Impact of the Americans with Disabilities Act on Family Physicians

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The Americans with Disabilities Act of 1990 prohibits discrimination against persons with disabilities in employment, government services, public accommodations, public transportation, and telecommunications. This article reviews the impact of the law on the practice of family physicians.

Pre-employment medical evaluations are prohibited by law, but medical evaluations may be performed after an offer of employment and before job assignment has been made. Employment may be conditional on results only if medical confidentiality is protected, and exclusionary criteria are job related, applied universally, and do not discriminate against individuals with disabilities.

The law provides that persons with disabilities will have equal access to medical care, through prohibiting discrimination based on disability and through the design and construction of medical offices. The law requires physicians who are covered by the law to make reasonable accommodations so that qualified employees and applicants can perform the essential functions of a job.

Key words. Physical examination; employment; prejudice; handicapped; legislation. *J Fam Pract 1993; 36:201-206.*

The Americans with Disabilities Act of 1990 (ADA),[1] the implementation of which began in 1992, prohibits discrimination against persons with disabilities in employment, government services, public accommodations, public transportation, and telecommunications. The new law will have an important impact on family physicians in several areas: employment-related medical evaluations, the right to refuse to treat patients, the design and operation of medical offices, and the hiring of medical office staff.

Employment-Related Medical Evaluations

Most employment-related medical evaluations are performed by family physicians.[2,3] For many family physicians, these evaluations comprise a sizable portion of their practice.[4] The employment provisions of the ADA became effective July 26, 1992 (table), and are expected to produce sweeping changes in the performance of job-related examinations. Problems with current practices that the Act addresses include:

- Criteria for exclusion. Physicians frequently use only their own implicit criteria to determine fitness for employment.[4] Physicians should now require explicit job descriptions from employers in order to evaluate fitness for a job from a medical standpoint.
- Medical confidentiality. The usual rules of medical confidentiality are often blurred for employment-related examinations, in that many physicians transfer the medical history and physical findings to employers without the prospective employee's consent.[4] Even if the employee consents to such a transfer, the transfer is seldom necessary, and the employee may feel coerced because failure to do so may result in failure to get the job.
- Testing for illegal drugs and human immunodeficiency virus (HIV). The appropriateness, legality, and confidentiality of testing in such controversial areas as drug use and HIV infection have been hotly debated.[5–11] The Act addresses those tests that must be job related and those that need not be. Drug testing is specifically allowed under the Act: testing for HIV would need to be related to central functions of the job.

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Implementation Timetable for the Americans with Disabilities Act of 1990

Effective Date	Provision
January 26, 1992	Barriers to persons with disabilities must be removed from physicians' offices where it is readily achievable to do so. Physicians may be sued for refusal to treat patients solely because of disability.
July 26, 1992	Barriers to persons with disabilities must be removed from physicians' offices with 11 to 25 employees where readily achievable. Employers with 25 or more employees must make reasonable accommodations to applicants and employees with disabilities. Physicians performing employment-related examinations must comply with new standards of evaluation and confidentiality.
January 26, 1993	Barriers to persons with disabilities must be removed from all physicians' offices regardless of number of employees.
July 26, 1994	Employers with 15 or more employees must make reasonable accommodations to applicants and employees with disabilities.

NOTE: *Questions regarding the Americans with Disabilities Act may be addressed to any of the federally funded technical assistance programs by calling the ADA Hotline: 800-949-4232.*

Definitions

The ADA requires employers to make *reasonable accommodations*, excepting those that constitute an *undue hardship*, so that any *qualified individual with a disability* can perform the *essential functions* of a job (Title I). A disability is defined as (1) any physical or mental impairment that substantially limits a major life activity (eg, communications, ambulation, and working), (2) having a record of such an impairment, or (3) being regarded by others as having such an impairment. Examples of disabilities include medical problems such as blindness, cardiovascular disease, osteoarthritis of the knee joints, unusual sensitivity to tobacco smoke, and HIV infection; neuropsychiatric problems such as manic-depressive syndrome, mental retardation, cerebral palsy, and emotional illness; and addictive disorders such as a history of alcoholism and former drug use. The ADA specifically excludes some conditions from the definition of disabilities, such as homosexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychiatric substance use disorder resulting from current illegal use of drugs.

