

Report on Medicare Compliance Volume 28, Number 16. April 29, 2019 Virtual Version of ADA Noncompliance Is Fertile Ground for Lawsuits; WCAG Is Standard

By Nina Youngstrom

In a new take on the Americans with Disabilities Act (ADA) and other anti-discrimination laws, people with disabilities and their advocates are filing far more lawsuits against hospitals and other organizations over websites, apps and electronic health records (EHRs) that allegedly aren't accessible. Overwhelmingly it's visually impaired patients who are unable to use websites, apps or EHRs because they're not designed and configured to work with assistive technology, such as screen readers. In the lawsuits, people with disabilities are asking federal courts to compel the organizations to comply with the ADA, make changes to their technology so that it can be accessed by people with disabilities and sometimes pay damages.

"This is significant in that bursts of litigation usually follow a new law or regulation, but there's no new law or regulation," says attorney Steven Helland, with Fredrikson & Byron in Minneapolis. "Plaintiffs' lawyers are starting to apply the same laws to digital and virtual places and not just physical places, like wheelchair ramps. This is new terrain for courts, and the litigation explosion has been gigantic." The Department of Justice (DOJ) has taken the position that the ADA applies to websites and apps "and multiple courts have agreed," he says. But the definition of "accessible" is somewhat murky. Because many cases end in settlement, courts haven't shed much light, and neither has DOJ. After promising for years to publish guidance on the ADA, DOJ changed its mind. In late 2017, "the Trump Administration said it has no intention of issuing regulations," Helland explains. "It's funky because normally businesses don't like regulations, but this is a case where a lot of businesses welcome regulations because it would give them clarity."

To reduce the risk of virtual ADA violations and improve compliance with state and federal anti-discrimination laws, organizations should follow Web Content Accessibility Guidelines (WCAG) version 2.1 AA, as recommended by DOJ and a number of courts, and require vendors to sign an accessibility warranty, Helland says (see box, p. 3). He notes that one in five Americans has a disability.

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