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Applying the ADA to Health Plans: Securing Equal Access to Health Care

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Why is disability awareness important to health plans?



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- ❑ People with disabilities face physical and other barriers at plans and at provider sites, such as architectural barriers, inaccessible exam tables and weight scales, lack of interpreters, inflexible office procedures.
- ❑ People with disabilities report being treated unfairly at practitioner offices because of their disabilities. They report negative attitudes and lack of knowledge about treating people with their disabilities.
- ❑ A survey of primary care physicians found that almost 20 percent were unaware of the Americans with Disabilities Act (ADA) and 45 percent were not aware of ADA architectural requirements.
- ❑ Physicians receiving training on disability issues were in the minority. Lack of knowledge or disability-related education is consistent with other reports finding inadequate preparedness to provide health services to people with disabilities.

Why is disability awareness important to health plans – especially MLTC and FIDA?



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Health plans that serve the Medicare and Medicaid populations are more likely have a higher percentage of members who have disabilities.

People who have both Medicare and Medicaid have significant health needs, are more likely than Medicare beneficiaries generally to be in fair or poor health and have significant functional limitations.

- ❑ Within dual eligibles, four identifiable high needs groups:
 - (i) adults under age 65 with physical or sensory disabilities;
 - (ii) those 65 or older with multiple chronic conditions and functional limitations;
 - (iii) individuals with serious psychiatric disabilities and/or drug or alcohol disorders; and
 - (iv) individuals with cognitive limitations including intellectual/developmental disabilities or dementia.



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REVIEW OF WHAT THE LAW SAYS?

The Americans with Disabilities Act (ADA)



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- The Americans with Disabilities Act (ADA), the landmark disability rights law passed in 1990, prohibits discrimination against people with disabilities in five major areas: employment, state and local government, public accommodations, transportation and communication. Health care plans are covered under the state and federal government provisions.
- The intent and spirit of the law is that people with disabilities have the right to participate with their nondisabled peers in all aspects of society, including access to health care.



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Defining Disability

There are many definitions of disabilities under various federal, state and local laws. Disability is defined differently by the Americans with Disabilities Act, New York State Human Rights Law, and New York City Human Rights Law.

The ADA is a landmark disability rights law passed in 1990. Because of its importance, courts often look to the ADA for guidance about disability rights.



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The ADA Definition of Disability

Under the ADA, a person with a disability is:

- A person with a physical or mental impairment that substantially limits one of more major life activities;
- A person with a record of such physical or mental impairment;
- A person who is regarded as having such impairment.



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Health Plans Have Obligations Under ADA

Plans are covered under Title II of the ADA and/or Section 504 of the Rehabilitation Act when they contract with the government to provide health care coverage.

- ❑ Under Title II of the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

- ❑ Title II also states “All governmental activities of public entities are covered, even if they are carried out by contractors. For example, a State is obligated by Title II to ensure that services, programs, and activities of a State park inn operated under contract by a private entity are in compliance with Title II’s requirements.”



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Health Plans and Title III

- Health plans as providers of health services and/or as insurance offices are public accommodations subject to Title III of the ADA.

Equal Treatment vs. Equal Opportunity



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Equal Treatment v. Equal Opportunity

Basic distinction between the ADA and other civil rights laws based on race, gender, other factors.

- Under most civil rights laws, nondiscrimination means “equal treatment.”
- Because of the extent and nature of barriers for people with disabilities, the ADA requires that affirmative steps (reasonable accommodations, modifications or provision of auxiliary aids) be taken to ensure that people with disabilities are given equal opportunity to participate.

What are examples of affirmative steps to ensure equal opportunity?



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- Architectural modifications

- Reasonable accommodations

- Auxiliary aids

Civil Rights Law Compliance for Health Plans



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- ❑ Plans should provide program accessibility for everyone and *in all aspects of the program*, not just physical accessibility at provider's offices.
- ❑ Plans must be able to communicate effectively in *all aspects of the plan* with all people with disabilities— including but not limited to those who are blind/have visual impairments, deaf/have hearing impairments, have speech impairments, have cognitive or intellectual disabilities, or have psychiatric disabilities.
- ❑ People with disabilities also may include people with limited English proficiency and limited literacy.
- ❑ Plans must have an adequate network of ADA-compliant providers to ensure people with disabilities have full and equal access to choice in health services without discrimination.