The Act requires that an individual who has a disability and is otherwise qualified to perform the essential functions of a position must not be disqualified from employment simply because of the disability. Rather, the employer is obligated to make reasonable accommodations in the workplace or in the job itself so that the individual may perform the job, as long as making the accommodations does not cause the employer "undue hardship" (defined as "significant difficulty or expense"). Examples of "reasonable accommodation" given in the law include altering facilities to make them accessible to wheelchairs, providing qualified readers or interpreters, and offering part-time or modified work schedules. Physicians may be asked by employers to suggest accommodations that could be made for employees with disabilities, or to document the need for the accommodation. For some physicians this may require additional training in assessment of disabilities and availability of accommodations in the workplace, or establishment of relationships with occupational therapists or psychiatrists.

Before examining the effect of the ADA on the performance of medical evaluations for fitness for work, two additional definitions are required. First, a medical *pre-employment* evaluation, examination, or inquiry is defined as an evaluation performed before the offer of a job. A medical *preplacement* evaluation, examination, or inquiry is defined as an evaluation performed after an offer of employment but before specific assignment.

How does ADA affect pre-employment evaluations?

The ADA prohibits pre-employment medical evaluations and inquiries concerning disabilities but permits ergonomic testing. Employers may inquire about the ability of an applicant to perform essential or marginal elements of the job, and may ask the applicant to describe or demonstrate the ability to perform the function, but they may not phrase their inquiries in terms of disabilities. For example, inquiry about a history of back problems, or of a worker's compensation claims history, is prohibited at the pre-offer stage. Also, the employer may not ask whether the applicant has a "visual disability" but may ask if the applicant has adequate vision for driving or a valid driver's license, and may ask the applicant to demonstrate the ability to drive a vehicle, if driving is an essential function of the job. The rationale for this distinction is that, in the past, some employers refused to hire persons with disabilities, based on a false assumption that their disability would render them incapable of performing the job. According to the new law, applicants for employment may not be excluded because of an inability to perform a marginal job function, or because their disability prevents them from performing an essential function if a reasonable accommodation that does not cause an undue hardship would allow performance of the essential function.

Although the ADA prohibits employers and physicians from pre-offer medical inquiries, it does allow er-

gonomic testing if the criteria are specifically job related. Evaluating specific physical abilities, such as weight-lifting capacity or agility required for an essential job function, is allowed. Testing is not a medical examination by definition and is more appropriately done by the employer in an ergonomics laboratory than in a physician's office. Results of such tests could be used as a criterion for employment only if (1) the tested disabilities are job related and consistent with business necessity, (2) reasonable accommodation is not possible, and (3) all applicants for the position are required to perform the same tests.

How does the ADA affect preplacement evaluations?

A medical evaluation of a prospective employee may be required *after* employment has been offered. The offer of employment may be conditional, based on the results of the evaluation if all entering employees in the same job category are required to have the same evaluation and if the exclusionary criteria involve essential functions of the job. Rules of confidentiality require that records of the medical evaluation be kept separate from the personnel file and not released to the employer. Only the physician's decision regarding fitness to work may be released to the employer. Exceptions may be made if the physician recommends any accommodations or restrictions: this information may be given to appropriate supervisors and managers; first-aid and safety personnel may be informed if the physician believes the person with the disability may require emergency treatment on the job; and information may be released to government officials investigating compliance with the law.

In cases in which the physician would not recommend employment unless medical information was transmitted to supervisors or first-aid personnel, the physician should ask the prospective employee for consent to release this information. Consider the case of a person with insulin-dependent diabetes mellitus who is subject to hypoglycemic episodes. A physician might recommend employment of this person only if steps were taken to prepare coworkers to address this potential problem. Physicians must be careful, however, to release such information only when necessary and in a manner least likely to compromise confidentiality. If the prospective employee is unwilling to consent to the release of this information, and the physician cannot recommend employment unless the information is released, the physician should not recommend employment.

