



Gathering Strength

For Living Your Best Life

**Asserting Your Rights to Equal Healthcare Services:
Filing Complaints with Federal Agencies**

Friday, September 8, 2023

Inaccessibility of Healthcare Providers

Survey of Clinics (KyOne) in Louisville

- A majority of **exam rooms** (93%) were **noncompliant** with the ADA
- A majority of clinic managers (70%) reported **not owning a height-adjustable exam table**
- A majority (70%) reported not owning or having access to a **wheelchair accessible scale**.
- Vast majority (70-87%) of patients were **examined while in their wheelchairs**.
- A majority of the **bathrooms were not compliant** with the ADA (83%)

Survey of 432 Wheelchair Users

- Most experienced **physical barrier** (73.8% primary care; 68.5% specialty)
- Most were **examined while seated** in wheelchair (69.7%)
- More than half felt they received **incomplete care** (54.1%).

Study of Pregnant Women w/Disabilities

- None had been routinely weighed during prenatal visits **due to lack of wheelchair scale**, even though weighing is part of SOC.

Federal Law that Protects PWD in Healthcare Settings

ADA

Americans with Disabilities Act



A federal civil rights statute that prohibits discrimination based on disability in:

- Title I – Employment
- Title II – State and local services, program, and activities
- Title III – Public accommodations

Federal law continued:

- **Section 504** of the Rehabilitation Act of 1973

prohibits discrimination based on disability in **programs and activities that receive funding from any federal department or agency (e.g. U.S. Health and Human Services)**, which includes Medicare and Medicaid reimbursements.

It applies to areas such as:

- Education
- Housing
- Publicly owned hospitals, clinics, etc., and those that receive Medicare and Medicaid.
- Compensatory damages available only if prove intentional discrimination

Federal law continued:

- **Section 1557** of the Affordable Care Act of 2010
 - The nondiscrimination section of the ACA, which prohibits discrimination based on race, color, national origin, sex, age, or disability in **health programs that receive federal funding and in health insurance**.
 - Final rulemaking has gone back and forth during Obama, Trump and Biden. Current rulemaking is not yet final.
 - Stay tuned for final rule implementing §1557

Kentucky law

- The Kentucky Civil Rights Act has **substantially similar protections** as the federal law for people with disabilities. KRS Chapter 344.
- The Kentucky Commission on Human Rights investigates complaints of violations of the Kentucky Civil Rights Act.
- Call us at 1.800.292.5566 or email kchr.mail@ky.gov.
- Online portal: <https://kchr.ky.gov/Pages/File-a-Complaint.aspx>

How does the ADA apply to healthcare

- **Title II** -- Prohibits discrimination based on disability in **State and Local** Services, Programs, Activities –
 - For example, public hospitals, clinics, and medical offices operated by state and local governments are covered by Title II of the ADA.
 - **Compensatory damages possible, only if show intentional discrimination.**
- **Title III** – “No individual shall be discriminated against on the basis of disability in **the full and equal enjoyment of** any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. Private doctor’s offices, medical clinics, and hospitals are “public accommodations.”
 - **Only injunctive relief. No compensatory damages for complainants.**

What Federal Law Requires:

In general, the ADA and §504 have substantially similar requirements.

Healthcare and ADA guidance: <https://adata.org/factsheet/health-care-and-ada>

1. Effective Communication (not going to cover in detail here)

Make all communication (written, verbal, digital) easily understood.

- a. Provide a qualified sign language interpreter
- b. Provide alternative formats (e.g. Large Print)
- c. Dial 7-1-1 for Telecommunications Relay Services to permit people with hearing or speech disability to communicate.
- d. Digital accessibility: websites, medical kiosks, electronic health records, telehealth, etc.

What Federal Law Requires cont.:

2. Accessible Facilities. Full and Equal Access to healthcare facilities:

U.S. Access Board Guidance:

<https://www.access-board.gov/ada/guides/>

The screenshot displays the U.S. Access Board website. At the top, the logo reads "U.S. Access Board" with the tagline "Advancing Full Access and Inclusion for All". A search bar and a link to "En Español" are visible. The navigation menu includes "About", "News", "Advancing Access", "Guidelines & Standards", "Services", "File an ABA Complaint", and "Contact Us". The main heading is "Guide to the ADA Accessibility Standards".

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This guide explains requirements in the current editions of the [ADA Standards](#) issued by the Department of Justice (DOJ) and the Department of Transportation (DOT). It was developed by the U.S. Access Board in cooperation with DOJ and DOT. It is important to use this guide along with a complete copy of the ADA Standards as it explains, but does not contain or reprint, the text of the ADA Standards.

DOJ updated its [ADA Standards](#) in 2010, which are referred to as the 2010 ADA Standards for Accessible Design. These standards, which replace the original ADA Standards DOJ issued in 1991, became mandatory for newly constructed and altered facilities as of March 15, 2012. DOJ's ADA Standards apply to all facilities covered by the ADA except public transit facilities.

