

## Compliance Today – October 2022



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### ADA compliance for healthcare facilities and services

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By Kristin Ahr and James Fetter

The Americans with Disabilities Act (ADA) is a comprehensive statute passed over 30 years ago with the goal of removing unnecessary and discriminatory barriers preventing people with disabilities from fully participating in all aspects of society.<sup>[1]</sup> To achieve this laudable goal, the statute imposed many requirements on public entities and private businesses that are deemed public accommodations. As relevant here, a public entity is defined as “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” ADA Title II thus covers public hospitals and other healthcare facilities.<sup>[2]</sup> Both hospitals and professional offices of healthcare providers are specifically listed as public accommodations covered under ADA Title III.<sup>[3]</sup> The ADA applies to all healthcare entities open to the public, from the large state-run hospital to the local pharmacy or doctor’s office. And the ADA’s requirements touch all aspects of the healthcare industry, from the physical layout of healthcare facilities to policies regarding communication with patients to the design of healthcare websites.

Though we do not discuss the Affordable Care Act (ACA) here, it is important to note that ACA Section 1557, which applies to “any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance.” 42 U.S.C. § 18116(a) applies more stringent regulations to private healthcare facilities than would otherwise apply to private entities under ADA Title III. In a nutshell, this means that private healthcare facilities subject to the ACA must follow the regulations concerning disability access that apply to entities which receive federal funds.<sup>[4]</sup>

Though the ADA’s requirements are numerous and seemingly daunting, they begin to make sense when one considers a basic question: What is required to ensure that people with disabilities—whether physical or sensory—have meaningful access to every part of or service provided by a healthcare facility? To take an obvious example, a doorway that is too narrow for a standard wheelchair to fit through creates an impassible barrier for a person who uses a wheelchair to ambulate. To take a somewhat more complicated case, a website or app that is not properly designed can be inaccessible to blind people who use screen readers (i.e., software that converts the text on the screen into speech or braille). As a result, blind people cannot perform otherwise simple tasks, such as

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independently booking a COVID-19 vaccine appointment for themselves.<sup>[5]</sup> Failure to comply with the ADA may also result in avoidable and expensive litigation, after which a court may decide what your organization must do to come into compliance. Without a doubt, then, it is better to be proactive rather than reactive in ensuring that your healthcare organization is ADA compliant across the board.

In what follows, we address what we believe to be the three most significant areas in which a healthcare entity should evaluate its compliance with the ADA. These are physical access, policies concerning patient communication, and web accessibility. The first two areas have been critical to ADA compliance since the statute was enacted in 1992. Still, litigation continues against healthcare entities alleged to be noncompliant in these areas. Web accessibility—though not expressly mentioned in the ADA—is of growing importance due to the high and increasing volume of web accessibility litigation and the recent guidance from the Department of Justice (DOJ) to encourage and assist both public and private entities in making their websites accessible. Though it is always a good idea to consult an attorney or other expert on ADA standards before implementing a compliance plan, simply consulting with people with various disabilities is also a great way to identify obvious accessibility barriers.

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