The ADA permits employers to conduct medical examinations at the preplacement stage that extend beyond the scope of job-related tests and inquiries, a point apparently misunderstood by several authors.[12–14] These evaluations may be used to establish baseline data, to gather epidemiological information, to collect information for insurance policies, and to provide health promotion services such as wellness programs, cancer screening, and weight control programs to employees. Information gathered from these more complete examinations cannot be used to exclude persons from employment, because any exclusionary criteria *must* be job related and consistent with business necessity. While a history of back problems could be elicited in the post-offer medical evaluation, the prospective employee could not be excluded from employment because of this history alone. If strength or flexibility of the back was an essential requirement of the job, and the patient failed ergonomic testing to which all applicants were subjected, only then could the patient be excluded from the job. This requirement makes it very difficult for a physician to disqualify an individual on the basis of the medical evaluation unless the employer provides a detailed description of essential job functions. The physician may also need to be familiar with available accommodations if consulted by the employee or employer regarding those that are possible without undue hardship. ("Undue hardship" and "reasonable accommodation" are likely to be judged against the size and resources of the employing entity.) A potential employee may not be disqualified from the job, or from insurance coverage, solely because the physician believes, based on current medical knowledge and experience, that the potential employee's medical condition or disability will necessitate increased time away from work or increase that person's risk for medical complications (ie, raise health insurance costs).

Medical evaluations for fitness for work have traditionally included a variety of laboratory or radiologic examinations. In some instances such tests are prescribed by law, such as pulmonary function testing for asbestos abatement workers. Whether these tests will still be allowed remains to be clarified. Otners are specifically related to the employee's risk or the risk a person may pose to others (eg, serologic testing for rubella immunity or skin testing for tuberculosis in a health care worker). The law still allows these tests. Other tests, especially those that pose some risk to the employee (eg, chest or lumbar radiographs), must be specifically related to essential job functions if they are to be required. Establishing a baseline to limit insurance or medicolegal exposure could not be sufficient justification. The ADA specifically allows urine drug testing in pre-employment or preplacement evaluations, and does not require that such testing be linked to job function. Whether HIV antibody testing can be required for health care workers is complex,[10] but may be required under the ADA only in those for whom being HIV-negative is essential to the job. The burden would be on the employer to show that the HIV-positive

employee would be a direct threat to others, which would be very difficult to do in most circumstances. Health care workers who are HIV-positive but who do not pose a risk to patients are protected from discriminatory employment practices under the ADA.

The physician should be careful not to transmit any medical information to the employer after the post-offer medical evaluation has been completed. The information given to the employer should state that the potential employee is medically fit to work, not fit to work, or fit with certain specified restrictions. All medical data should be preserved with the same attention to confidentiality that applies to other medical records.

What other employee examinations are allowed by the ADA?
The ADA allows medical evaluations of employees after hiring in two instances. The first is when an employee's accident, illness, or aging gives rise to questions about the employee's continued fitness to perform essential job functions and the employer's obligations regarding accommodations. The second instance pertains to those occupations governed by laws and safety regulations (eg, truck drivers, airline pilots, employees exposed to toxins). In each of these circumstances, the confidentiality requirements described above, including separate medical records and universality of application, apply with limited exceptions.

Summary. Provisions of the Americans with Disabilities Act prohibit the performance of medical evaluations before an offer of employment. Medical evaluations that are performed after the offer of employment but before job assignment or placement are expressly permitted by the Act. Employment may be made conditional on the results of the medical evaluation provided that medical confidentiality is protected, and exclusionary criteria are job-related, applied universally, and do not discriminate against individuals with disabilities. These evaluations may be useful in establishing baseline health data, screening for specific job-related functions, complying with state or federal guidelines for high-risk positions, providing a benefit to the employee such as health screening and risk-reduction counseling, and determining what accommodations may be required in the workplace or job description to allow an individual with a disability to be able to perform the job's essential functions.