DOT issued its current edition of the [ADA Standards for Transportation Facilities](#) in 2006. These standards apply to facilities used by state and local governments to provide public transportation. They became effective on November 29, 2006 and replace earlier standards issued by DOT in 1991.

The current DOJ and DOT ADA Standards are very similar as both documents are closely based on the Access Board's ADA Accessibility Guidelines (2004). This guide explains requirements of both standards, which are jointly referred to as the "ADA Standards" or "the standards." Most provisions of each standard are identical and discussed in this guide without distinction. Both standards contain several unique provisions not found in the other. In these limited areas, the guide notes the differences and explains how they are to be applied. This guide does not cover requirements of the original 1991 ADA Standards issued by DOJ or DOT.

In addition to explaining the requirements of the standards, this guide also provides clearly labeled recommendations for best practices that exceed the minimum requirements and are thus optional to follow. In addition, the guide provides links to other federal accessibility requirements that may also apply to entities covered by the ADA.

The guide currently covers most chapters of the standards. Additional sections on remaining chapters will be

View ADA Standards

Technical Assistance

Contact the Access Board for guidance on these standards
202-272-0080 (voice)
ta@access-board.gov

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Full and Equal Access to Healthcare Facilities continued:

a. 2010 Standards for Accessible Design.

- 28 CFR Part 36, Subpart D, New Construction and Alterations.
- Revised the 1991 Standards for Accessible Design.
- Facilities built or altered before March 15, 2012, don't have to meet 2010 standards.

See details here: U.S. Access Board Guidance

<https://www.access-board.gov/ada/guides/>

Examples of accessible design requirements:

i. Exterior -- Accessible Approach and Entrance

See what's wrong here?

a. Parking

b. Slopes (max 1:20)

c. Ramps (max 1:12)

d. Cross slope (max 1:48)

e. Exterior Doors –

width (32" minimum clear space)



No striped access aisles

Examples of accessible design requirements:

- ii. Interior – Accessible Routes, Elevators, doors
 - a. Information displays, signs, and technology (max 40” above floor)

This directory was at the level that a standing person could use, well above 40” from the floor.

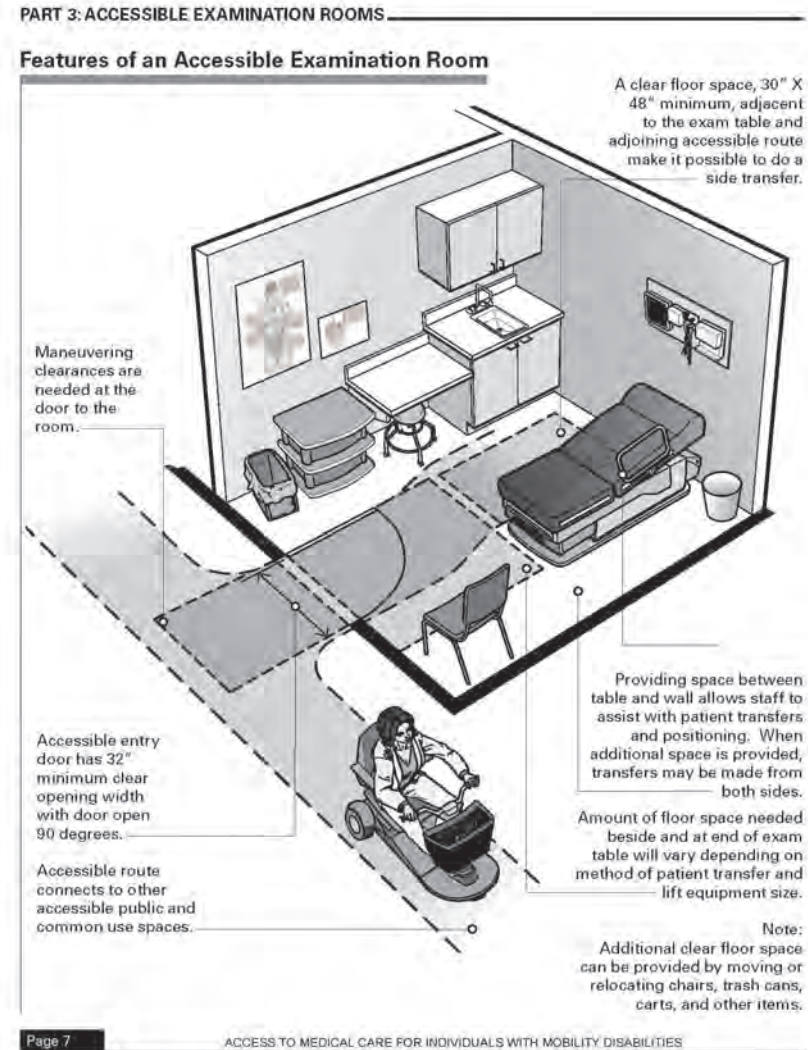


Interior examples – Accessible Routes, Elevators, doors, etc. continued:

b. Exam rooms

Image is p.7 from the Department of Justice
Civil Right Division's
*Access to Medical Care for Individuals
With Mobility Disabilities*