ADA standards may be elaborated or augmented by other guidance/authorities



- For example, in New York, Fully-Integrated Dual Advantage (FIDA) plans are also subject to disability rights requirements through other agreements, contracts, etc.
 - CMS, NYSDOH and FIDA plans have a 3-way contract that defines in detail about ensuring rights of people with disabilities.
 - NYSDOH has issued a Letter to Providers about accessibility of their clinics and practices.



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HOW DOES THE LAW AFFECT A PLAN'S ACTIVITY?



People with disabilities and plans – Some examples



You receive inquiries from people about enrolling in your plan:

- Richard is 65 years old and tells you he is a little hard of hearing and doesn't read English.
- Fred is 50. When he calls, he asks for things to be repeated multiple times and seems not to understand forms that have been sent to him.
- Maria is 35, says she uses a wheelchair and has some speech difficulty.
- Bianca is 40, she is legally blind and has a service animal. She says she has no trouble traveling, but is nervous when she goes to a new place.
- Phil is 30 and a veteran. He says he takes medication that makes him slow in the morning, but other than that he feels fine.

As we go through all the stages where the plan may interact with a potential member or member (call center, marketing and outreach material, assessment, provider access, etc.), think about what the plan will have to do to ensure ADA compliance.

Disability and Managed Care: Areas where accommodations are critical



How do potential participants get information:

- Call Centers
- Informational/Marketing Sessions
- Marketing Materials

How do potential participants enroll in the plan:

- Printed materials
- Online applications
- Telephone assistance with applications

How do participants access Member Services

- Access to services and
- Ensuring adequate network of ADA compliant providers
- Information Access

Disability and Managed Care: Areas where accommodations are critical



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Grievances

- When to submit
- How to submit
- How to get help

Disenrollment

- How to disenroll
- How to get help

Member Feedback/Advisory Boards

- How to provide feedback
- Materials for Advisory Board members

Making sure call centers provide equal access for people with disabilities



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Call Centers must:

- Provide information on accessing oral interpretation services and written materials in alternative, cognitively accessible formats.
- Inform callers that interpreters are free.
- Fill out forms over the telephone upon request.

Making sure service representatives provide equal access for people with disabilities



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Participant Service Representatives must:

- Be trained in TTY (Tele Typewriter), Video Relay services, remote interpreting services, providing accessible PDF materials, and other Alternative Formats.
- Be capable of speaking directly with, or arranging for an interpreter, to speak with participants in their primary language, including American Sign Language, or through an alternative language device or telephone translation service. Make oral language interpretation services available free-of-charge, including ASL.
- Maintain the availability of services, such as TTY services, computer-aided transcription services, telephone handset amplifiers, assistive listening systems, closed caption decoders, and other services for Deaf and hard of hearing Participants.
- Demonstrate sensitivity to culture, including disability culture and independent living philosophy.

Making sure service representatives provide equal access for people with disabilities



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- Provide assistance to Participants with cognitive impairments; for example, provide Marketing, Outreach and Participant Communications in simple, clear language at a 4th- to 6th-grade reading and below, and, if necessary, individualized assistances to ensure materials are understood.
- Provide reasonable accommodations needed to ensure effective communication and provide Participants with a means to identify their disability to the Plan.
- Make available information on how to access oral interpretation services and written materials in alternative, cognitively accessible formats.
- Make available information on the availability of reasonable accommodations and how they can be arranged and delivered.

Ensuring marketing materials are accessible and understandable



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Plans are required to have the following.

