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A collaborative program between the Southwest ADA Center, Great Lakes ADA Center and members of the ADA National Network

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## Listening to the Webinar, *continued*



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## Listening to the Webinar, *continued*



### MOBILE Users (iPhone, iPad, or Android device (including Kindle Fire HD))

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\*\*Closed Captioning is not visible via the Mobile App and limited accessibility for screen reader/Voiceover users

4

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5

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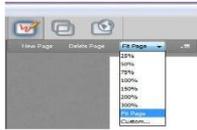
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## Customize Your View



- Resize the Whiteboard where the Presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard. The default is “fit page”



7

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## Customize Your View *continued*



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8

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9

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# Access to Healthcare for People with Disabilities

George Powers, JD; Edward Elms, MD

Southwest ADA Center

March 22, 2017



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This presentation is informal guidance and not legal advice

Not You



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I'm not your doctor



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## Brief Intro to Healthcare Access

- Settlements:
  - Architectural barriers - paths of travel, accessible parking as well as patient areas & restrooms



Image retrieved from <http://thechronicleherald.ca/novascotia/1271326-northside-general-steps-pose-risk-from-ice-damage>

13

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- Settlements:
  - Auxiliary Aids not made available
    - Sign language interpreters/ video remote interpreting
  - Refusal to treat consumers based on previous diagnoses (i.e. HIV positive)



Image retrieved from <http://kskradio.com/boothwell-regional-health-center-implements-video-remote-interpretation/>

14

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- Settlements:
  - Failure to provide accessible medical equipment:
    - Required to provide safe transfer
    - Needed for diagnostic purposes
    - accessible weight scales



Image retrieved from <http://www.scalegators.com/96390.cfm?>

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- Settlements:
  - Absence of an ADA Officer to oversee compliance
  - Lacking a Patient Complaint Process
  - ADA Consultant not in place to train with respect to disability issues in the healthcare arena



Image retrieved from <https://www.forbes.com/sites/stevedenk/2014/09/10/could-this-be-more-important-than-price-and-product/#49ed8bc9107a>

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## Effective Communication

- Crucially important in the healthcare arena:
  - To prevent a delay in diagnosis or misdiagnosis
  - To prevent health complications due to lack of consumer compliance due to fragmented or misunderstanding of the management plan
  - To ensure proper counseling/ therapy



Image retrieved from <http://adaaaf.com/our-services/on-site-medical-aaf-interpretng/>

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## Effective Communication

- Method chosen is determined by:
  - Consumer's usual method of communication
  - Complexity of interaction (more complex = sign language interpreter)
    - diagnosis, treatment, and prognosis discussions
    - complicated billing or insurance issues
    - living wills & powers of attorney

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## Effective Communication

- Persons who may need accommodation other than those receiving the health services:
  - Guardian of a minor
  - Partner of the patient
  - Parent to be



Image retrieved from <https://www.signs.com/blog/happy-effective-communications-month/>

19

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## Effective Communication

- Who can interpret?
  - qualified person must be capable, precise, and neutral (familiar with medical terminology)
  - Not acceptable to suggest family members or other attendants to interpret (given the potential for highly stressful scenarios)

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## Effective Communication

- Undue Burden
  - “significant difficulty or expense”
  - vary from entity to entity and possibly from one year to the next
  - must provide another effective aid or service if undue burden would be the result



Image retrieved from <https://bowtellaw.wordpress.com/category/reasonably-accessible/>

21

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## Effective Communication

- Undue Burden
  - State and local governments:
    - in light of all resources available
    - decision made by a department head or higher
  - Businesses and nonprofits:
    - overall financial resources (including parent company)
    - not expected to fundamentally alter the nature of their goods or services

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## Effective Communication

- Reed v. Columbia Saint Mary's Hospital
  - Reed has tardive dyskinesia
  - She uses a computer to communicate.
    - During a hospital visit, Reed asked that staff bring the computer to her, which they refused.
  - Seclusion room
  - Meeting with a doctor to discuss her discharge

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## Questions??

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## Service Animals

- What is the definition of a service animal under the ADA?
  - Emotional support animals and companion animals



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## Service Animals

- Inquiries and Identification



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## Service Animals

- Hurley v. Loma Linda University Medical Center
  - Hurley went to visit her grandfather
  - Service dog with a vest
  - Security asked to see documentation
  - Hurley refused and was removed

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## Service Animals

- Hurley v. Loma Linda University Medical Center
  - “[T]his regulation — intended to assist the disabled — often causes more harm than good. It is unsurprising that there is widespread fraud regarding service animals, as this regulation precludes law enforcement and personnel such as Casey from investigating whether purported service animals are what their owners say they are.”

