

Are You Accessible In Cyberspace?—Healthcare Is Not Immune From the Latest ADA Title III Trend

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Public accommodation lawsuits under Title III of the Americans with Disabilities Act (ADA) have been around for years, but traditionally involve physical barriers such as narrow parking spots or access aisles, lack of elevators, and inaccessible restrooms. Increasingly, these lawsuits are not just confined to brick-and-mortar accommodations, but involve cyberspace. For example, individuals who are visually impaired typically access organization's websites by using certain software that reads a website's content. If this software cannot read an organization's website, however, a visually impaired individual may be unable to fully access its content.

The healthcare industry is not exempt from the recent surge in website accessibility cases under Title III of the ADA. Although the retail, hospitality, and higher education industries have been some to get hit the hardest on this growing trend, the ADA specifically protects hospitals and doctor's offices, and a number of hospital systems and health insurance organizations have already been involved in these lawsuits.

Part of the difficulty of this issue is the lack of regulatory guidance. Most courts examining the issue have concluded that cyberspace is a place of public accommodation and thus, websites must be accessible to disabled users. There is less agreement among courts, however, on whether all commercial websites must be ADA-compliant or whether only businesses with brick-and-mortar locations must comply. Thus far, most courts require a website have an actual nexus to a brick-and-mortar location to be covered by Title III. That is, some courts have concluded that Title III does not cover "stand-alone" websites that do not also have physical locations. Additionally, even for those organizations that are subject to Title III, there are no government-issued guidelines defining what makes an organization's website accessible. Unlike the physical access barrier regulations that provide inch-by-inch guidance, such standards are not yet available for cyberspace.

The good news is that, despite the lack of regulation, there are steps organizations can take toward ensuring compliance. Typically, websites that comply with "WCAG 2.0 Guidelines" are considered accessible to the visually impaired. Organizations can utilize these standards to evaluate the accessibility of their website for visually impaired individuals. While there are other ways to defend against a Title III claim, ongoing assessment of the accessibility of the website along with programs to improve accessibility are strong indicia of an organization's intent to comply with Title III.

Although healthcare organizations already are heavily regulated, this is an area where additional guidelines could be helpful in understanding the steps necessary to make their websites compliant with Title III of the ADA. The Trump Administration has indicated it may even issue additional regulations this year. Until then, however, the healthcare industry, along with millions of other U.S. businesses, must strive for compliance without the benefit of clear directions to do so.

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