

# The ADA and Health Care Access



Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
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# Learning Objectives

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1. Enable you to understand health care organizations' obligations under the Americans with Disabilities Act (ADA)
2. Learn about the Department's recent cases addressing barriers to equal access to health care
3. Find out where to go for more information about preventing barriers to health care access



# From *Bragdon v. Abbott* to Today

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- *Bragdon v. Abbott*, Supreme Court (1998) – dental care for patient with HIV
- Since 2012, U.S. Attorneys' Offices across the country have been partnering with the Department's Civil Rights Division to ensure that people with disabilities are able to access health care, including medical services and facilities



# Recent DOJ Health Care Access Agreements

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- Effective Communication
- Service Animals
- HIV/AIDS
- Opioid Use Disorder
- Equal Access to Services
- Built Environment



# Effective Communication



# Effective Communication

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- Must provide auxiliary aids and services to ensure effective communication with people who have hearing, vision, or speech disabilities
- Examples:
  - Braille or tactile displays
  - Large print materials
  - Video remote interpreting (VRI)
  - Qualified interpreters
  - Transcription services
  - Assistive listening systems



# Effective Communication

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- Type of appropriate auxiliary aid or service will vary based on:
  - Method of communication used by individual
  - Nature, length, and complexity of communication involved
  - Context in which communication is taking place
- Subject to defenses:
  - Fundamental alteration
  - Undue burden



# Effective Communication

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- May not require individuals to their bring own interpreter
- May not require adults accompanying individual to interpret except:
  - In an emergency where no interpreter is available, or
  - Where specifically requested by the individual with a disability and appropriate under the circumstances
- Children as interpreters:
  - Only when there is an emergency and no interpreter is available





# Interpreters: Recent Settlement Agreements

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- Lincare, Inc. (Virginia, 2019)
- Washington State Health Care Authority (Washington, 2018)
- Astria Health (Washington, 2018)
- Seminole Neurology Associates (Florida, 2017)
- Highline Medical Center (Washington, 2017)
- Doctor's Hospital at Renaissance (Texas, 2017)
- HealthSource Saginaw (Michigan, 2017)
- Mountain States Health Alliance (Tennessee, 2017)
- Overlake Medical Center (Washington, 2017)
- John Dempsey Hospital (Connecticut, 2017)
- Arrowhead Regional Medical Center (California, 2016)



# Lincare, Inc.

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- Eastern District of Virginia (June 2019)
- Affects 800 centers in 48 states
- Settlement agreement:
  - Designed to ensure that nationwide supplier of oxygen, durable medical equipment and other respiratory care products and related services provides appropriate auxiliary aids and services, including sign language interpreting services, to individuals who are deaf or hard of hearing
  - Assess patients' needs for auxiliary aids and services during intake call



# Lincare, Inc.

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- Settlement Agreement (cont.):
  - Designate an ADA Administrator and at least one employee on call 24/7 to answer questions regarding interpreters
  - Establish grievance procedures
  - Maintain records of patients who require auxiliary aids and services
  - Provide notice
  - Provide training
  - Pay \$10,000 in compensatory damages
  - Pay \$10,000 civil penalty



# Washington State Health Care Authority (HCA)

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- Western District of Washington (June 2018)
- Settlement agreement designed to improve interpreter services for low-income patients with hearing disabilities
- Calls for the HCA to increase the number of sign language interpreters it has available to attend medical appointments for Medicaid patients, and to interpret for patients who are hearing impaired or their companions
- The number of interpreters under contract throughout the state of Washington will be increased from fewer than ten to over 100



# Washington State Health Care Authority (HCA)

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- Settlement agreement (cont.):
  - Requirements for VRI if used
  - Community engagement
    - Post information on availability of interpreters on website
    - Adopt and publish grievance procedure
    - Hold stakeholder meetings to assess progress in providing access
- Data reporting/monitoring



# Astria Health

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- Eastern District of Washington (Jan. 2018)
- Complainant is deaf-blind and uses tactile ASL
- Alleged he requested interpreter for four separate appointments, but no interpreter was provided, and the appointments were cancelled



# Astria Health

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- Settlement Agreement:
  - Use Model Communication Assessment Form
  - Must assess appropriate auxiliary aids and services when appointment is scheduled or upon arrival of patient (whichever is earlier)
  - Designate employee to provide assistance
  - Document each request for auxiliary aid or service
  - Grievance mechanism
  - Provide interpreters in timely manner
  - VRI is OK when it is effective
  - Post policies in print and online
  - Train employees on policies and equipment