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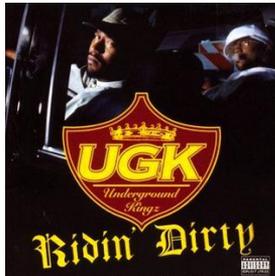
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## Service Animals

- Riding in an ambulance



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## Service Animals

- In hospitals
  - Allowed anywhere where patients and members of the public are permitted.
  - Patient rooms, clinics, cafeterias, or examination rooms.
  - Operating rooms and burn units.

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## Service Animals

- Patient who is unable to care for their animal.



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## Questions??

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## Medical Diagnostic Equipment

- Accessing medical diagnostic equipment (MDE):
  - examination tables
  - weight scales
  - diagnostic imaging equipment



Image retrieved from <http://www.medicalexpo.com/medical-manufacturers/wheelchair-2081.html>

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## Medical Diagnostic Equipment



Images retrieved from <http://www.rehabmart.com/product/clinton-eta-alpha-series-medical-tables-26429.html> and <http://www.valuemart.ca/product/ptm000000033.html>

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## Medical Diagnostic Equipment



Images retrieved from <http://med.stanford.edu/news/all-news/2015/07/dna-damage-seen-in-patients-undergoing-ct-scanning-study-finds.html> and [http://thehill.com/policy/healthcare/262546-ada-requirements-for-mammogram-access-for-disabled-women/article\\_87a8c68-7b2f-5a61-880f-4a81d23a25c.html](http://thehill.com/policy/healthcare/262546-ada-requirements-for-mammogram-access-for-disabled-women/article_87a8c68-7b2f-5a61-880f-4a81d23a25c.html)

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## Medical Diagnostic Equipment

- The U.S. Access Board, in consultation with the FDA, were required to issue accessibility standards for MDE.



Image retrieved from <http://blog.compackage.com/health-care-reform-affects-on-insurance-agencies/>

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## Medical Diagnostic Equipment

- July 2010 - DOJ issued an advance notice of proposed rulemaking to include specific standards for accessible equipment & furniture



Image retrieved from <http://www.adattitle.com/2016/05/1928/>

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## Medical Diagnostic Equipment

- February 2012 – Access Board issued a notice of proposed rulemaking for accessibility standards
  - the public comment period captured 59 comments



Image retrieved from <http://blog.cleanenergy.org/2014/12/03/public-comment-period-closes-for-apac-clean-power-plan-but-there-is-more-work-to-be-done/>

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## Medical Diagnostic Equipment

- Convened an advisory committee
  - Experts from 24 organizations
  - Comprised stakeholders and ex officio members from the FDA, Department of Justice, and the Department of Veterans Affairs.



Image retrieved from <http://www.cithecouncils.org/contact/>

39

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## Medical Diagnostic Equipment

- Advisory Committee Recommendations
  - The one topic lacking consensus was the lowest height for adjustable-height transfer surfaces.
    - Sunset provision – ongoing research to revise by 01/09/22
  - Otherwise, 54 recommendations for MDE standards were put forth.



Image retrieved from <http://www.hallierawford.com/2016/linkedin/boost-your-credibility-on-your-resume-with-linkedin-recommendations/>

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## Medical Diagnostic Equipment

- Update
  - On January 9, 2017 Access Board released a final rule for accessibility requirements for MDE
  - Requirements took effect on February 8, 2017



Image retrieved from <http://blogs.opentext.com/blog-delays-accessibility-rules-document-publishing/>

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## Medical Diagnostic Equipment

- The Access Board's mandate was to establish the minimum technical criteria
- These proposed standards represent "best practice" guidance
- Voluntary not mandatory



Image retrieved from <http://www.blueayscads.org/content/best-practice-or-conventional-wisdom-editor-commentary-91509>

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## Medical Diagnostic Equipment

- Communication features and operable parts also must be made accessible to consumer
  - data sent via the equipment must be delivered in 2 of 3 methods – audible, visible, &/ or tactile