Areas Related to Medical Practice

How does the ADA affect physicians' treatment of patients with mobility impairments, HIV infection, and alcoholism, and of patients who are "difficult" or "hateful"?

The ADA restricts the freedom of physicians to refuse to treat patients on the basis of both physical and emotional impairments. Title III of the ADA "prohibits discrimination on the basis of disability by private entities in places of public accommodation"[1] and specifies physicians' offices, along with most other professional and commercial establishments, as examples of private entities operating places of public accommodations. Patients with mobility impairments, blindness, HIV infection, alcoholism, and emotional and psychological illnesses are all considered to be persons with disabilities; therefore, the law affects the way physicians relate to these patients. A physician who refuses to treat such patients may do so only on the basis of medically justifiable criteria and not on the basis of the patient's disability.

For example, primary care physicians may not refuse to provide primary care to patients with mobility impairments, HIV infection, or emotional illnesses, but may justifiably refuse to treat such patients whose medical problems have become so complex as to extend beyond the realm of a generalist. Conversely, specialists may legitimately refuse to provide general care to persons with disabilities if general care is outside the realm of their expertise and customary practice. They may not refuse to treat problems falling within their realm of expertise or customary practice.

In the case of "hateful" patients, "noncompliant" patients, and patients with emotional or psychological illnesses, a refusal to treat must be based on reasonable criteria established prospectively and applied to all patients in the practice. For example, a physician may reasonably refuse to treat a patient who is consistently abusive to the staff, who consistently fails to follow the physician's recommendations, or who misses numerous appointments without explanation. If these standards are made known to all patients and a patient with an emotional illness violates them, the physician may legitimately "fire" the patient, provided the physician dismisses *all* patients who fail to meet such standards and gives the patient appropriate notification and reasonable time and assistance in finding another physician. Physicians who develop exclusionary criteria must be careful not to set standards that discriminate against persons with disabilities. They should also be careful to apply the standards universally ("likable" patients who break the rules must be dismissed as well as "hateful" ones).

How does the ADA affect the design and construction of medical offices?
In the past, patients with mobility impairments and other physical disabilities had difficulty gaining access to care because physicians' offices were not designed to accommodate such patients. The new law requires that all

places of public accommodation be made readily accessible to and usable by persons with disabilities. Newly constructed offices must install curb cuts, ramps, elevators with raised letters or Braille buttons, grab bars in toilet stalls, and accessible water fountains, telephones, and furniture, including examining tables. Shag carpets and narrow doorways are no longer permissible, and physicians' offices must provide a suitable examination room for patients who use wheelchairs.

The architectural requirements apply to all new facilities and to existing facilities that undergo renovations. In addition, existing facilities must remove barriers where it is "readily achievable" to do so. This means that some offices may need to install ramps where needed, and make the elevators and signs in their buildings accessible to individuals with visual impairments. "Readily achievable" changes are those that are relatively inexpensive and easy to make.

The duty to provide interpreters and readers (auxiliary aids) for individuals who are deaf or blind must be provided where the content and length of the discussion require them in order for "effective communication" to be achieved. In other situations "effective communication" may be achieved through the use of computer terminals or a notepad and paper. These auxiliary aids must be provided unless the physician's office can demonstrate that it would impose an undue burden requiring significant difficulty or expense.

How does the ADA affect hiring practices for physicians?
Physicians in independent practice who have 25 or more employees have been required to comply with the hiring practice provision of the ADA since July 26, 1992. All physicians in independent practice who employ 15 or more workers must be in compliance by July 26, 1994. Physicians covered by the law are required to make reasonable accommodations so that qualified employees and applicants can perform the essential functions of a job. Reasonable accommodations must also be made in the hiring process. While the law does not contain affirmative action requirements that an individual with a disability must be hired over an equally qualified individual without a disability, the disability or the necessity for a reasonable accommodation must not be considered while making the hiring decision.

