

## **DID YOU KNOW? ADA/CIVIL RIGHTS ACT ISSUES IN HEALTH CARE**

Do you have any patients who are deaf/hard of hearing? Visually impaired? If so, you must provide equal access to communications, including “auxiliary aids and services” to ensure effective communication between the health care provider and the patient or patient’s representative.

What about English as a Second Language (ESL)? Do you have patients whose preferred language is a language other than English? Do you receive federal funding, including Medicare, Medicaid or SCHIP? If so, your practice must provide language access services for your patients.

### **ADA Title III Requirements**

The Americans with Disabilities Act (ADA) prohibits discrimination in employment, public services, and places of public accommodations (among others) against individuals with disabilities. Title III of the ADA covers businesses that are public accommodations, including health care providers such as hospitals, physician offices, pharmacies, dentists’ offices, etc. The ADA requires that health care providers provide full and equal access to health care services for people with disabilities through reasonable accommodations. “Reasonable accommodations” include (a) reasonable modifications of policies, practices, systems, or procedures; (b) making communication in all forms understandable; and (c) assuring physical accessibility. If a health care provider can demonstrate that a reasonable accommodation (including a reasonable modification or providing effective communication) would impose an undue financial burden (overly expensive) or would fundamentally alter the nature of the care or services provided, then the health care provider may be excused from complying with the ADA requirements. However, this is not the position anyone wants to be in when a patient files a complaint that the provider did not reasonably accommodate their needs.

### **Title VI of the Civil Rights Act of 1964 (CRA)**

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity that received federal funds, including most health care providers. Guidance issued pursuant to Title VI of the CRA requires health care providers to assure “meaningful language access” for those with limited English proficiency to the health care services provided. Any program designed to provide meaningful language access requires a thorough assessment of the language needs of the population served, a written policy to specify what services are made available and how to access those services, staff training to assure compliance, and periodic monitoring and assessment of the effectiveness of the program. If a health care provider does not have a program in place to meet these needs, the health care provider exposes themselves to risk of enforcement and potential fines and penalties.

### **Recent OCR Settlement**

Violations of the ADA and CRA are investigated by the Office for Civil Rights (OCR) of the U.S. Department of Justice. A recent case illustrates the challenges faced by health care providers in assuring compliance with ADA and CRA in all departments and on all

shifts. On January 4, 2022, settlement was reached in a complaint by a deaf patient against a hospital in Georgia. The complaint alleged that the patient was denied auxiliary aids and services during her labor and delivery and as a result had to rely on lip reading and the assistance of a deaf companion. Ultimately, the refusal to provide a sign language interpreter resulted in difficulty in communications between the patient and her advocate and the hospital. As a result of the settlement, the hospital has agreed to pay \$50,000 to the patient and \$10,000 to the advocate as well as to implement additional processes to assure patients and their advocates are informed of their right to auxiliary aids and services to assure effective communication. This includes agreeing to provide a qualified sign language interpreter, whether through video or on-site, along with the capabilities to communicate via text and handheld devices. Further, as a result of the settlement, the hospital has agreed to provide additional training to its staff and to submit periodic compliance reports to OCR for ongoing monitoring.

### **Closing Thoughts**

Have you taken a look at how you identify patients who need special services to assure effective communication with you and your employees? Have you recently evaluated the training you provide to your staff concerning your legal obligations to provide reasonable accommodations and effective communications to all patients? If not, now is a good time to reexamine policies, procedures and the training you provide to assure you have an effective plan in place to address these issues. We can help you determine if your policies, procedures and training will stand up to the test. Contact us if you need assistance in this regard.

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