



Disability Rights Education & Defense Fund

MODULE # 1: The Americans with Disabilities Act—Key Elements

Improving Access to Health Care for People with Disabilities

A self-directed training for aging and disability organizations

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Disability Rights Laws

- Federal and state disability rights laws protect people with disabilities from discrimination and provide remedies when discrimination takes place
- Key laws include the 1990 Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973
- These laws protect people with disabilities from discrimination in health care services and programs and set forth requirements for physical and communication accessibility and modification of policies and procedures

The 1990 Americans with Disabilities Act (ADA)



ADA Learning Objectives

- Understand that the ADA:
 - Prohibits disability discrimination
 - Calls for equal opportunity to participate
 - Applies to states, and through contract, to health plans and all network providers
 - Requires physical access
 - Requires accommodations
 - Permits limited exemptions
 - Enforcement by US Justice Department; law suits

What is the ADA?

- The 1990 Americans with Disabilities Act is a federal civil rights law that
 - Prohibits discrimination against people with disabilities
 - In employment (15 or more employees)
 - By state and local governments
 - By privately owned and operated public accommodations
 - By public and private transportation, and
 - In telecommunications
- For more information about the ADA, see the US Department of Justice website at <http://www.ada.gov/>

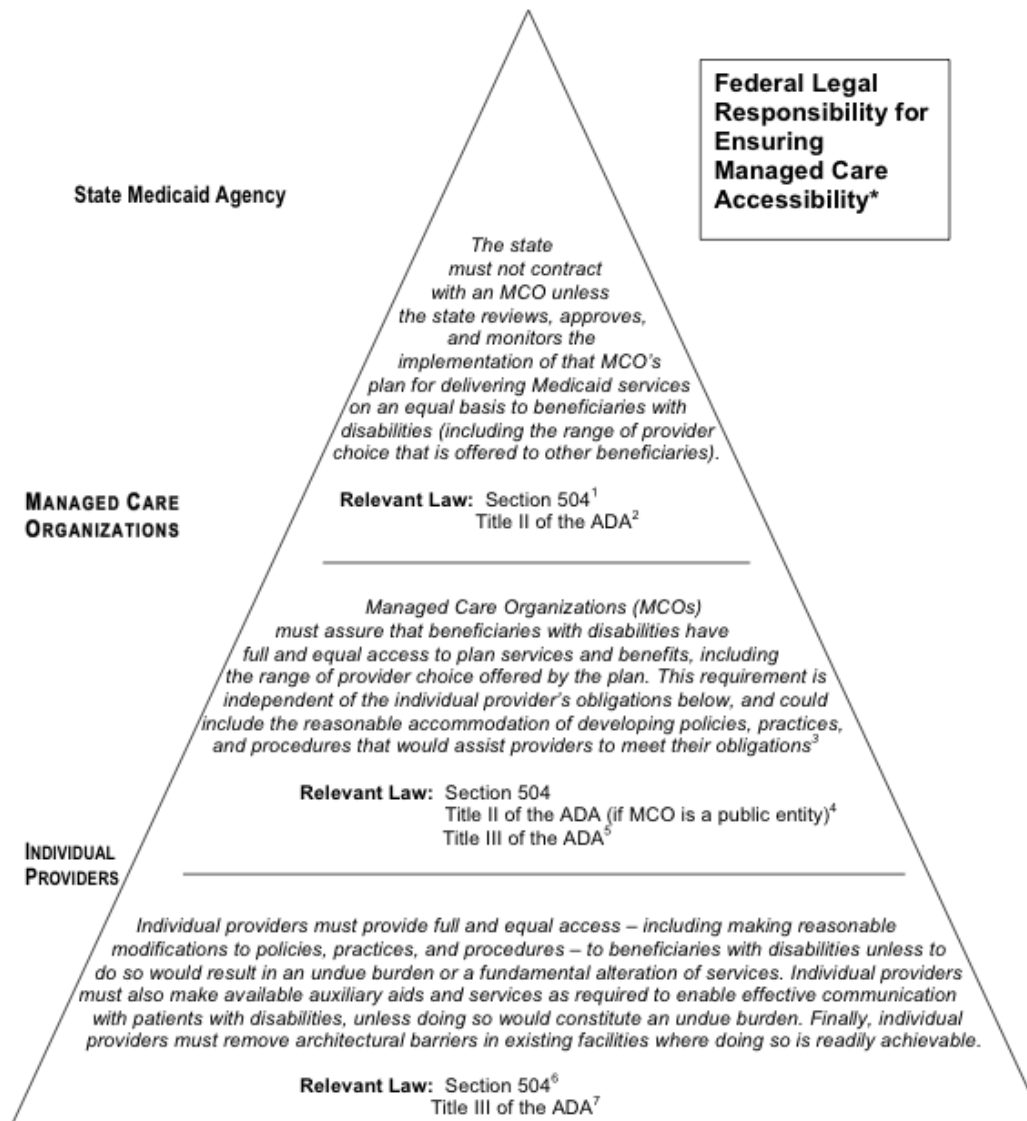
Central Principle of the ADA

The ADA ensures that people with disabilities have an equal opportunity to participate in all aspects of community life

What Health Care-Related Entities Have to Comply with the ADA?

- The provisions of the ADA that most directly apply to health care entities and providers can be found in Titles II and III
- State and Local Governments (Title II)
 - Entities with whom states contract including health plans
 - Entities with whom health plans contract
- Privately owned and operated public Accommodations (Title III) – private health care providers
 - Private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce
 - The entity falls within twelve listed categories, one of which includes a “professional office of a health care provider, hospital, or other service establishment”

The following graphic illustrates the relationship of federal disability rights laws to states, managed care organizations and providers



What Health Care Providers Are Covered by the ADA?

- All health care providers are covered
 - Hospitals, nursing homes, psychiatric and psychological services, offices of private physicians, dentists, managed care organizations, and health clinics
