

Blind Medicare Recipients Sue CMS For Disability Discrimination

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The last year has seen a flurry of lawsuits and demand letters to health care and other companies, and even a variety of nonprofits, alleging that those entities have websites that are not accessible to those who are blind or have low vision and thus allegedly violate the **Americans With Disabilities Act (ADA)**. The **U.S. Department of Health and Human Services' (HHS)** Office for Civil Rights (OCR) enforces nondiscrimination and accommodation obligations as to health care entities providing services to Medicare and Medicaid recipients with disabilities. In an ironic twist, the National Federation of the Blind has [brought suit](#) in U.S. District Court, District of Massachusetts, alleging that HHS's sub-agency, the **Centers for Medicare and Medicaid Services (CMS)** and its CMS subcontractors, have systemically violated the civil rights of blind Medicare recipients.

The purpose of the lawsuit, entitled [Figueroa v. Burwell \(PDF\)](#), is stated to be "to require HHS to provide blind individuals meaningful and equally effective access to their Medicare information, as required by *Section 504 of the Rehabilitation Act of 1973*, 29 U.S.C. § 794" (Rehab Act). (The Rehab Act is the predecessor to, and similar to, the ADA, but applies to the government and federal contractors and financial aid recipients.) The suit notes that CMS is the largest single payor for health care in the country providing coverage to nearly 90 million persons through Medicare, Medicaid and the State Children's Health Insurance Program.

The suit claims that CMS regularly communicates information to blind persons using inaccessible electronic formats and print. By doing so, the suit alleges, blind beneficiaries have faced loss of benefits and health care disruption. The suit also claims that, in response to Section 504 complaints filed in 2011 and 2012 with the OCR under Section 504 of the Rehab Act, CMS had entered into an agreement entitled the "Commitment to Action to Resolve DREDF Section 504 Complaints." The Commitment set forth a time period within which CMS was to take specified actions to provide effective communications for individuals with disabilities consistent with Section 504. Pursuant to the agreement, CMS allegedly was required to complete a "Long Term Action Plan" by April 15, 2015, to provide effective cross disability communication access and appropriate auxiliary aids and services to CMS beneficiaries and consumers. The suit alleges that no such action plan was provided.

The suit is a good reminder to health care companies that they should consider whether their websites are accessible to blind and low vision individuals. It is entirely possible that the suit against CMS will cause it, or the OCR, to take an interest in the accessibility of the websites and the auxiliary aids and services used by health care providers who serve Medicare & Medicaid beneficiaries. It is an apt time for health care entities to consider having the accessibility of their websites and auxiliary aids and services reviewed with the assistance of counsel to provide legal advice on ADA and Rehab Act issues and to maximize the potential attorney-client privilege connected to such a review.



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