs and services
- 54.4 M people have some form of disability (18.7%)
- 35 M have a significant disability (12 %)
- Rates of disability increase with age

Goals for Disability and Health Objectives



- Be included in public health activities.
- Receive well-timed interventions and services.
- Interact with their environment without barriers.
- Participate in everyday life activities.

HealthyPeople.gov, 2013

Health Care Provider should...



- Offer expertise and knowledge about health care and wellness promotion
- Hear and respond to articulated health concerns
- Communicate clearly and directly
- Be willing to spend the time necessary to be fully responsive
- See the person as a partner in their care and an expert on their own body

Barriers to Health Care for People with Disabilities



- Health care provider stereotypes about disability
- Lack of appropriate training
- Lack of accessible medical facilities and examination equipment
- Lack of understanding how to effectively communicate with people with disabilities – disproportionately affects the Deaf population
- Failure to accommodate people with disabilities

A Survey of healthcare providers



- 22 - 26% said they could not accommodate a patient in a w/c who could not self transfer
- Gynecology had the highest rates of inaccessible practices (44% declined to see the patient)
- All the other subspecialties had proportions of inaccessible practices ranging from 16%-28%.
- Several practices reported a willingness to provide substandard or potentially unsafe care
- Fewer than 10% of practices had a height adjustable table

FYI...



- The U.S. Access Board has proposed accessibility standards for Medical Diagnostic Equipment.
- Minimum technical criteria to ensure that medical diagnostic equipment, including exam tables and chairs, weight scales, mammography equipment and other imaging equipment used by health care providers for diagnostic purposes are accessible to people with disabilities
- <http://www.access-board.gov/guidelines-and-standards/health-care/about-this-rulemaking/proposed-standards/text-of-the-proposed-standards>

Something to Think About



- <http://www.proyectovision.net/map/book/export/html/63.html>



Five Titles of the ADA



Title 1. Employment

Prohibits disability discrimination in all employment processes

Title 2. Accessibility in public entities

Physical and program accessibility in state/local govt. entities

Title 3. Accessibility in businesses

Physical and program accessibility in restaurants, hotels, stores, places of business

Title 4. Telecommunications

Telephone and communications systems for the public

Title 5. Miscellaneous

Protection from retaliation



Who is “covered” (must comply with) the ADA



Entities with 15 or more employees



Public (government) agencies regardless of whether they receive federal assistance

Privately operated commercial entities (for example, private schools and colleges, banks, restaurants, theaters, hotels, private transportation, supermarkets, shopping malls, museums, recreational facilities, sports arenas, medical, legal and insurance offices)

Exempt: Private clubs and religious organizations

DOJ: Barrier Free Health Care Initiative



- DOJ targeted enforcement - access to medical services and facilities is a “critical area for individuals with disabilities”
 - Multi-phase initiative focusing on...
 - Effective communication for people who are Deaf or have hearing loss
 - Physical access to medical care for people with mobility disabilities
 - Equal access to treatment for people who have HIV/AIDS
-

A quote...



“Disability-based discrimination in health care is illegal under the Americans with Disabilities Act and will not be tolerated,” said Eve L. Hill, Senior Counselor to the Assistant Attorney General for the Civil Rights Division. “All types of health care providers – from hospitals to nursing homes, from surgeons to general practitioners – all across the country – need to provide equal access to people with disabilities, including people who are deaf. More than 20 years after passage of the ADA, the time for compliance is now.”

Title II of the ADA: Accessibility in State and Local Facilities



Title II of the ADA



- Applies to all programs, activities, and services provided or operated by state and local government
- No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied benefits of the services, programs, or activities of a public entity or be discrimination by any such entity

Primary Principle of Title II



- Nondiscrimination
- Must evaluate all programs and activities by 2 main criteria:
 1. Equal access
 2. Integration of settings

Who is a qualified individual?



- The ADA protects three categories of individuals with disabilities:
- 1) Individuals who have a physical or mental impairment that substantially limits one or more major life activities;
- 2) Individuals who have a record of a physical or mental impairment that substantially limited one or more of the individual's major life activities; and
- 3) Individuals who are regarded as having such an impairment, whether they have the impairment or not.

Qualified...



- The individual must meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities, or services with or without:
 - 1) Reasonable modifications to a public entity's rules, policies, or practices;
 - 2) Removal of architectural, communication, or transportation barriers; or
 - 3) Provision of auxiliary aids and services.

Public Entity is Defined as...



Any State or Local
Government **OR**

Any Department, Agency,
Special Purpose District, or
Instrumentality of State or
Local Government

Equal Access



- You cannot deny access to a good or a service based on disability alone.
- No unnecessary eligibility standards or rules
- Where necessary, modify programs, policies, practices and procedures

Disparate Impact



- People with disabilities shall not be discriminated against by an unfair application of administrative rules or policies.
- Many rules and policies exist for good reasons.
- However, when the rule is implemented, it cannot have a greater impact on people with disabilities than on people without disabilities.

Integrated Settings



- Provide universal access where ever possible.
- You can have separate events for people with disabilities, but understand that you can't deny access to the "regular" event if someone with a disability would prefer to participate in it.



Program Accessibility

Public Facilities

Program Accessibility



A public entity's services, programs, and activities, when viewed in their entirety, must be readily accessible to and usable by people with disabilities.



“In Its Entirety”



A program must be evaluated both in terms of the parts or elements that make up the program AND in terms of the way they work together as a whole.

Important Point!



Unlike private entities under Title III, public entities are not required to remove barriers from each facility, even if removal is readily achievable. A public entity must make its **programs** accessible. Physical changes to a building are required only when there is no other feasible way to make the program accessible.