 - A professional office of a doctor, dentist, or psychologist located in a private home is considered a place of "public accommodation" and covered by the ADA
 - Regardless of the size of the office or the number of employees (except for employment discrimination)
 - Less is required of small providers than larger ones

General Requirements

- No Exclusion of People with Disabilities
 - Health care providers may not deny person with a disability goods or services
- No Discrimination Through Contract
 - A covered medical or health care provider that enters into a contract with another entity must ensure that the activity operated under that contract is in compliance with the ADA
- Integrated Settings
 - Health care providers must offer goods and services in most integrated setting appropriate to the needs of the individual

General Requirements

- Eligibility Criteria
 - No eligibility criteria that screen out or tend to screen out an individual or a class of individuals with disabilities unless shown to be necessary for the provision of goods and services
 - May impose legitimate safety requirements based on actual risks and on facts, not on speculation or stereotypes

General Requirements

- Modification in Policies
 - It is discrimination to fail to make reasonable modifications in policies, practices, and procedures when necessary to afford goods and services to a person with a disability unless the health care provider can demonstrate that modifying the policy or practice would fundamentally alter the nature of the goods and services provided

General Requirements

- Relationship to Other Laws
 - Nothing in the ADA invalidates or limits any other federal law or the law of any state or local government that provides greater or equal protection than is afforded by the ADA
- Other Limits on the Obligations of Health Care Providers
 - Direct threat
 - “Direct threat” is defined as posing a significant risk to the health or safety of others that cannot be eliminated or reduced by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services
 - Health care providers may refuse to provide goods and services to an individual who poses a direct threat to the health or safety of others

Landlord and Tenant Responsibility

- Both the landlord who owns a building that includes a place of public accommodation (doctor, dentist's office), and a tenant who owns or operates the place of public accommodation, are both fully responsible for complying with the ADA's requirements
- Financial responsibility may be determined by lease or contract
 - The ADA title III regulation permits the landlord and the tenant to allocate responsibility, in the lease, for complying with particular provisions of the regulation. However, any allocation made in a lease or other contract is only effective as between the parties, and both landlord and tenant remain fully liable for compliance with all provisions of the ADA relating to that place of public accommodation.

