NEWS & VIEWS

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Med-Net Concepts, LLC

Compliance with ADA's Requirements For Access to Healthcare Services

By:
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In 1990, after he signed it into law, President George H.W. Bush called the Americans with Disabilities Act (ADA) an "historic new civil rights Act.... The world's first comprehensive declaration of equality for people with disabilities." Others touted the legislation as "the most far-reaching legislation ever enacted against discrimination of people with disabilities."

The ADA provides wide-ranging safeguards in the areas of employment, public services, public accommodations, services operated by private entities, and in the areas of transportation and communications. Protected under the ADA are "qualified individuals with a disability."
[42 U.S.C. §12102(2)]

The ADA is made up of these five sections-

- Title I (Employment) - Equal Employment for Individuals with Disabilities
- Title II (State and Local Government) - Non Discrimination on the Basis of Disability in State and Local Government Services
- Title III (Public Accommodations) - Non Discrimination on the Basis of Disability by Public Accommodations and In Commercial Facilities
- Title IV (Telecommunications)
- Title V (Miscellaneous Provisions) - Provisions relating to the ADA as a whole, in relationship to other laws, its impact on insurance providers and benefits, etc.

An area that may provide a challenge for healthcare providers like nursing homes and assisted living centers involves the ADA and access to healthcare services.

Prior to the last half of the 20th Century and under common law, healthcare professionals and organizations

had no legal obligation to "undertake care or to refrain from discriminatory practices in the selection of their customers." However, legislative acts like the Hospital Survey and Construction Act of 1946 and the Emergency Treatment and Labor Act essentially set aside or modified the "no-duty" aspects in providing healthcare services. Additionally, Title VI of the Civil Rights Act of 1964 established the principle of nondiscrimination regarding healthcare services furnished by private providers receiving federal funds, i.e., Medicare and Medicaid.

The ADA expanded the modification and moved further away from the common law "no-duty" position by explicitly classifying healthcare services as a public accommodation. The U.S. Supreme Court's decision in Bragdon v. Abbott further established that "private health-care providers are places of public accommodation for purposes of ADA enforcement" and are barred from participating in anything that is considered discriminatory.

Under the ADA's Title II, public entities that receive federal funds are categorized and include nursing homes and assisted living centers that receive Medicare and Medicaid funds. Since the ADA law and its enforcement are complaint-driven, this makes Title II public entities subject to being investigated at any time to resolve complaints. One of the first questions that investigators ask is whether the facility has an up-to-date Self-Evaluation and Transition Plan. Not knowing is no defense. Over time, facilities and programs change and frequently the changes are sufficient to trigger the need for a new Self-Evaluation and Transition Plan.

A Self-Evaluation Plan is a public entity's assessment of everything, including its programs, services, and activities; facilities; and current policies, practice, and procedures. The self-evaluation identifies and corrects barriers to access that are inconsistent with ADA's Title II requirements. A transition plan addresses the structural changes that are needed to achieve program accessibility.

Title III of the ADA identifies a wide-range of discriminatory conduct. It is considered discriminatory to deny individuals, either directly or through contractual arrangements, the opportunity to participate in or to benefit from the goods and services of public accommodations. It is not acceptable to provide services to qualified individuals that are "not equal," are "different" or "separate from" those goods, services, or accommodations provided for others. [42 U.S.C. §12182]

For example, it is considered discriminatory to impose eligibility criteria that would screen out individuals with disabilities unless it can be demonstrated that the conditions are necessary due to the services the healthcare facility offers. It is also considered discriminatory if a facility fails to make "reasonable modifications in policies, practices, and procedures" when such adjustments are needed to offer services to persons with disabilities, e.g., offering patient education materials in braille. The exception to that requirement would be if the facility could show that making those modifications would "fundamentally alter" the nature of the services being offered. It is also discriminatory for a healthcare facility to not treat an individual in the most adaptable environment suitable to the person's needs.

ADA compliance involves more than just removing barriers, it requires covered entities to establish a framework for eliminating program discrimination. These steps include:

1. Designating an employee to be the ADA Coordinator who is responsible for the facility's immediate and long-range responses to program access issues.
2. Providing notice of ADA requirements.
3. Establishing a Grievance Policy.
4. Conducting a Self-Evaluation.
5. Creating a Transition Plan.

Renovations to address physical barriers should be done in a logical and cost-effective way. It is important not to "rush" to make revisions and remove barriers in a "broad-brush" manner. Here are some steps that will help a facility with the barrier discrimination compliance concerns:

- Use the Self-Evaluation process to review how services and activities are provided.
    - Discover possible discrimination such as staff attitude and responses to requests,
    - Lack of auxiliary aides and services,
    - Specific staff and personnel training,
    - Venders attitudes or practices, and
    - Review facility activities involving remote locations, e.g., parking, accessible routes, and permitted accessibility for all participants.
    - Create a Transitional Plan to identify, schedule, and budget for removal of architectural barriers that contribute to program discrimination.
    - Be aware that renovations and barrier removal in healthcare facilities should not have a separate schedule or budget apart from the program.
        - It might be more feasible to revise a program to eliminate discrimination.

The process of becoming compliant regarding the ADA should be an ongoing one that is flexible and responsive to changes and conditions. Some revisions cannot be anticipated until there are program changes in the delivery of services and activities.

All Disabilities Must Be Covered

Compliance regarding discrimination against mobility-related physical disabilities represents only one piece in the process. Other disabilities must be addressed including hearing or vision, cognitive impairment, speech/communication, and any other disability recognized by the ADA.

Reference Articles:

"What Is the Americans with Disabilities Act (ADA)?" NATIONAL NETWORK: Information, Guidance, and Training on the Americans With Disability Act (ADA).

http://adata.org/learn-about-ada

FUTURE OF DISABILITY IN AMERICA,"D-The Americans with Disabilities Act in A Health Care Context" by Sara Rosenbaum

https://www.ncbi.nlm.nih.gov/books/NBK11429/

"ADA Compliance: It's More Than "Removing Barriers,"

https://www.iadvanceseniorcare.com/article/ada-compliance-its-more-removing-barriers

"Ada Compliance for Nursing Homes, Assisted Living Facilities" by Chris Murray

https://www.caitlin-morgan.com/ada-compliance-nursing-homes-assisted-living-facilities/

"Fraud Avoidance Courses from Med-Net Compliance, LLC Provide Valuable Lessons for Long Term Care Administrators"

Jo Ann Halberstadter, Esq

ADMINISTRATORS TAKE NOTE

Med-Net Compliance, LLC now offers two series of fraud modules with NAB/NCERS CEs on our website. Modules 1-8 offers 3 NAB CEs and modules 9-16 offer 3.75 CEs. All modules provide education on fraud, waste and abuse prevention and offer a combined total of 6.75 CEs for successful completion.

To review the NAB Accredited courses visit our website:
https://www.mednetcompliance.com/med-net-academy/nab-accredited-courses/

All 16 courses on fraud, waste and abuse were developed by Betty Frandsen, our Vice President of Professional Development and her staff.

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