Limitations to Program Access

A public entity does not have to take any action that would:

- Result in a fundamental alteration in the nature of its program or activity
- Cause undue financial or administrative burdens

NOTE: The public entity is still responsible for finding an alternative way to ensure individuals with disabilities receive the benefits and services of the program or activity.

Program Accessibility Options



- Reassigning services to accessible locations
- Purchase of equipment
- Offering aide/assistance
- Auxiliary aids and services to ensure effective communication
- Structural change if no other option available



Title III of the ADA: Accessibility in Private Business



Things to Remember



- Businesses/public accommodations have a responsibility to ensure their buildings and goods are accessible (physically, programmatically, technologically, etc.)
- People with different disabilities have different needs to consider when designing your facilities, providing your services, and selling your goods

Who is covered by Title III of the ADA?



- Public accommodations
- Commercial facilities
- Private entities that offer examinations and courses related to educational and occupational certification

Overarching Requirement



Non-Discrimination

Individuals with disabilities may not be denied full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations offered by Title III entities

Broad Principles of Title III Requirements



1. Equal opportunity to participate;
2. Equal opportunity to benefit; and
3. Receipt of benefits in the most integrated setting appropriate.

Title III specifically requires that Public Accommodations avoid:



- Eligibility criteria that screen out people with disabilities without legitimate safety reasons
- Unnecessary inquiries into disability
- Surcharges associated with compliance with Title III

Auxiliary Aids and Services



- Title III requires public accommodations provide auxiliary aids and services
- Auxiliary aids and services help to ensure equal access by offering alternatives to business as usual
- Appropriate aids and services will vary depending on the nature of the business and the person's disability

Access to Sites and Services



- Readily achievable barrier removal
- If removal of barriers is not readily achievable, must take alternate steps to make goods/services accessible

Important Provisions Under Title II and Title III



Equal Access



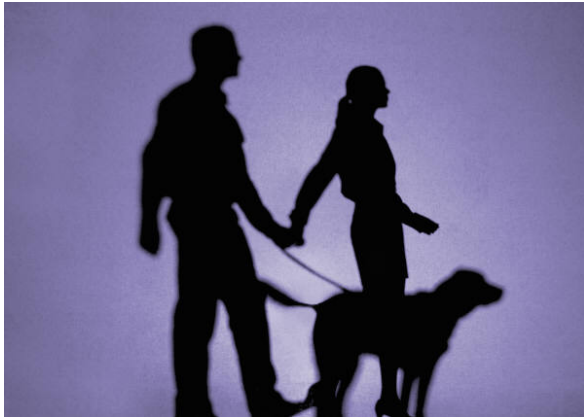
- You cannot deny access to a good or a service based on disability alone.
- No unnecessary eligibility standards or rules
- Where necessary, modify programs, policies, practices and procedures
- Avoid creating policies or practices that discriminate against people with disabilities in the normal course of activities.

Effective Communication



- Both Title II and Title III require that entities provide appropriate auxiliary aids and services to ensure effective communication
- Things to consider:
 - How complex is the interaction?
 - How long is the conversation?
 - What is the person's preferred communication style?
 - What will work?

Service Animals



- Now limited to any dog that is individually trained to work or perform a task for an individual with physical, sensory, psychiatric, intellectual or other mental disability
- And sometimes miniature horses...

What do you need to know about service animals?



- May or may not be harnessed/identifiable
- Must be allowed to enter public facilities, even if there is a “No Pets” policy
- Cannot impose additional fees, surcharges, deposits, etc. for having a service animal

Service Animals: The ADA Requires...



- Must be allowed to take their service animals into ALL areas of a facility where guests are normally allowed to go
- Title II entities must make reasonable modifications in policies, practices, or procedures to permit an individual with a disability to be accompanied by their service animal

What CAN you ask about a service animal?



- Do you need the animal because of a disability?
- What work or tasks has the animal been trained to perform?

What can't you ask about a service animal?



- Do you have proof that the animal has been certified, trained, or licensed as a service animal?
- What kind of disability do you have?
- Can you prove you have a disability?

Note: You may not exclude a service animal from a facility even if state or local codes prohibit animals on the premises. The ADA is a federal law that trumps state or local laws and regulations that are less protective of the rights of individuals with disabilities.

Lets Review!



- Equal access is critical
- Don't make decisions based on stereotypes or assumptions
- Develop policies around effective communication, service animals, and other issues around disability
- Ensure all staff is trained to implement your policies.
- Start thinking about the physical accessibility of your offices and develop a plan to get accessible medical diagnostic equipment

Have questions?



- ADA National Network
 - 800.949.4232
 - adata.org
- Local Independent Living Centers
 - <http://www.ilru.org/html/publications/directory/>
- Barrier Free Health Care Initiative
 - <http://www.ada.gov/usao-agreements.htm>

Upcoming Webinars



Scenario Clinic: Finding qualified candidates with disabilities

May 14, 2014

2pm – 3pm

<http://www.ilr.cornell.edu/edi/register/index.cfm?event=4500>

What's Your Plan? Barrier Removal in Title III Entities. Part 4

May 16, 2014

2pm – 3:30pm

<http://www.ilr.cornell.edu/edi/register/index.cfm?event=4508>

Northeast ADA Center

Employment and Disability Institute
School of Industrial and Labor Relations

Cornell University

201 Dolgen Hall

Ithaca, NY 14853

800.949.4232 in NY, NJ, PR and the U.S. VI

607.255.6686

northeastada@cornell.edu

www.northeastada.org



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