Equal Opportunity

- Delivery of services in way that ensures that all people have an equal opportunity to achieve the full benefit of those services and programs
- Equitable access to care and services
 - Physical and equipment accessibility
 - Communication accessibility
 - Accommodations
 - Modification of policies and procedures
 - Extended exam time
 - Flexible exam schedule

Physical Access

- Accessibility required
 - New construction
 - Alteration
 - New and altered buildings must be readily accessible to and usable by people with disabilities
 - All new buildings with more than one story must have elevators if they contain the professional office of the health care provider
- Modifications of existing facilities
 - Some access modifications required by small healthcare providers if doing so is readily achievable
- Tax incentives available

Existing Facilities

- Requirements for all public accommodations, which include health care providers
 - All facilities must remove architectural, communication, and transportation barriers where it is readily achievable to do so
- Readily achievable
 - Means easily accomplishable and able to be carried out without much difficulty or expense
 - Flexible requirement based on resources of the public accommodation

ADA Accessibility Guidelines (ADAAG)

- Compliance with ADA Accessibility Guidelines (ADAAG) is required if it is readily achievable to do so
- If not, no measure may be taken which poses a significant risk to health or safety (such as a very steep ramp)

Affected Areas Where Access Is Required

- External and internal path of travel
- Parking
- Main entrance
- Offices of healthcare providers
- Restrooms
- Exam and treatment rooms
- Signage
- Architectural accessibility is governed by the ADA Accessibility Guidelines for Buildings and Facilities issued by the US Access Board. For more information, see: <http://www.access-board.gov/adaag/html/adaag.htm>

Tax Credit And Deduction For Private Sector Providers

- Eligible small businesses are those with gross receipts up to \$1,000,000 for the year or up to 30 full-time employees (who work 30 hours a week for 20 or more weeks a year)
 - Tax credit may be taken of 50% of the amount spent on eligible expenses over \$250, up to \$10,250 (the maximum yearly credit is \$5,000)

Tax Deduction for Business of Any Size

- Tax deduction of \$15,000 may be taken for removal of structural barriers in facilities or transportation vehicles
- A business eligible for the small business tax credit that removes structural barriers may use the deduction for expenditures over the amount claimed for the credit.

Effective Communication – – Auxiliary Aids and Services

- Ensuring effective communication with people who have hearing, speech or vision impairments requires specific types of accommodations
 - Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments
 - Qualified readers, taped texts, or other effective methods of making printed materials available to individuals with visual impairments
 - Acquisition or modification of equipment or devices
 - Other similar services and actions

When Are Auxiliary Aids Required

- Auxiliary aids and services must be provided if necessary to avoid segregating or excluding an individual with a disability or denying goods or services unless
 - providing them would fundamentally alter the nature of the goods and services or
 - cause an undue burden (undue burden means an action requiring significant difficulty or expense)

Methods to Ensure Effective Communication

- Qualified readers
- Audio recordings
- Braille
- Large print
- Qualified ASL interpreters
- Relay service
- Assistive listening device
- Digital formats
- Captioning

Fundamental Alteration and Undue Burden

- A fundamental alteration is a modification that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered
- Determining an undue burden must be made on a case-by-case basis

Undue Burden: Factors to Consider

- The nature and cost of the action needed
- The overall financial resources of the site or sites involved in the action
- The number of persons employed at the site
- The effect on expenses and resources
- Legitimate safety requirements

Understanding Undue Burden

- An oncologist might view the provision of a Sign Language interpreter as an undue burden because the cost of the interpreter is higher than the potential reimbursement available from the patient and the patient's insurance. But that is not how undue burden is measured. The *overall* resources of the health care provider are to be considered, not the reimbursement available from the patient her or himself.
- MMCOs are subject to the ADA and can assist with costs
 - Factor into capitated reimbursements
 - Provide service directly

Accessible Medical Equipment

- Accessible medical equipment might be necessary to ensure effective treatment and care for people with certain disabilities
 - Height adjustable exam tables
 - Accessible weight scales
 - Adjustable, accessible mammography equipment
 - Movable optometry chairs
 - Portable and ceiling lifts

Modification of Policies And Procedures

- Modification of policies and procedures are required if needed to ensure effective treatment and care for people with disabilities
 - Flexible appointment time
 - Longer appointed time
 - Assistance filling out forms
 - Lifting assistance
 - Print materials in alternative, accessible formats
 - Permitting service animals

ADA Enforcement

- The ADA is a civil rights law
- People with disabilities who think they have experienced discrimination may seek remedies through a variety of means
 - Individual complaints with the US Department of Justice
 - Private lawsuits
 - Alternative Dispute Resolution
 - Injunctive relief
- US Attorney General may bring lawsuits
- Fines (\$50,000/\$100,000)
- Compensatory damages