

# It's Time To Review Your Online Patient-User Interface: DOJ Issues New Federal Guidance on Telemedicine and Civil Rights Protections

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As online digital health services continue to enjoy broader use and appeal, federal regulators are concerned some telemedicine online patient-user interfaces fail to accommodate persons with disabilities and limited English proficiency. Such failures in “product design” can violate federal civil rights laws and the Americans with Disabilities Act (ADA), according to new policy guidance jointly issued by the U.S. Department of Health and Human Services (HHS) and Department of Justice (DOJ).

The document, [Nondiscrimination in Telehealth](#), is specifically directed to companies offering telemedicine services and instructs such covered entities to immediately take specific steps to comply with the various “accessibility duties” under federal civil rights laws. The guidance focuses on ensuring accessibility for two populations of users: 1) people with disabilities and 2) people with Limited English Proficiency (LEP).

## Who is Subject to these Rules?

The guidance refers to “covered entities” subject to these rules. Under the rules, “covered entities” are any health programs and activities *receiving* federal financial assistance (in addition to programs and activities administered by either a federal executive agency or an entity created by Title I of the Affordable Care Act). While the guidance does not define what constitutes “receiving federal financial assistance”, HHS has historically held that providers who receive federal dollars solely under traditional Medicare Part B were **not** covered entities. However, a [recently-proposed rule](#) suggests HHS will significantly expand the scope of covered entities, and soon. Telemedicine providers should be prepared to comply with these federal laws.

## People with Disabilities

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The guidance explains that no person with a disability shall – because of the disability – be excluded from participation in or be denied the benefits of the services, programs, or activities of a covered entity, or otherwise be subjected to discrimination by a covered entity. The requirements in the guidance is supported by several federal laws, including the Americans With Disabilities Act, the Affordable Care Act Section 1557, and the Rehabilitation Act Section 504.

Applying these federal civil rights protections to telemedicine services, the guidance states companies must make reasonable changes to their policies, practices, or procedures in order to provide “additional support to patients when needed before, during, and after a virtual visit.”

DOJ and HHS provided the following as examples of such “additional support” obligations:

- *A dermatology practice that typically limits telehealth appointments to 30 minutes may need to schedule a longer appointment for a patient who needs additional time to communicate because of their disability.*
- *A doctor’s office that does not allow anyone but the patient to attend telehealth appointments would have to make reasonable changes to that policy to allow a person with a disability to bring a support person and/or family member to the appointment where needed to meaningfully access the health care appointment.*
- *A mental health provider who uses telehealth to provide remote counseling to individuals may need to ensure that the telehealth platform it uses can support effective real-time captioning for a patient who is hard of hearing. The provider may not require patients to bring their own real-time captioner.*
- *A sports medicine practice that uses videos to show patients how to do physical therapy exercises may need to make sure that the videos have audio descriptions for patients with visual disabilities.*

## **People with LEP**

The second area of the guidance is protections for LEP individuals under Title VI of the Civil Rights Act of 1964 (Title VI). Under Title VI, no person shall be discriminated against or excluded from participation in or be denied the benefits of services, programs, or activities receiving federal financial assistance on the basis of race, color, or national origin.

For telemedicine services, the guidance states that the prohibition against national origin discrimination extends to LEP persons. Namely, telemedicine companies must take reasonable steps to ensure meaningful access for LEP persons. Such “meaningful access” includes providing information about the availability of telehealth services, the process for scheduling telehealth appointments, and the appointment itself. In many instances, HHS states, language assistance services are necessary to provide meaningful access and comply with federal law.

These language assistance services can include such measures as oral language assistance performed by a qualified interpreter; in-language communication with a bilingual employee; or written translation of documents performed by a qualified translator

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DOJ and HHS provided the following as examples of such “meaningful access” obligations:

- *In emails to patients or social media postings about the opportunity to schedule telehealth appointments, a federally assisted health care provider includes a short non-English statement that explains to LEP persons how to obtain, in a language they understand, the information contained in the email or social media posting.*
- *An OBGYN who receives federal financial assistance and legally provides reproductive health services, using telehealth to provide remote appointments to patients, provides a qualified language interpreter for an LEP patient. The provider makes sure that their telehealth platform allows the interpreter to join the session. Due to issues of confidentiality and potential conflicts of interest (such as in matters involving domestic violence) providers should avoid relying on patients to bring their own interpreter.*

## **What if Making These Changes is Expensive?**

While not directly addressed in the guidance, the cost for implementing accessibility measures generally falls on the company itself. Federal ADA regulations prohibit charging patients extra for the cost of providing American Sign Language (ASL) interpreters or similar accommodations. In fact, a covered entity may be required to provide an ASL interpreter even if the cost of the interpreter is greater than the fee received for the telemedicine service itself. With respect to LEP interpreters, HHS issued [separate guidance](#) stating it is not sufficient to use “low-quality video remote interpreting services” or “rely on unqualified staff” as translators.

However, companies are not required to offer an aid or service that results in either an undue burden on the company or requires a fundamental alteration in the nature of the services offered by the company. This is an important counterbalance in the law. Yet, the threshold for what constitutes an “undue burden” on a company or a “fundamental alteration” to the nature of the services is not bright line and requires a fact-specific assessment under the legal requirements.

## **Conclusion**

Telemedicine companies subject to the guidance should heed the government’s warning and look inward on patient-facing elements. The first step is to simply have the website and app platform reviewed (most particularly the patient online user interface) by a qualified third party to determine if its design and features are sufficiently accessible for people with disabilities, as well as LEP persons. That time is also a prudent opportunity to review the user interface to confirm it complies with state telemedicine practice standards, e-commerce rules, electronic signatures or click-sign laws, and privacy/security requirements. Because these laws have undergone rapid and extensive changes during the Public Health Emergency, it is recommended to conduct these assessments on a periodic/annual basis.

If a company believes the expense of making these product design changes to ensure accessibility would be prohibitively expensive, it should check with experienced advisors to determine if the changes would constitute an “undue burden” or “fundamental alteration.” Otherwise, federal guidance is clear that refusing to make reasonable changes can be a violation of federal civil rights laws.

National Law Review, Volume XII, Number 255

Source URL: <https://natlawreview.com/article/it-s-time-to-review-your-online-patient-user-interface-doj-issues-new-federal>