# Highline Medical Center

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- Western District of Washington (Aug. 2017)
- Complainant is deaf and uses ASL
- Alleges he was not provided an interpreter for his scheduled spinal surgery
- Alleges no interpreter was provided for his companion, his wife, who is also deaf
- Alleges that as a result, was unable to effectively communicate about his significant pain, or that the surgeon had found more damage than expected





# Highline Medical Center

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- Settlement Agreement:
  - Provide appropriate auxiliary aids and services, including interpreters, in a timely manner
  - Lists situations in which interpreters may be required, including:
    - Discussing a patient's symptoms, conditions, medications, and history;
    - Explaining conditions, treatment options, tests, medications, surgery;
    - Providing a diagnosis or recommendation for treatment;
    - Communications immediately preceding, during, and after surgery;
    - Obtaining informed consent for treatment;
    - Providing instructions for medications, post-treatment activities, and follow-up treatments



# Service Animals



# Service Animals

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- Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability
  - Makes clear that comfort or emotional support animals are not covered
  - Also makes clear that individuals with physical, sensory, psychiatric, or other mental disabilities can use service animals



# Service Animals

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- Title II and III entities must modify policies to permit the use of a service animal by a person with a disability
- Entity may not require written documentation of need for animal
- A service animal generally may be excluded only when:
  - The animal is out of control and the handler does not take effective action to control it; or
  - The animal is not housebroken



# Service Animals

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- Service animals are generally allowed in all areas of a facility where the public is normally allowed to go
- But may be appropriate to exclude service animals from limited-access areas for health reasons, e.g. operating rooms and burn units
- Even if the animal can be excluded, the individual with a disability should be given the opportunity to participate in the program without the animal



# St. Joseph Hospital/SLC Health

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- Parent company of 8 hospitals and more than 100 clinics in Colorado, Montana, Kansas and Wyoming
- Patient denied access to clinic because of service dog for PTSD
- Letter of Findings (July 2018):
  - Create service animal policy and post on website and public places
  - Staff training
  - \$2,500 compensatory damages for complainant



# Hardin County Emergency Medical Services (EMS)

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- Western District of Kentucky (March 2018)
- EMS refused to let service dog ride with patient
- Settlement Agreement:
  - Designate ADA coordinator
  - Modify policies to permit use of service animal, allow service animals in ambulances, no surcharges
  - Post nondiscrimination notice
  - Train employees on ADA and service dogs
  - Adopt and publish grievance procedure



# HIV/AIDS





# HIV/AIDS

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- Health care providers may not:
  - Refer a patient with HIV/AIDS to another provider simply because the person has HIV/AIDS
  - Exclude a person with HIV/AIDS unless that person poses a “direct threat” to the health or safety of others
  - A direct threat analysis must be individualized, finding a significant risk to the health and safety of others that cannot be eliminated or reduced to an acceptable level by reasonable modifications to policies, practices, or procedures.



# Advanced Plastic Surgery Solutions

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- Northern District of Georgia (Dec. 2017)
- Patient alleges she was denied a consultation as a new patient when she revealed she had HIV and was told doctor would not perform surgery because of her HIV status
- Settlement Agreement:
  - Draft nondiscrimination policy and post in reception areas and website
  - Document any denials based on HIV
  - Training to all employees about HIV/AIDS and discrimination
  - Pay compensatory damages of \$25,000
  - Pay a civil penalty of \$10,000



# Aurora Health Care (2017)

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- Eastern District of Wisconsin (July 2017)
- Complainants alleged that they were denied access to medical services because of HIV
- Settlement Agreement Relief:
  - Maintain and enforce nondiscrimination policy and post in reception areas and website
  - Training to all employees about HIV/AIDS and discrimination



# Opioid Use Disorder



# Opioid Use Disorder

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- Current users of illegal drugs, or current abusers of prescription drugs are NOT covered by the ADA if the entity acts on the basis of that illegal drug use
- However, the ADA generally covers those in recovery from Substance Use Disorder (SUD) or Opioid Use Disorder (OUD) who currently do not engage in the illegal use of drugs
- This can include individuals using Medication-Assisted Treatment (MAT) – treatment for OUD combining the use of medications such as methadone, buprenorphine, or naltrexone with counseling and behavioral therapies



