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Patient Care Requirements Significantly Transformed for 2011

New federal regulations governing patient access to medical services will take effect in March 2011. The regulations are designed to make the services provided by hospitals, medical offices and care facilities more accessible to persons with disabilities. They are part of the long-awaited amendments to the Americans with Disabilities Act's (ADA) public accommodation regulations. These new rules are not related to the pending ADA regulations that affect employment issues.

Even before the new rules were issued, the Civil Rights Division of the U.S. Department of Justice had heightened its focus on accessible medical care. The Department recently settled some notable ADA cases involving hospitals and physicians' offices. It also issued special guidance about providing medical care to persons with physical disabilities. The guidance emphasizes that exam tables, scales, radiological equipment such as x-ray and mammography machines, and all other medical equipment must be accessible to persons with a physical disability.

Between the new regulations and the Department's guidance, several new ADA compliance priorities have emerged that health care providers should note. They include the following:

Providers must ensure effective communication both with a patient as well as with a patient's companion who has difficulty with communication. For example, a hospital's emergency department or a physician's office may need to provide a sign-language interpreter for a patient's spouse who is deaf. This obligation exists even if the patient does not require assistance communicating with providers and staff.

Providers may not treat a patient seated in a wheelchair if the patient would otherwise be treated while on an exam table or another piece of equipment. Facilities must have mechanized tables and other accessible devices available, and employees must be trained to safely transfer and position patients onto them. The failure to have the required equipment available and to train employees in its use may be tantamount to denying effective medical treatment.

To the extent feasible, patients and visitors must be allowed to use Segways as mobility devices. In addition, dogs, and in some cases miniature horses, must be permitted as service animals. A common ADA violation – and frequent complaint received by the Justice Department – is that a facility improperly excluded a service animal. To avoid the inappropriate denial of services, and resulting costly litigation, facilities should have policies that cover these issues as well as training for all employees, including security personnel, in how to enforce it.

Accessible patient rooms must be dispersed throughout a facility in a manner that is proportionate to each medical specialty. This means that a facility cannot place all patients with physical disabilities in an orthopedic area if the patients actually need cardiovascular or neurological care.

Facilities need to assess whether changes in common-space accessibility requirements necessitate modifications or remodeling. As an example, built-in elements now must have side reach of no more than 48 inches. This can affect the height of door handles, counters, pay phones, security card readers, fire-alarm pulls, elevator buttons, etc. The previous maximum was 54 inches.

Although most of the new rules go into effect on March 15, 2011, there are some exceptions. One of the most notable exceptions is the new “element-by-element” safe harbor. Under the previous rules, any physical change to an existing space could trigger the obligation to make the entire space ADA compliant. For example, replacing the flooring in exam rooms could trigger the obligation to make the entire patient treatment area accessible.

However, the new regulations allow each physical element to be considered separately. For instance, no longer will new carpeting create an obligation to make unrelated elements, such as counter tops or restroom sinks, ADA compliant. Nevertheless, facilities are cautioned against overreliance on the element-by-element safe harbor. The rules still require continuous “readily achievable barrier removal.”

What This Means To You

ADA missteps can be costly. Justice Department investigations can be lengthy and remedies may include a term of court-ordered oversight, victim compensation, fines and retrofits for construction issues. Medical facilities should take proactive measures to create policies (such as those covering service animals) to modify treatment protocols, and to ensure that physical spaces are accessible. Husch Blackwell can create a roadmap to help address these and many other timely compliance issues.

Contact Info

Please contact one of our Healthcare, White Collar, Internal Investigations & Compliance or Labor & Employment attorneys for additional information and assistance.

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