The determination of whether an applicant with a disability is qualified for a position should be made in two steps. First, evaluate the credentials, experience, and training of the individual in the usual job interview process. Second, decide whether, with or without accommodations, the individual can perform the essential functions of the position. "Otherwise qualified" individuals must not be denied employment based on their inability to perform marginal aspects of the job, or on their inability to perform essential functions if reasonable accommodations in the workplace or the job description would enable them to do the job. Criteria for essential functions can be based on the employer's judgment, a written job description prepared before interviews begin, time required to perform the function, consequences of not being able to perform the function, and the work experience of former employees in the job or current employees in similar jobs. A job function may be essential because the alternative of distributing the function to other employees is impractical, or because the function is so highly specialized that ability to perform the function is the main criterion for hiring.

The law allows that a person who "poses a direct threat to the health or safety of themselves or others in the workplace that cannot be eliminated by reasonable accommodation" can be excluded from a position. A direct threat means a significant risk to the health or safety of themselves or others. The risk can only be considered where there is a high probability of substantial harm.

There are several important points concerning developing criteria in the hiring process. First, while a written job description is not required, it is invaluable if an employer is called upon to explain why an individual with a disability was considered unable to perform the essential functions of a position, even with reasonable accommodation. Second, if ability criteria are used to screen applicants, the criteria should have a job-related, nondiscriminatory basis for selection. Third, if certain tests administered to applicants purport to measure abilities to perform essential functions, employers could be asked to demonstrate that the tests are valid measures of essential skills. An example of an essential function for a telephone receptionist in a physician's office may be the ability to speak Spanish, provided there are no other Spanish speakers in the office and a significant portion of the physician's patients speak only Spanish. The ability to stand, however, would not be an essential function because lowering the desk or providing room for an individual who uses a wheelchair to maneuver behind the desk would be a reasonable accommodation.

The following are further examples of reasonable accommodations that could be required for physicians hiring individuals with disabilities:

- A file clerk who has a hearing impairment is hired. The clerk can communicate through sign language. The employer should provide an interpreter for the training period, special programs, employer-sponsored gatherings, and job-related training programs involving the employee. For day-to-day communications the employer could have another employee learn sign language, or

provide a video display terminal where messages can be exchanged.

- An employee has a disability that requires him to take medication that causes drowsiness in the morning. The employer could structure the employee's work schedule to accommodate this.
- An employee has a back problem that renders her unable to bend or stoop. The employer could provide tongs for reaching.

Enforcement

The Equal Employment Opportunities Commission (EEOC) or the courts may issue orders prohibiting discrimination or requiring restitution; punitive damages are available in cases where intentional discrimination can be shown. Under Title II (Public Accommodations), an individual filing suit can obtain injunctive relief, ie, an order requiring that a ramp be built or an interpreter provided. If the Attorney General intervenes or brings suit in cases of general public importance or where there is a pattern or practice of discrimination, then fines may be assessed but need not accrue to the individual. Also under both Titles I and III, good faith efforts to provide accommodations and make modifications are a defense to a charge of discrimination.

Summary

The new law provides that patients with disabilities, including those with HIV infection, alcoholism, and psychological and emotional illnesses, will have greater access to medical care. Despite the difficulty these patients sometimes pose for physicians, this legislation is a laudable achievement, given the patients' greater relative need for medical care and the history of discrimination against them. The difficulties for physicians can be mitigated through training, experience, and an increased awareness of the educational and financial benefits of expanding one's practice to a broader population.

Similarly, physicians' hiring practices will be in compliance with the ADA if the applicant's ability and training for a position are the basis for hiring decisions, rather than any preconceptions about the effect of a disability. Physicians must be prepared to make reasonable accommodations in their offices to allow employees with disabilities to perform essential job functions. The law allows assessment of the need to provide "reasonable accommodations" to be measured against the resources of the employer.

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