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Understanding a physician's responsibility to comply with the ADA

By Anne Sumpter Arney

Like other healthcare providers, physicians are subject to myriad federal and state laws and regulations governing everything from medical records to reimbursement. Along with these many healthcare-specific compliance issues, physicians must also make sure their practices—both in person and remote—comply with the laws and regulations that govern the accessibility of healthcare for persons with disabilities.

According to the Centers for Disease Control and Prevention, 61 million adults in the United States, or one in four, have some form of disability.[1] Access to healthcare for persons with disabilities is a civil right mandated by state and federal law.

The ADA and Rehabilitation Act of 1990

Over 30 years ago, President George H.W. Bush signed the Americans with Disabilities Act of 1990 (ADA) into law.[2] Prior to the enactment of the ADA, the Rehabilitation Act of 1973 already prohibited discrimination against individuals with disabilities based on their disability in programs or activities that receive federal financial assistance, including health programs and services.[3] Title III of the ADA expanded the prohibition on discrimination on the basis of disability beyond activities that receive public funds to any public accommodation or commercial facility.

Both Title II and Title III of the ADA and Section 504 of the Rehabilitation Act require that medical care providers provide individuals with disabilities:

- Full and equal access to their healthcare services and facilities; and
- Reasonable modifications to policies, practices, and procedures when necessary to make healthcare services fully available to individuals with disabilities, unless the modifications would fundamentally alter the nature of the services (i.e., alter the essential nature of the services)

Even if a physician does not participate in any federal program, offices are covered by Title III of the ADA as places of public accommodation; they are required to be accessible to disabled individuals.

The needs of patients with a disability are different not only from those without a disability but also from each other. According to the ADA, a person with a disability can have a mobility or physical disability, sensory (vision or hearing), intellectual, psychiatric, or other mental disability. The obstacles to accessibility for a particular patient and the necessary accommodation must meet the need of the particular disability.

The solution for someone with a visual disability will be completely different from the solution for a patient who

is deaf or has speech or mobility issues. Despite the difficulty of these challenges, the ADA and other civil rights laws require that each of these unique patients have access to the same care provided to those without disabilities. Accommodating the variety of patient disabilities will often require time with the patient and additional expense in the design and structure of an office or specific changes to the website for a virtual visit.

Mobility issues and accessibility standards

Medical care providers are required to provide access to care for people with mobility disabilities, where the services are provided. The Architectural and Transportation Barriers Compliance Board (Access Board) "is an independent federal agency that promotes equality for people with disabilities" through accessible design and sets minimum guidelines for accessibility; these ADA Standards apply to physician offices.[4] Under Title III, existing facilities are required to remove architectural barriers when it is easily accomplishable and can be carried out without much difficulty or expense.

If not readily achievable, services must be available through alternative methods.[5]

The ADA standards require, among other things, that a physician provide an accessible examination room with features that make it possible for patients with mobility disabilities—including those who use wheelchairs—to receive appropriate medical care. New and altered examination rooms must meet the ADA Standards for Accessible Design requirements. In addition, a physician's office must provide accessible medical equipment, an exam table, and chairs.[6]

Communication barriers

Effective communication is essential to quality medical care. The ADA requires physicians to provide auxiliary aids and services to ensure individuals with speech, hearing, and vision disabilities can understand what is said or written and communicate successfully.

A physician must confirm that communication with people with disabilities is as effective as communication with people without disabilities. The type of auxiliary aid or service necessary to ensure effective communication will depend on what communication method is currently used by the individual, as well as the length and difficulty of the message or information being communicated. A physician should ask individuals with disabilities what communication method they prefer, but may choose a different method if it results in effective communication. For example, in some circumstances, a pen and note paper may be adequate; in others, a sign language interpreter may be necessary.

In addition, to effectively communicate the information, any aid or service must be readily available and must protect the privacy, independence, and dignity of the person with a disability.

For patients with visual impairment, office directories must be available if this does not pose an undue burden. Solutions may be as simple as having a large print directory or better lighting of signs and providing personal assistance to read information or find a location.

For patients with cognitive impairment, information should be given clearly and simply. Physicians and the staff should allow for more time with a patient and be prepared to repeat and explain concepts and confirm the patient has understood the communication.

Telemedicine

In 1990 when the ADA became law, the internet was not a prevalent communication tool for the general public.