<https://www.ada.gov/resources/medical-care-mobility/#top>

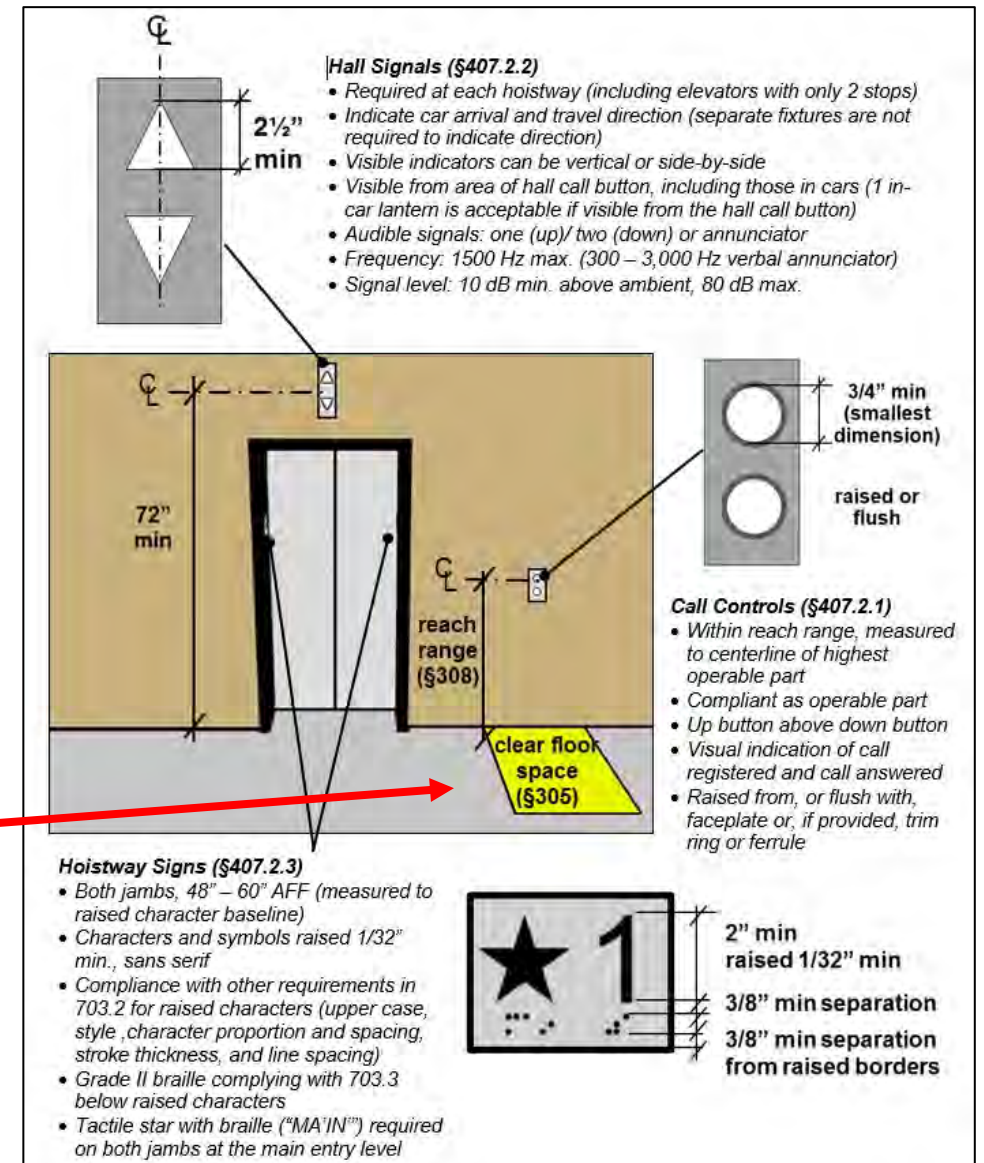


Interior examples – Accessible Routes, Elevators, doors, etc. continued:

c. Elevators

(diagram from <https://www.access-board.gov/ada/guides/>)

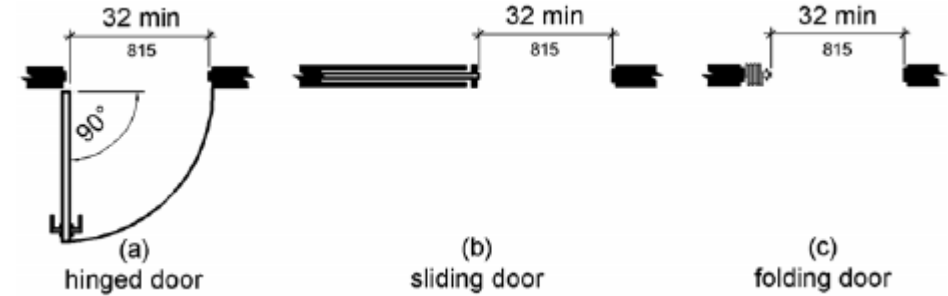
See the problem with this picture?



