

HEALTH BENEFIT PLANS AND THE AMERICANS WITH DISABILITIES ACT

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This publication is taken from a more extensive review of the topic entitled "Health Benefit Plans and the ADA", which is currently available for purchase from your Regional Disability and Business Technical Assistance Center at 1-800-949-4232 (Voice/TTY), or from LRP Publications (specify Product #31015.HEALTH, 39 pp. \$16), PO Box 980, Horsham, Pennsylvania, 19044-0980, phone (800)341-7874, Fax 1-215-784-9639.

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New York State School of Industrial
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What is the Americans With Disabilities Act?

The Americans With Disabilities Act of 1990 (ADA) is a civil rights law for individuals who have a current disability or a record of disability, or are perceived as having a disability. The ADA protects against disability-based discrimination in employment, access to government and commercial services, transportation and telecommunications. For purposes of the ADA, a disability is a physical or mental impairment — such as a visual, hearing or mobility impairment, HIV disease, mental retardation, etc. — that substantially limits a major life activity.

How does the ADA Apply to Employment?

ADA Title I prohibits limiting, segregating or classifying an individual in a way that adversely affects employment opportunities on the basis of an individual's disability. Title I also forbids denying equal jobs or benefits based on an individual's relationship to someone else with a disability.

Title I applies to both public and private employers with at least twenty-five employees (fifteen employees after July 25, 1994). Title II applies the same standards to state and local government employers regardless of the number of employees. Title I also covers employment agencies, labor unions, and joint labor-management committees.

Title I reaches purposeful discrimination and employment practices with discriminatory impact. Criteria that have the effect of excluding individuals with disabilities from employment opportunities may not be used unless justified by business necessity. Further, Title I establishes the obligation, except if it is an undue hardship for the covered entity, to reasonably accommodate "a qualified individual with a disability," that is, an individual with a disability who meets the necessary prerequisites for a job and can perform the essential job functions with (or without) reasonable accommodation.

Does the ADA Apply to the Terms of Health Benefit Plans?

Yes. ADA Title I prohibits discriminating against a qualified individual with a disability in all terms, conditions and privileges of employment, including health benefits. The ADA specifically prohibits participating in a discriminatory contractual or other arrangement with organizations that provide fringe benefits to employees.

The Equal Employment Opportunity Commission (EEOC) has addressed health benefits issues in regulations and various informational materials. In addition, the EEOC has issued specific guidance to its enforcement staff on the application of the ADA to health benefit plans. All are based on explanations in congressional committee reports. The application of the ADA to health benefit plans

also currently is being considered by federal courts. What follows is based on the EEOC's interpretations.

Does the ADA Apply to Health Benefit Plans Adopted Before the ADA?

Yes. The ADA does not provide a "safe harbor" for plans that were adopted prior to the ADA's July 26, 1990 enactment date.

Does the ADA Apply to Self-Funded Plans?

Yes. The EEOC enforcement guidance applies to the terms both of plans insured by a third party and self-insured health plans.

How Does the ADA Affect Health Benefit Plans?

First, personnel decisions regarding an individual with a disability may not take account of whether, or to what extent, an individual is or would be covered under a health benefit plan. For example, an employer may not refuse to hire a qualified applicant who has a disability or has a dependent with a disability because of concern about the potential impact on health insurance costs.

Further, the ADA regulations require that employees be accorded equal access to whatever health benefits are provided to other employees. If an employer provides health insurance to employees in general, the employer must provide equal access to employees with

disabilities. However, ADA Title V allows insurers and health benefit plans to make health-related distinctions, provided that these practices are not used as a subterfuge to evade the purposes of the ADA. This means that any coverage limits or exclusions based on disability must be justified by sound actuarial data or other legitimate business or insurance justification.

For example, it may be illegal for a health plan to cap benefits for the treatment of AIDS at a lower level than the cap applicable to the treatment of all other physical conditions. The lower AIDS cap would violate the ADA unless the disability-based distinction can be justified. Studies demonstrating that the cost of AIDS is comparable to the costs of other commonly covered conditions make it unlikely that this type of disparate treatment could be justified.

Finally, even if a disability-based distinction is justified, a plan is rarely justified in completely denying coverage to an individual based on a diagnosis of disability. For example, a group plan generally could not deny coverage for treatments or procedures unrelated to the disability.

Must All Limitations and Exclusions Be Justified?

