

Discrimination in Health Care against Persons with Disabilities

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The ADA on Health

The American Disabilities Act (ADA) does not have a specific provision referring to health. Notwithstanding this absence, the law is read to include access of persons with disabilities to health services. It expressly mentions that offices of private health care providers and hospitals are public accommodations that are prohibited from discriminating on account of one's disabilities.¹ As provided by the law: "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."² To ensure the enforcement of the law, pertinent government agencies, specifically the Department of Justice and the Department of Human Health Services, interpret the ADA and set guidelines for compliance.

At the ADA website can be found a document entitled Access to Medical Care for Individuals with Mobility Disabilities.³ This serves as a guideline to ensure access of persons with disabilities to preventive health services by obligating providers to make available their services in an accessible manner. It requires accessible examination room in which entry doors have "a minimum clear opening width of 32 inches when the door is opened to 90 degrees," with "maneuvering clearances on either side of the door that comply with the ADA Standards" and door hardware that does not require "tight twisting, pinching, or grasping in order to use it."⁴ Together with an accessible examination room is the requirement of accessible medical

¹ Americans with Disabilities Act (ADA) of 1990 § 12181(7), 42 U.S.C. § 12181(7), as amended.

² Americans with Disabilities Act (ADA) of 1990 § 12182(a), 42 U.S.C. § 12182(a).

³ Dep't of Justice & Dep't of Health and Human Services, *Access To Medical Care For Individuals With Mobility Disabilities*, http://www.ada.gov/medcare_mobility_ta/medcare_ta.htm.

⁴ *Id.*

equipment, such as a height-adjustable examination or procedure table, and skilled staff who have been trained on different lifting techniques.⁵

Problem of Access

A recent study, however, found out that despite the ADA and the abovementioned guidelines, health care providers still fail to deliver accessible health care services to persons who are wheelchair bound.⁶ The study involved a survey in five large cities of four states, namely Atlanta, Georgia; Dallas and Houston, Texas; Portland, Oregon; and Boston, Massachusetts. In doing the survey, the researcher called by phone 256 health care providers from different areas of practice, specifically endocrinology, gynecology, orthopedic surgery, rheumatology, urology, ophthalmology, otolaryngology, and psychiatry, and made an appointment for a fictional patient.⁷ The latter was described as obese, with one side of the body paralyzed due to stroke, and thereby unable to self-transfer from wheelchair to the examination table. She would not have anyone with her to assist her in transferring from wheelchair to the table.

The survey study yielded the following result:

Of 256 practices, 56 (22%) reported that they could not accommodate the patient, 9 (4%) reported that the building was inaccessible, 47 (18%) reported inability to transfer a patient from a wheelchair to an examination table, and 22 (9%) reported use of height-adjustable tables or a lift for transfer. Gynecology was the subspecialty with the highest rate of inaccessible practices (44%).⁸

Speaking from experience, a 22-year old with spinal muscular atrophy who uses an electric wheelchair narrated her own difficulties in being accommodated for her medical check-ups. She confirmed that health care providers and doctor's offices that she went to were not complying with the ADA standard. She was always apprehensive that the doors might hit her chair because there was not enough clearance. She would find it hard to maneuver her electric wheelchair because of insufficient space, contrary to the ADA standard. She was also

⁵ *Id.*

⁶ Tara Lagu et al., *Access to Subspecialty Care for Patients With Mobility Impairment: A Survey* Ann Intern Med 19 March 2013: Vol. 158, No. 158, pp. 441-446, <http://annals.org/article.aspx?articleid=1667265>.

⁷ *Id.*

⁸ *Id.* at 443.

embarrassed that she had to be lifted because there was no place for her wheelchair in the examination room and she had to leave it on the hallway. Neither was there an appropriate examination table that would adjust to the height that was comfortable for her.⁹ This would show that doctors' appointments thus become an ordeal and discourage persons with disability to get preventive treatment.

Although the ADA does not specifically provide for access to health services of persons with disabilities, the administrative rules setting specific standards and requirements for health care providers are supposed to ensure this access. The document Access to Medical Care for Individuals with Mobility Disabilities is a good standard for health providers. It would seem, thus, that there is no insufficiency in the law. The problem, however, is in ensuring compliance by health providers with said standard. If health care providers in big cities do not comply with the ADA standard to make sure that people who use wheelchairs can have access to the facilities and to their services, compliance cannot reasonably be expected in small cities either.

Recommendation

In order to guarantee access, what the government could do is to give incentives to health care providers to comply with the ADA standard and provide accessible routes, entry doors and clearances, accessible medical equipment and trained staff for persons with disabilities. These incentives may be in the form of financial aid or subsidies for the cost of altering the facility and for training staff, or in the form of a tax cut or tax credit. Penalties may also be imposed for flagrant and unreasonable noncompliance with the ADA standard. There must also be personnel from the Department of Justice and the Human Health Services to inspect health care facilities regarding compliance. Failure to comply should be met with penalties, and repeated noncompliance should mean revocation of their license or business permit. For future health care providers, before they are allowed to do business, it should be a requirement that their facility be able to accommodate persons with mobile disabilities by complying with the ADA standard.

⁹ Geneva Pittman, *Disabled people may struggle to get specialty care*, REUTERS (Mar. 18, 2013), <http://www.merckmedicus.com/external/what-patients-are-seeing/Disabled-people-may-struggle-to-get-specialty-care?proceed&r=0&bu=http%3A%2F%2Fwww.merckmedicus.com%2Fwhat-patients-are-seeing>.

It is not enough that laws and rules are in place for the protection of the access to health care services of persons with disabilities. The law's noble aim of protecting persons with disabilities from discrimination would all be in vain if the law is not enforced or followed. As what the study and the experience of the person with disability show, there is still discrimination in the area of health care. The failure of those health care facilities to be accessible to persons with disabilities is discrimination in itself.

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