Interior examples – Accessible Routes, Elevators, doors, etc. continued:

d. Interior doors

- i. Width (32" clear space)
- ii. Opening force (less than 5lb)
- iii. Door pressure gauges by HMC International
Guages are 7lb max and 35lb max.
hmc-international.com
- iv. Closing speed (min 5 seconds)



Full and Equal Access to Healthcare Facilities continued:

MYTH: Only new construction must comply with the ADA accessibility standards for facilities. **This is FALSE.**

- Existing facilities are required to remove architectural barriers where such removal is readily achievable – when it is easily accomplishable and able to be carried out without much difficulty or expense.
- If it's not readily achievable, the provider must make services available through alternative methods, if those methods are readily achievable.
- There are a lot of rules about when the 1991 Standards for Accessible Design apply and when the 2010 Standards for Accessible Design apply, which we cannot get into here.

What Federal Law Requires continued:

3. Full and Equal access to healthcare services

- Regarding patients with mobility disabilities this means, for example:
 - Provider CANNOT require you to bring someone with you to help you transfer
 - Provider CANNOT refuse to treat you because they don't have accessible equipment
 - See Department of Justice (DOJ) guidance: *Access to Medical Care for Individuals with Mobility Disabilities*. <https://www.ada.gov/resources/medical-care-mobility/#top>
 - Accessible diagnostic and medical equipment – Requirements are not yet final.

What federal law requires continued

- A Note about accessible medical and diagnostic equipment.
 - Requirements for accessible equipment are not yet definitive
 - The DOJ's guidance *Access to Medical Care for Individuals with Mobility Disabilities* is helpful.
 - The Access Board has a Notice of Proposed Rulemaking on Standards for Accessible Medical Diagnostic Equipment (comment period extended to August 2023) <https://www.access-board.gov/mde/>
 - No case law regarding what the ADA requires regarding such equipment.
 - **However**, most settlements (including *Fust et al. v. First Urology*) have including the requirement for provider to purchase accessible equipment.

What Federal Law Requires continued:

4. The law requires providers to make **reasonable modifications**

- Reasonable modifications to policies, practices, and procedures
- when necessary to make healthcare services fully available,
- UNLESS the modification would “fundamentally alter the nature of the services.”
- Examples:
 - a. Blind patient calls the office when arrives and someone comes down to lobby to guide to office.
 - b. Granting an early appointment to a patient with anxiety so that fewer people will be in the office and noise will be minimal.
 - c. Allowing a companion to assist a person with a mobility disability when positioning the patient for a radiology scan.
 - d. Allowing a service dog that has been trained to alert their handler with a seizure disorder at the onset of a seizure to be present in an exam room.

Recap:

- Federal law requires:
 1. Effective Communication
 2. Accessible facilities
 3. Full and equal access to services
 4. Reasonable modifications to policies, practices, and procedures.

For assistance with a specific problems you have

- For help determining if you have been discriminated against, contact:

The Southeast ADA Center has experienced and highly trained specialists available to answer your questions about the Americans with Disabilities Act (ADA)

1. 404-541-9001 (Mon – Fri 9:00 – 5:00 Eastern time)
2. ADA national network 1-800-949-4232 (routed to your ADA center)
3. adasoutheast@syr.edu
4. <https://adasoutheast.org/contact/#getanswers>

Department of Justice ADA Technical Assistance Program

1. ADA Specialistts: 800-514-0301 (voice); 833-610-1264 (TTY)
2. Monday, Tuesday, Wednesday, and Friday from 9:30 a.m. until 5:30 p.m. (Eastern Time) and on Thursday from 12:30 p.m. until 5:30 p.m. (Eastern Time).