Telemedicine was still in the future. Although telemedicine was becoming an important resource before COVID-19, the pandemic dramatically impacted the need for and use of an alternative to in-person healthcare delivery.

Patients no longer felt as safe in their physician's office as they did at home. In an effort to provide access to care while allowing patients to keep their distance, the federal government, states, and third-party payors adopted changes in laws and rules to increase the availability of healthcare from your home, which resulted in the growth of telemedicine.[7]

Previously, telemedicine was only one alternative for care, but now it may be the only care offered by a physician's practice.

In some ways, telemedicine can increase access to care for individuals with a disability, particularly mobility issues; however, telemedicine without accommodations is inaccessible for individuals with visual and other communication-related disabilities. The ADA and the Rehabilitation Act apply to telehealth on the same basis as care provided in the physician's office. Physicians and their offices who provide telemedicine must use technologies and methods that allow their disabled patients to obtain quality care through their websites.

Telehealth access is achieved when physicians apply the same principles used to assist patients with in-person visits. Many commercial services provide the technology necessary to adapt a telehealth site to the needs of those with communication challenges.

Although Title III of the ADA does not directly address whether websites are places of public accommodation, the Department of Justice takes the position that the ADA applies to all public-facing websites[8] and looks to the standards set by Web Content Accessibility Guidelines for compliance.[9]

In addition, to develop a telehealth site that accommodates patients with disabilities, physicians and staff should modify the necessary procedures to provide additional support to patients with disabilities. For example, a medical office should:

- Make sure any intake forms include a way for patients to let the physician know about their particular needs and consider whether some patients may need longer appointment times.
- Written materials should be available in different formats, including print, audio recordings, or braille.
- Website and online tools should be compatible with screen readers and offer large text sizing.
- Provide interpreter services and communication aids to patients with disabilities and their companions free of charge. (Patients with disabilities are not required to provide their own interpreter.)

Accommodation is the responsibility of the physician and not the patient

A physician may not charge the patient for the costs of the auxiliary aid or service provided by their office unless it can demonstrate that it would be an undue financial burden. In that case, the entity must provide a different auxiliary aid or service to communicate effectively. In addition, healthcare providers cannot require an individual with a disability to bring someone to interpret for them—except in emergencies—nor rely on an adult accompanying an individual to interpret or facilitate communication.

Takeaways

- Physicians should ensure that medical practices—both in person and virtual—comply with laws and regulations that govern the accessibility for persons with disabilities.

- Whether or not a medical office participates in any federal program, it must comply with Title III of the Americans with Disabilities Act (ADA) requirements as a place of public accommodation.
- Disability includes mobility or physical disabilities, sensory, intellectual, psychiatric, and cognitive disabilities, and a medical office needs to address their patients' specific accessibility challenges.
- COVID-19 dramatically impacted the need for and use of virtual healthcare delivery, which increased its accessibility and also created new ADA compliance challenges.
- ADA and Rehabilitation Act requirements apply to medical services provided in telehealth on the same basis as medical care provided in the traditional physician's office.

1 Centers for Disease Control and Prevention, "Disability Impact All of Us," infographic, last reviewed September 16, 2020, https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html.
2 U.S. Department of Justice, Civil Rights Division, "Introduction to the ADA," *Information and Technical Assistance on the Americans with Disabilities Act*, https://www.ADA.gov/ada_intro.htm.
3 29 U.S.C. § 701 et seq.
4 U.S. Access Board, "U.S. Access Board Equity Plan," January 20, 2022,https://www.access-board.gov/equity/.
5 28 C.F.R. § 36.401-36.406.
6 U.S. Department of Justice and the U.S. Department of Health and Human Services,*Americans with Disabilities Act: Access To Medical Care For Individuals With Mobility Disabilities*, July 2010, https://www.ada.gov/medcare_mobility_ta/medcare_ta.htm.
7 U.S. Department of Health & Human Services, "Policy changes during COVID-19," last accessed August 9, 2022, https://telehealth.hhs.gov/providers/policy-changes-during-the-covid-19-public-health-emergency.
8 U.S. Department of Health & Human Services, Civil Rights Division, "Guidance on Web Accessibility and the ADA," March 18, 2022, https://beta.ada.gov/web-guidance/.
9 Web Accessibility Initiative, "Web Content Accessibility Guidelines (WAG) 2, Level AA Conformance," updated July 13, 2020, https://www.w3.org/WAI/WCAG2AA-Conformance.