- ❑ Materials must be accessible and understandable including:
 - Understandable to those with cognitive limitations
 - Available to those who use technology to access materials
 - Accessible via screen reading technology, in alternate formats
 - Read to participants on request

- ❑ This applies to materials including:
 - Education and outreach materials
 - Enrollment and disenrollment materials
 - Claims or service denials information
 - Complaint information
 - Internal appeal information
 - External appeal information
 - Provider terminations
 - Service authorizations

Providing reasonable accommodations: Ensuring effective communication



Plans' reasonable accommodations depend on the particular needs of the Participant and can include:

- Providing interpreters or translators for Participants who are Deaf or hard of hearing;
- Providing large print (at 16-point font or more) versions of all Marketing, Outreach and Participant Communications;
- Ensuring that all Marketing, Outreach and Participant Communications are available in formats compatible with optical recognition software;
- Reading all notices, Marketing, Outreach and Participant Communications to Participants upon request;
- Assisting Participants in filling out forms over the telephone;
- Ensuring effective communication to and from Participants with disabilities through email, telephone and other electronic means. TTY, computer-aided transcription services, telephone handset amplifiers, assistive listening systems, closed-caption decoders, videotext displays and qualified interpreters for the Deaf.
- Individualized assistance.



Access in Intake and Assessment

Intake

- Essential that intake process includes a disability accommodation needs assessment, including the opportunity to identify and request reasonable accommodations.

Assessment

- Assessment should include information on functional needs and a record of reasonable accommodations that are updated as needed.

Accessibility of the complaint/grievance system



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Grievance Procedures must also be accessible.

- Plans must provide reasonable accommodations in the grievance process, including assistance in completing any forms or other procedural steps, which shall include interpreter services and toll-free numbers with TTY/TTD and interpreter capacity.

Equal opportunity to participate in plan feedback: Advisory Board



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- Plans should have feedback from participants reflect the diversity of its members, including people with disabilities.
- In NY, FIDA plan are required to have the composition of the participant advisory committee reflect the diversity of the FIDA population and have participation of individuals with disabilities within the governance structure of the FIDA Plan.
- Reasonable accommodations must be provided to assist participants in the feedback sessions or advisory committees to assist with the cost, transportation, reasonable accommodations, and other challenges of attending any in-person sessions.



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HOW DOES THE LAW AFFECT PROVIDERS IN PLAN NETWORKS?



Provider Directories: Providing ADA information



In New York, FIDA plans must have provider directories that contain:

- information on Providers with areas of special experience, skills and training, including providers with expertise in treating people with disabilities;
- whether the participating Provider is accessible for people with disabilities, including office, exam room(s) and equipment.
- the cultural and linguistic capabilities of the Provider, including languages spoken by Provider or skilled medical interpreter at site.
- whether participating Provider or Pharmacy meets the ADA Accessibility Attestation Form requirements
- Languages spoken by Providers or by skilled medical interpreters at the Provider's site, including ASL, and whether translation services are available.

Ensuring Network Adequacy ADA-Compliant providers



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In New York, a plan must ensure ADA-compliance of its network of providers by, at minimum:

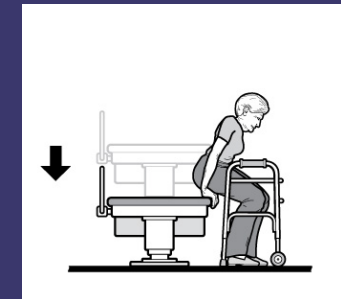
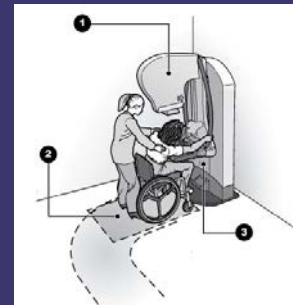
- Conducting on-site visits to participating Providers to assess for meaningful compliance with ADA requirements;
- Naming an individual within the plan who is responsible for ADA compliance;
- Ensuring that *all* Providers' physical sites are accessible to *all* Participants.

What makes a provider compliant with the ADA?



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Physical Barrier Removal



- Providers are responsible for altering or modifying waiting, exam and changing rooms to ensure access to persons with a range of physical, sensory and cognitive impairments.
- Providers are responsible for providing medical equipment that ensures an individual with a disability can receive the same health care services. Examples include but are not limited to: Adjustable exam tables, accessible weight scales (platform/roll-on scales)
- Providers are responsible for safe and comfortable transfers without using patient's family member, friend, etc.

What standards do providers have to meet to be sure that they can meet participant needs?