Image retrieved from [http://www.mlive.com/business/west-michigan/index.ssf?2013/11/lan\\_mri\\_machine\\_that\\_doesnt\\_mak.html](http://www.mlive.com/business/west-michigan/index.ssf?2013/11/lan_mri_machine_that_doesnt_mak.html)

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## Medical Diagnostic Equipment

- Exemption
  - if observance with rule would change diagnostically necessary structural or operational features so as to inhibit use



Image retrieved from <http://anemploymentlaw.com/post/Exceptions-to-Policy-Not-Always-Wrong.aspx>

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## Medical Diagnostic Equipment

- Exemption
  - but must still comply to the maximum degree achievable



Image retrieved from <http://mmap.com/radiology/dexa-scan/dexa-scan/>

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## Medical Diagnostic Equipment

- The Access Board's mandate did not include scoping (who must comply, minimum numbers)
  - Determined by an enforcement agency who adopts the standards



Image retrieved from <https://thebettertomorrowgroup.com/2014/02/24/scope-of-work-the-backbone-of-your-ifa/>

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## Medical Diagnostic Equipment

- The Access Board's final standards
  - does not deal with the accessibility of existing diagnostic medical equipment
  - or require a % of new equipment to be accessible
- This would be the task of the enforcing agency



Image retrieved from <http://www.fqaablog.com/blog/tag/seal-mckessy>

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## Medical Diagnostic Equipment

- Moving forward
  - The U.S. DOJ (an enforcement agency) amend the ADA regulations to include the proposed standards for accessible medical diagnostic equipment



Image retrieved from <http://www.acsterehabilitation.com/ftcal-mla/>

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## Medical Diagnostic Equipment

- “Full and equal enjoyment of and access to health care services and health care facilities”



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## Medical Diagnostic Equipment

- Washington Hospital Center Settlement Agreement
  - Plaintiffs use wheelchairs
  - Examined on inaccessible equipment which required them to be lifted onto an examination table
  - Lifting performed in an improper manner
  - Longer wait times because accessible exam table was occupied

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## Medical Diagnostic Equipment

- The Beth Israel Deaconess Medical Center Settlement Agreement
  - Compliance review
  - Accessible patient rooms
  - Accessible medical equipment

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## Medical Diagnostic Equipment

- Medical Specialist of the Palm Beaches, Inc. Settlement Agreement
  - Complainant uses wheelchair
  - Denied opportunity to be weighed at the office
  - Was refused transfer for diagnostic services
  - Lifts and accessible scale

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## Questions??

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## Telehealth

- What is it?



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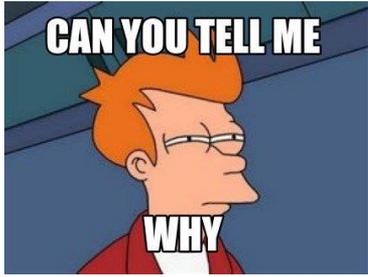
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## Telehealth

- Why?



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## Telehealth



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## Telehealth



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## Telehealth

- Is it fad?



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## Telehealth

- Lower costs
- Preventive healthcare
  - Constant monitoring
  - Medical services on demand
- Remove barriers
  - Distance (Rural areas)
  - Facility access
  - Transportation

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## Telehealth

- The future of medicine



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## Telehealth

- Accessibility
  - People who have vision loss or who are blind
  - People with hearing loss or who are deaf



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## Telehealth

- Is it covered by the ADA?



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## Telehealth

- Technology companies

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## Telehealth

- Website accessibility
  - Nexus



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## Telehealth

- Website accessibility
  - No nexus



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## Telehealth

- "The Internet is central to every aspect of the 'economic and social mainstream of American life.' In such a society, excluding businesses that sell services through the Internet from the ADA would `run afoul of the purposes of the ADA and would severely frustrate Congress's intent that individuals with disabilities fully enjoy the goods, services, privileges, and advantages available indiscriminately to other members of the general public."

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Questions??

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## Resources

- United States Access Board
  - <http://www.access-board.gov/guidelines-and-standards/health-care/about-this-rulemaking>
- Department of Justice
  - <https://www.ada.gov/>

68

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## Session Evaluation

Your feedback is important to us

You will receive an email following the session with a link to the on-line evaluation



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## Next ADA Legal Webinar Session

*"The Interplay between the ADA and the FMLA"*

Barry Taylor and Rachel Weisberg

May 24, 2017

Registration: [www.ada-legal.org](http://www.ada-legal.org)



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