# Opioid Use Disorder

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- Legitimate safety requirements allowed
- Subject to defenses:
  - Fundamental alteration
  - Undue burden
  - Direct threat



# Selma Medical Associates, Inc.

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- Winchester, VA (Jan. 2019)
- Medical facility that provides primary and specialty care allegedly refused to accept a prospective patient for an appointment due to the patient's use of Suboxone
- Facility allegedly regularly turned away prospective patients who lawfully took controlled substances to treat their medical conditions



# Selma Medical Associates, Inc.

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- Settlement agreement:
  - Agreed not deny services on the basis of disability, including opioid use disorder
  - Agreed not apply standards of criteria that screen out individuals with disabilities
  - Adopt non-discrimination policies and train staff
  - Pay \$30,000 in damages to complainant and a \$10,000 civil penalty





# Charlwell Operating, LLC

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- Dist. of Mass (May 2018)
- Skilled nursing facility allegedly denied admission to a patient with OUD due to the patient's use of Suboxone
- Settlement agreement:
  - Adopt a non-discrimination policy
  - Provide training on the ADA and OUD to admissions personnel
  - Pay a civil penalty of \$5,000 to the United States



# Equal Access to Services



# Equal Access to Services

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The ADA requires that a hospital or health care provider make reasonable modifications to policies, practices, and procedures when necessary to ensure that its services are fully available to individuals with disabilities, unless the modifications would fundamentally alter the nature of the services. Not required to take actions resulting in undue financial and administrative burdens.



# Equal Access to Services

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A provider cannot deny service to a patient whom it would otherwise serve because he has a disability. For an individual whose disability requires the use of a wheelchair this may mean, where appropriate, providing an accessible examination table or other medical equipment, having a patient lift available (e.g., a Hoyer lift), and/or having available trained staff available who can assist the patient to transfer so that the patient may be examined or treated.



# Thomas Jefferson University Hospital

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- Eastern District of Pennsylvania (April 2019)
- Complainant who uses wheelchair was denied DEXA scan as a walk-in patient
- Alleges he was told they did not have staff available to transfer him
- Settlement agreement:
  - Train staff who interact with patients on safe transfer
  - Make staff available who can assist with transfer at all times when it accepts patients (including walk-in)
  - Pay compensatory damages of \$5,000



# Charlotte Radiology

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- Western District of North Carolina (Aug. 2018)
- Complainant who uses wheelchair was denied DEXA scan unless she brought someone to assist with transfer
- Settlement agreement:
  - Adopt nondiscrimination policy and post in facility and website
  - Schedulers will ask if patient needs modification, to be prepared
  - Training for employees on ADA and transfer
  - Acquire patient lifts and provide reasonable modifications
  - Remove architectural barriers
  - Compensatory damages



# Built Environment



# Built Environment

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- Public entities (both state and local); public accommodations; and commercial facilities must follow the relevant provisions of the ADA Standards for Accessible Design for newly constructed and altered facilities.





# Built Environment

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- **Title II:** Must provide **program access** to all services, programs or activities, when viewed in their entirety, and use other methods to provide such services, which may include modifications to features and elements of buildings or facilities.
- **Title III:** For existing facilities, public accommodations must remove architectural and communication barriers to access where it is readily achievable to do so, i.e, without significant difficulty or expense.



# McLean Hospital

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- Dist. Of Massachusetts (2016)
- Complainant sought admission to a program at the hospital that provided therapeutic and residence services for women with borderline personality disorder. Facility was a three-story townhouse with common spaces on 1<sup>st</sup> floor and bedrooms on 2<sup>nd</sup> and 3<sup>rd</sup> floors. Complainant uses a wheelchair and was denied admission because of accessibility needs.
- Settlement Agreement:
  - Alter first floor common areas to meet 2010 ADA Standards
  - Provide off-site accessible housing and transportation to it
  - Training for all intake staff on new policies



# Filing an ADA Complaint/ ADA Resources

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File a Complaint at:

**ADA** ■ gov

Call the ADA Information Line:

**800-514-0301** (voice) or 800-514-0383 (TTY)



# Contact Information

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Disability Rights Section

Civil Rights Division

U.S. Department of Justice

[www.ada.gov](http://www.ada.gov)

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# Questions?