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- ❑ Plans must collect completed ADA Accessibility Attestation forms from new Network Providers that join their networks during the demonstration.
 - Attestation should include NON-PHYSICAL access issues, e.g., flexible scheduling, communication capacity , etc.;
 - FIDA Plans must collect sufficient information from Participating Providers to assess compliance with the ADA;
 - All participation providers must notify FIDA plan within 10 business days of any change in ability to meet ADA Accessibility standards; and
 - FIDA Plans must conduct site visits to confirm provider accessibility



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Providing reasonable accommodations

Providers should not only provide physical accessibility, but programmatic accessibility as well. Plans are required to have written policies and procedures to ensure ADA compliance by providers, including ensuring that physical, communication, and programmatic barriers do not inhibit Participants with disabilities from obtaining all covered Items and services from the Plan.

For example, programmatic access can be providing flexibility in scheduling as an accommodation.

Provider training: Reasonable Accommodations



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FIDA Plans must train providers about disabilities and reasonable accommodations, including

- Ascertaining the need for accommodation;
- Methods to ensure privacy during intake procedures;
- Transferring and positioning techniques; and
- Sensitivity and awareness of the needs of individuals with various disabilities, including cognitive disabilities;
- Identify and locate which examination and procedure rooms are accessible, where accessible equipment is stored and how to use it;
- How to use transfer and positioning aids and equipment, such as patient lifts, gait belts and variety of stabilizing supports.
- Their obligations to:
 - Have procedures to evaluating compliance with accessibility standards on an ongoing basis.
 - Inform patients of their rights in understandable formats and provide straightforward methods for receive and resolving complaints.
 - Have flexibility in scheduling needs.

Provider training: Reasonable Accommodations



FIDA plans must train providers about disability culture and sensitivity, including:

- Various types of chronic conditions prevalent among eligible Individuals;
- Awareness of personal prejudices;
- Legal obligations to comply with the ADA requirements;
- Definitions and concepts, such as communication access, medical equipment access, physical access, and access to programs;
- Types of barriers encountered by eligible Individuals;
- Training on person-centered planning (i.e., PCSI's) and self-determination, the social model of disability, the independent living philosophy, and the recovery model;
- Use of evidence-based practices and specific levels of quality outcomes; and
- Working with Participants on mental health diagnosis, including crisis prevention and treatment.

Provider Access: Reference Materials



In addition, FIDA plans must have a comprehensive online reference tool for the Participating Providers about:

- Reasonable accommodations
- Cultural and linguistic competency
- Availability and access standards, including but not limited to requirements of the ADA Accessibility Attestation Form.



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Grievances and Appeals

- **Grievances** are formal complaints about the behavior of a provider or health plan. A grievance should be submitted when the goal is to get a health plan to **fix an ongoing problem**.
- **Appeals** are disputes about a decision by a health plan. These may be decisions to deny coverage, refusals to authorize a specific service, or refusals to pay a bill. Appeals are appropriate when a plan has **already made a formal decision** that you disagree with.



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When and How to Submit a Grievance

You should file a grievance when:

- A provider (i.e. a doctor, nurse, home care attendant) is not providing appropriate care.
- Your provider or health insurance plan have not been adequately accommodating your disability-related needs.
- Complaints about providers or health plans should first be addressed to their internal grievances or compliance departments (if applicable).
- If an entity is not responsive to your grievance, you may want to submit a grievance to their respective oversight agency or organization. Contact ICAN for specific details.



When to File an Appeal?

You should appeal when:

- Your health plan makes a decision to reduce or terminate existing services.
- Your health plan refuses to authorize or cover a new service or item.
- Your health plan refuses to pay for covered services.



How to File an Appeal

Depending on the type of plan and the decision being appealed, different procedures may apply:

- If you are appealing a decision by an MMC or MLTC plan, you should concurrently request BOTH an **internal appeal** and a **fair hearing**. You should do this ASAP to preserve current services (if applicable).
- If you are appealing a decision by a FIDA plan, you must first request an internal appeal. If the internal appeal is unsuccessful, you will be able to continue to further external review.
- For assistance with conducting an appeal, contact ICAN.



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Contact information

- ICAN – Independent Consumer Advocacy Network
 - Call **844-614-8800**
 - TTY Relay Service **711**
 - Email **ican@cssny.org**

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