How to assert your rights to equal healthcare

1. If you encounter an accessibility or equal service problem with a healthcare provider:
 - a. If possible, BEFORE you go to healthcare provider, let them know of any accessibility need you have – if you call, also follow up in writing (Mychart, email)
 - b. Document the issue: take a picture, right down notes on a piece of paper or in your phone, or create a voice memo in phone of what happened.
 - i. Write down dates and times.
 - ii. Was the appt or test or procedure time sensitive
 - iii. What are the health consequences of the lack of accessibility
 - iv. Memorialize the emotional distress of the experience.

c. Contact the provider and tell them what happened and ask them to remedy the problem.

i. You will get a better response if you put the request in writing.

ii. Write a letter or email (or both) to the provider about everything that went wrong.

iii. If you talk on the phone with, or meet with, someone from the provider's office, FOLLOW UP with a letter or email to:

- 1) Confirm what was said in the conversation
- 2) Confirm what decisions were made
- 3) Confirm who is supposed to do what by when

Information helpful to a successful complaint

If the provider fails or refuses to remedy the problem and you wish to file an administrative complaint:

1. Create a chronology of events in writing
 - a. Hopefully, you documented things when they happened
 - b. Dates and Times of what happened including meetings with provider
 - c. What happened, why important, how it affected you
2. Enhance that chronology with evidence
 - a. Pictures
 - b. Emails or letters you sent to provider
 - c. Contemporaneous notes of what happened

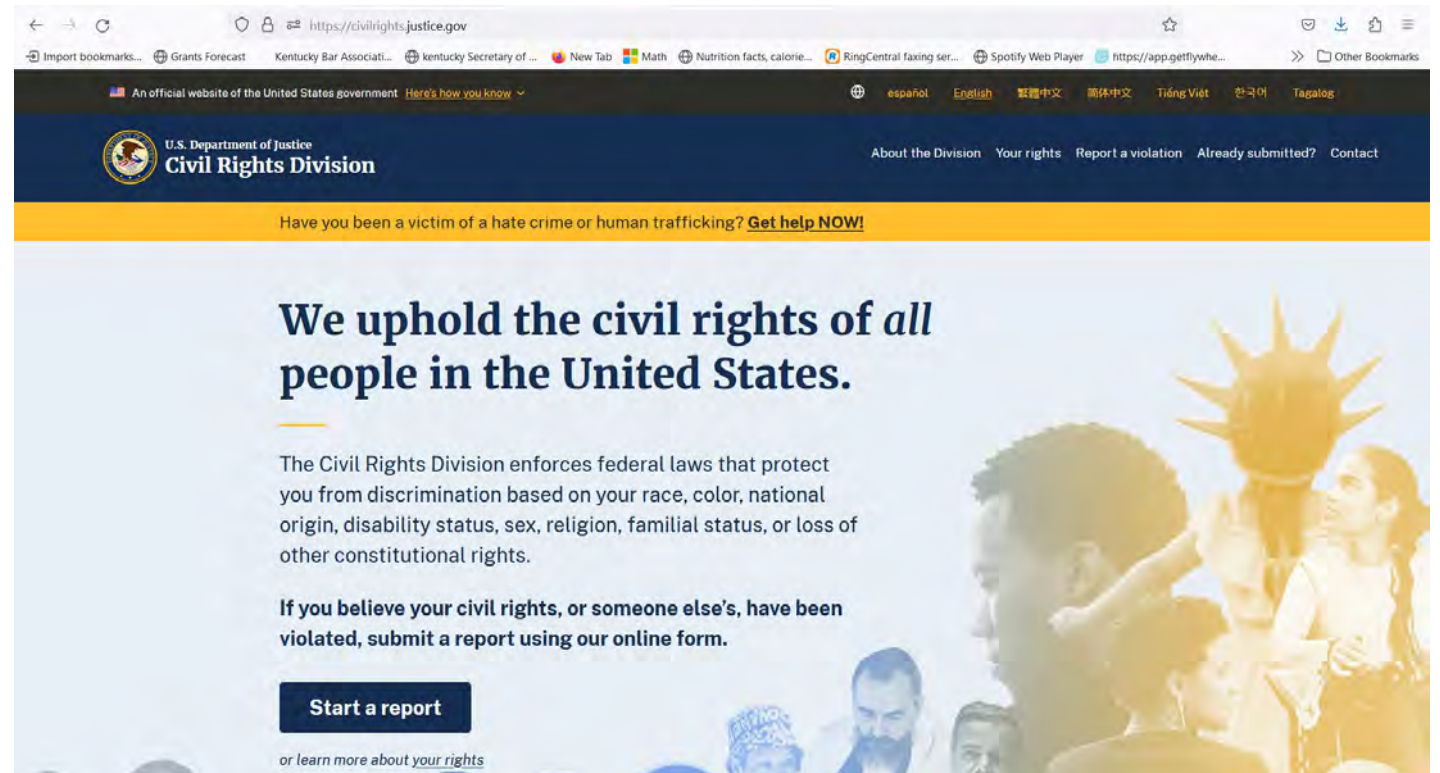
How to file and complaint with federal agency

1. The Department of Justice (DOJ) – enforces the Americans with Disabilities Act (ADA)

a. Online Portal of the DOJ's Civil Rights Division <https://civilrights.justice.gov/>

- The online portal receives tens of thousands of complaints
- Only 20 people in the Civil Rights Division doing ADA cases
- Specifically say that you have documents, pictures, evidence to support

Click “Start a report”



DOJ Civil Rights Division online portal continued

- After clicking “start a report,” you’ll enter contact info:

ce.gov/report/

mtucky Secretary of ... New Tab Math Nutrition facts, calorie... RingCentral faxing ser... Spotify

Contact the Department of Justice to report a civil rights violation

- 1 Contact
- 2 Privacy concern
- 3 Location
- 4 Personal characteristics
- 5 Date
- 6 Personal description
- 7 Review

If you believe you or someone else has experienced a civil rights violation, please tell us what happened.