No. Justification is required only for disability-based distinctions. Not all health-related plan distinctions discriminate on the basis of disability. The EEOC does not require justification of generally applicable limitations and exclusions, even if

they adversely affect individuals with disabilities. Nor does the EEOC interpret the ADA to require that health plans make reasonable accommodation for individuals with disabilities.

Employers, insurers and unions may continue to apply insurance distinctions that are not based on disability and are uniformly applied to all employees. For example, employers may still offer health insurance that does not cover pre-existing conditions for a certain period of time specified in the plan, even if such a pre-existing condition exclusion adversely affects employees with disabilities. The guidelines also permit facially neutral limitations such as lifetime coverage caps applied to all employees.

Further, a health plan may exclude or limit coverage for specific procedures or treatments if they are not exclusively or nearly exclusively applicable to a particular disability. For example, a plan may limit the number of blood transfusions or x-rays that the plan will pay for, even though this may have an adverse effect on individuals with certain disabilities such as hemophilia. Likewise, a plan may limit or deny coverage for all "experimental" drugs and/or treatments or all "elective surgery."

Finally, a plan may exclude or provide lower levels of coverage for broad categories of conditions that are not drawn along lines of disability. For example, a plan may have lower reimbursement rates for treatment of "mental or nervous conditions" or for "eye care." The EEOC

does not consider these to be disability-based distinctions because these conditions are not always “disabilities” as defined in the ADA. That is, they are not always impairments that substantially limit a major life activity.

How Does the ADA Apply to Disability-Based Distinctions?

A plan term or provision is disability-based if it singles out a particular disability, a discrete group of disabilities, disability in general (all conditions that substantially limit a major life activity), or a treatment or procedure used exclusively or nearly exclusively to treat a particular disability. Exclusions that are based on a disability like deafness, AIDS, cancer or alcoholism, may violate the ADA.

The best way to avoid possible violations of the ADA is to avoid singling out diseases or conditions considered disabilities under the ADA. However, differential treatment may be justified by the risks or costs associated with the disability. Justification will be determined on a case-by-case basis. The plan sponsor bears the burden of proof that a disability-based distinction is permitted by first showing that the health plan either is a bona fide plan that is consistent with state law or is a bona fide self-funded plan, and then proving that the disability-based risk classification is not being used as a subterfuge to evade the purposes of the law.

Plan sponsors may use accepted principles of insurance risk classification and current and accurate actuarial data, but not data based on myths, fears, stereotypes or false or outdated assumptions about a disability. Disability-based limitations or exclusions will not be considered to violate the ADA if:

1. they are based on legitimate actuarial data, or actual or reasonably anticipated experience, and apply equally to conditions with comparable actuarial data and/or experience; or
2. they are necessary because no alternative to a disability-based distinction is available to prevent an “unacceptable” change such as:
 - a drastic increase in premiums, co-payments or deductibles;
 - a drastic alteration in the scope of coverage or level of benefits; or
 - other changes that would make the plan unavailable to a significant number of other employees, or so unattractive that the employer could not compete in recruiting and maintaining qualified workers due to the superiority of health insurance plans offered by other employers in the community, or so unattractive as to result in significant adverse selection.

How Does The ADA Apply to Dependent Coverage?

Disability-based distinctions involving dependent coverage will be analyzed in the same fashion as disability-based distinctions in employee coverage. The ADA, however, does not require that the coverage accorded dependents be the same in scope as the coverage accorded employees. For example, a \$100,000 benefit cap for employees but only a \$50,000 for dependents, would be permitted.

Will There Be Future EEOC Guidance?

Yes. The EEOC plans to publish further guidance with an opportunity for public comment. Future guidance will address issues relating to wellness plans, and clarify issues related to the coverage of workers with substance abuse problems.

Resources

EEOC materials are available from the U.S. Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507, (800) 669-4000 (Voice) to reach EEOC field offices; for publications call (800) 800-3302 or (800) 669-EEOC (voice/TTY)..

ADA Regional Disability and Business Technical Assistance Center Hotline, 800/949-4232 (voice/TTY).

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OTHER TITLES IN THIS *IMPLEMENTING THE ADA* SERIES ARE:

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The ADA and Collective Bargaining Issues
The ADA and Personnel Training
The ADA and Total Quality Management
Cultural Diversity and the ADA

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www.ilr.cornell.edu/ped/ada

For further information about publications such as these, contact the ILR Program on Employment and Disability, Cornell University, 102 ILR Extension Division, Ithaca, NY 14853-3901; or at 607/255-2906 (Voice), 607/255-2891 (TTY), or 607/255-2763 (Fax).

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