Contact

You are not required to provide your name or contact information. If you want to remain anonymous, leave this section blank. If you choose to provide your contact information, we will only use it to respond to your submission.

Your name

First name

Last name

Contact information

Email address

Phone number

Last name

Contact information

Email address

Phone number

Mailing address 1

Mailing address 2

City State

Zip code

Are you now or have ever been an active duty service member? *required

If you're reporting on behalf of someone else, please select their status.

Yes

No

Next

DOJ Civil Rights Division online portal continued

- After clicking “next:”
Scroll down and click
“Discriminated against in a
commercial location or
public place”
- The next pages will ask the location,
the basis (disability), the date, and
other details.

Voting rights or ability to vote affected

EXAMPLES:

- Obstacles to registering to vote, obtaining or submitting a ballot, having your ballot counted, or entering a polling place to vote
- Denied adequate voting assistance or accommodations for a disability at a polling place
- Restricted or prevented from participating in an election, including voting, becoming a candidate, or being elected for office

Discriminated against in a commercial location or public place

This could include a store, restaurant, bar, hotel, place of worship, library, medical facility, bank, courthouse, government building, public park or street, as well as online.

EXAMPLES:

- A physical or online location that does not provide disability accommodations
- Denied service or entry because of a perceived personal characteristic like race, sex, or religion
- Denied an accommodation for a disability, including not being allowed to have a service animal in a commercial or public location

Something else happened

The examples above reflect some but not all of the civil rights violations that we address. Select this option if you don't see an example that applies to your situation. You will be able to tell us more later.

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How to file a complaint with federal agency cont.

b. You can send a complaint directly to your U.S. Attorney's Office.

i. U.S. Attorney's Office for the Western District of KY (Louisville)

<https://www.justice.gov/usao-wdky>

Main #: 502-582-5911

Civil Rights Coordinator:

Jessica Malloy – 502-779-2765

Send complaints to AUSA Malloy

717 W. Broadway

Louisville, KY 40202



How to file a complaint with federal agency cont.

- ii. U.S. Attorney's Office for the Eastern District of KY (Lexington)

<https://www.justice.gov/usao-edky/civil-rights>

Main #: 859-233-2661

Civil Rights Coordinator:

Carrie Pond: 859-685-4869

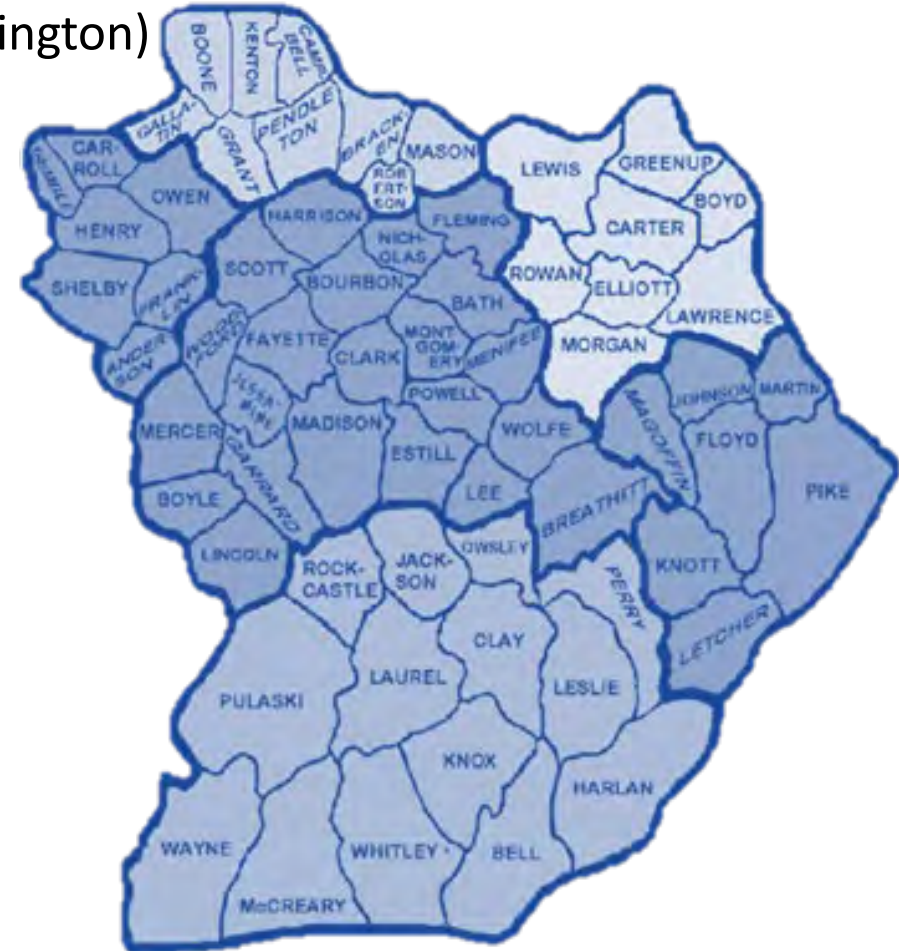
Send complaints to

usakye.civilrights@usdoj.gov

Or to AUSA Carrie Pond

260 W. Vine St, Suite 300

Lexington, KY 40507-1612



How to file a complaint with federal agency cont.

2. U.S. Dept of Health and Human Services Office of Civil Rights (OCR)

Has jurisdiction to investigate complaints of §504 of the 1973 Rehabilitation Act of 1973, which prohibits discrimination based on disability in **programs and activities that receive funding from and federal department or agency (e.g. U.S. Health and Human Services)**, which includes Medicare and Medicaid reimbursements. For example, publicly owned hospitals, clinics, etc., and those that receive Medicaid and Medicare.

You can file a complaint BOTH with the DOJ and with the OCR of HHS.

How to file a complaint with federal agency continued:

- The online portal of the Office of Civil Rights for Health and Human Services: <https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>



Complaint Portal Assistant

The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR), enforces federal civil rights laws, conscience and religious freedom laws, the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security, and Breach Notification Rules, and the Patient Safety Act and Rule, which together protect your fundamental rights of nondiscrimination, conscience, religious freedom, and health information privacy at covered entities.

1. **Federal Civil Rights Laws** help to protect you from unfair treatment or discrimination because of your race, color, national origin, disability, age, or sex.
2. **Federal Conscience and Religious Freedom Laws** help to protect you from coercion, discrimination on the basis of conscience or religion, and burdens on the free exercise of religion.
If you believe that a [covered entity](#) discriminated against you or violated your (or someone else's) civil rights, conscience rights, or religious freedom rights, you may file a complaint with OCR. You may file a complaint for yourself, your organization, or for someone else.

The following are some examples of potential covered entities (including institutions and personnel) that must abide by federal civil rights, conscience, and religious freedom laws:

- State and local government agencies that are responsible for administering health care
- State and local government income assistance and human service agencies
- Hospitals
- Medicaid and Medicare providers
- Physicians and other health care professionals in private practice with patients assisted by Medicaid
- Family health centers
- Community mental health centers
- Alcohol and drug treatment centers
- Nursing homes
- Foster care homes
- Public and private adoption and foster care agencies
- Day care centers
- Senior citizen centers
- Nutrition programs
- Any entity established under the Affordable Care Act
- Health insurance plans or companies
- HMOs
- Pharmacies
- Homeless shelters
- Health researchers

3. **The HIPAA Privacy Rule** is a federal law that gives you rights over your health information and sets rules and limits on who can look at and receive your health information. The Privacy Rule applies to all forms of individuals' protected health information, whether electronic, written, or oral. The **HIPAA Security Rule** is a federal law that requires security for health information in electronic form. In addition, the **Patient Safety Act and Rule** establishes a voluntary reporting system to enhance the data available to assess and resolve patient safety and health care quality issues, and provides confidentiality protections for patient safety concerns.

If you believe that a covered entity violated your (or someone else's) health information privacy rights or committed another violation under the HIPAA Privacy, Security, and Breach Notification Rules or the Patient Safety Act and Rule, you may file a complaint with OCR. The following are some examples of covered entities that must meet the requirements of the federal Privacy, Security and Breach Notification Rules: • Health Plans • Health care dearinghouses • and Health care providers that conduct a portion of their business electronically using a HIPAA covered transaction. OCR can investigate complaints against covered entities and their business associates. You may file a complaint for yourself, your organization, or for someone else.

Question 1 - What is the nature of your complaint?

- Violation of Civil Rights (Based on Race, Color, National Origin, Disability, Age, or Sex)
- Violation of Conscience or Religious Freedom
- Violation of Privacy or Security of Health Information (HIPAA)

Next

If you have any questions or need help filing a civil rights, conscience or religious freedom, or health information privacy complaint, you may email OCR at OCRMail@hhs.gov or call the U.S. Department of Health and Human Services, Office for Civil Rights toll-free at: 1-800-368-1019, TDD: 1-800-537-7697.

We provide alternative formats (such as Braille and large print), auxiliary aids and services (such as a relay service), and language assistance.

How to file a complaint with federal agency cont.

Filing complaints with the Office of Civil Rights of Health and Human Services:

- Must have happened in the last 180 days (6 months).
- After you click “next,” you will move through a series of pages asking what the complaint is about and you will click “NO” UNTil you get to:
- Question 10: “Do you believe that any other healthcare provider....” and click “YES” on this one, and then “Next.”
- Then you choose “Civil Rights” and “next”
- Proceed to fill in the relevant facts on the subsequent pages.

Upcoming Gathering Strength Activities

FREE online workshops


- **Equal Healthcare Services for People with Disabilities**
a two-part series

Wednesday, September 20, 2:00 – 3:30

Wednesday, October 11, 2:00 – 3:30

Register at <https://gatheringstrength.org/classes/>

Scan QR code:



Gathering Strength
For Living Your Best Life

ADA
Americans with Disabilities Act

EQUAL HEALTHCARE SERVICES FOR PEOPLE WITH DISABILITIES


A TWO-PART SERIES


LIVE ON ZOOM
WEDNESDAY, SEPT. 20TH AND OCT. 11TH
2:00 - 3:30 EST

Part 1 - Wednesday, September 20, 2023, 2:00 - 3:30 EST
The Southeast ADA Center will discuss the federal law that requires full and equal services for people with disabilities with a focus on: accessible facilities; reasonable modifications to policies, procedures, and practices; and current guidance on accessible medical and diagnostic equipment.


Part 2 - Wednesday, October 11, 2023, 2:00 - 3:30 EST
The Southeast ADA Center and Ky Protection and Advocacy will discuss how to file administrative complaints with federal agencies: the steps to take before filing, how to draft a complaint, and how to file it.

Workshops led by:

 **Burton Blatt Institute**
SYRACUSE UNIVERSITY

 **Southeast ADA Center**

To register, scan this QR code
or go to
www.gatheringstrength.org/classes



Upcoming Gathering Strength Activities

FREE online workshops:

- **Financial empowerment for people with disabilities**

1. **Saving for the Future: Wed, Sep 27, 2:00 ET**
how to save without jeopardizing benefits
2. **Working While on Benefits: Wed, Oct 25, 3:00 ET**
how to work and maximize earnings without losing benefits.

Register at <https://gatheringstrength.org/financial-workshops/>
or scan the QR code

FINANCIAL EMPOWERMENT FOR PEOPLE WITH DISABILITIES

FREE ONLINE WORKSHOPS
LIVE ON ZOOM

Wednesday August 30, October 4, and October 25, 2023



Financial Wellness for People with Disabilities

- Includes guidance on personal financial management, such as budgeting, managing debt, getting banked, and resources for financial counseling and coaching.
- Led by the Metro Louisville Office of Financial Empowerment, Resilience and Community Service.

WEDNESDAY
AUG. 30
3:00-4:30 ET



Saving for the Future

- Includes information about methods for saving money that don't jeopardize social security benefits.
- Led by Carolyn Wheeler of the University of Kentucky Human Development Institute.

WEDNESDAY
OCT 4
2:00-3:30 ET



Working While on Benefits

- Includes guidance for people with disabilities about how to work and maximize earnings without losing Social Security Disability and SSI benefits.
- Led by Donna Mundy of the Center for Accessible Living.

WEDNESDAY
OCT. 25
3:00-4:30 ET

 **Gathering Strength**
For Living Your Best Life

To register, scan the QR code: 

Resources:

ADA National Network: Healthcare and the ADA.
<https://adata.org/factsheet/health-care-and-ada>

U.S. Access Board Guidance to accessibility standards
<https://www.access-board.gov/ada/guides>

Department of Justice Civil Right Division's
Access to Medical Care for Individuals With Mobility Disabilities
<https://www.ada.gov/resources/medical-care-mobility/#top>

Door pressure gauges by HMC International
hmc-international.com

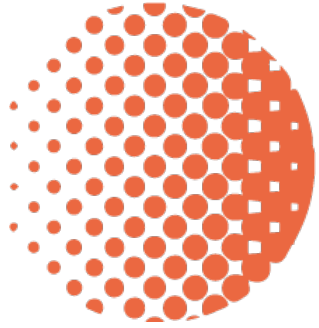
Access Board Notice of Proposed Rulemaking on Standards for Accessible Medical Diagnostic Equipment
<https://www.access-board.gov/mde/>

Department of Justice Civil Rights Division online complaint portal <https://civilrights.justice.gov/>

Office of Civil Rights for U.S. Dept of Health and Human Services online complaint portal:
<https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>

U.S. Attorney's Office for the Western District of KY (Louisville)
<https://www.justice.gov/usao-wdky>

U.S. Attorney's Office for the Eastern District of KY (Lexington)
<https://www.justice.gov/usao-edky/civil-rights>



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