

Americans with Disabilities Act (ADA)

Federal & State Laws related to ADA
Accessibility Standards for Public Websites

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Founding Partner of Patient Data Protection, LLC

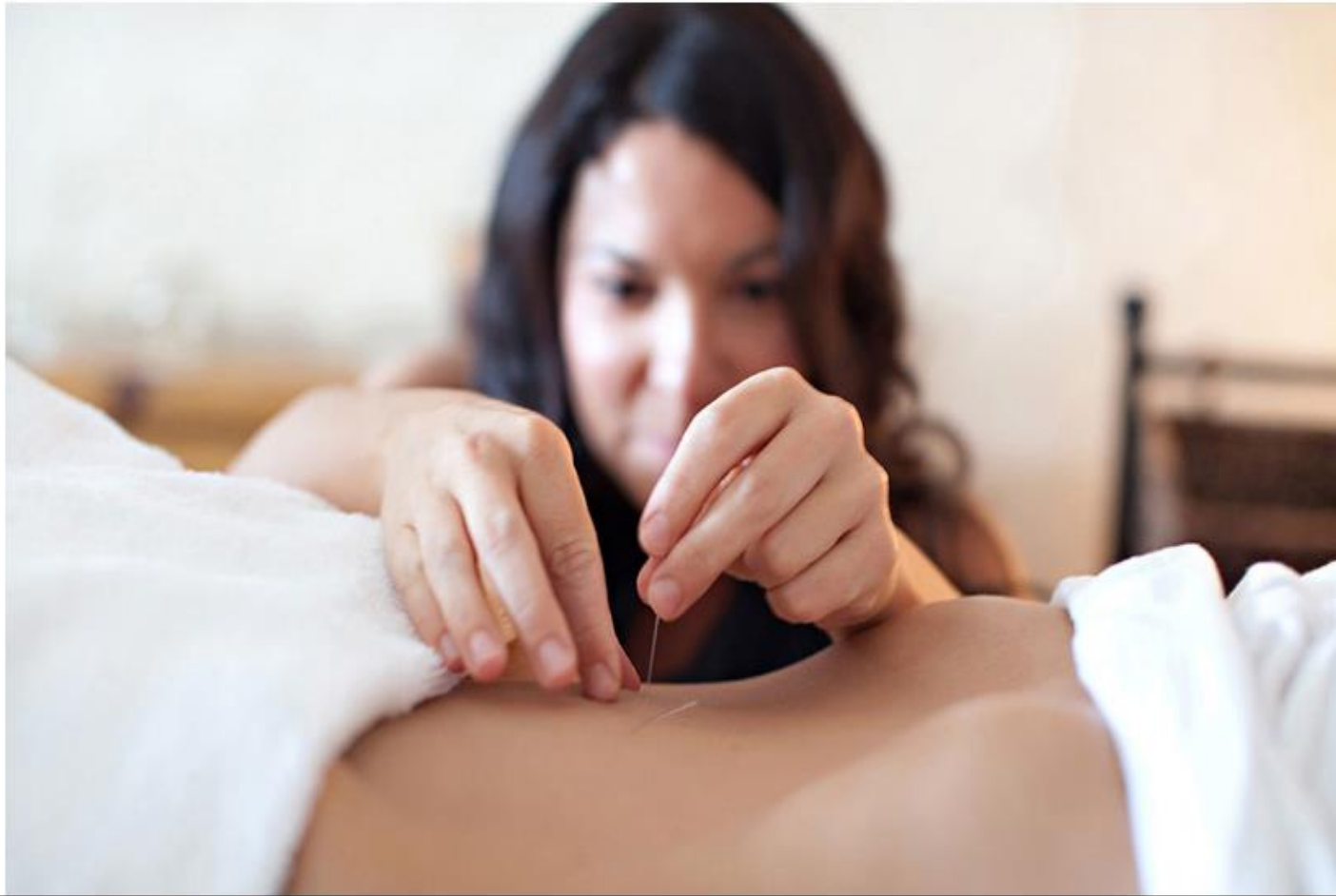
HIPAA & ADA Compliance Software, Technology and Programming Solutions

Outline: ADA Compliance 101

- ▶ Overview of ADA
 - ▶ ADA Title I - V
 - ▶ Title III - Emphasis
- ▶ Understanding
 - ▶ “Places of Public Accommodation”
 - ▶ “Accessibility”
 - ▶ Disability Assistance Software
 - ▶ W3C & WCAG 2.1 AA
- ▶ Complaint Letters, Lawsuits & Fines
- ▶ Installing, Monitoring & Updating Software
- ▶ Following the Law & Ethical Practice

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Accessibility Adjustments

[Reset Settings](#) [Statement](#) [Hide Interface](#)

Search the online dictionary...

Choose the right accessibility profile for you

<input type="checkbox"/>	<input type="checkbox"/>	Seizure Safe Profile Eliminates flashes and reduces color	
<input type="checkbox"/>	<input type="checkbox"/>	Visually Impaired Profile Enhances the website's visuals	
<input type="checkbox"/>	<input type="checkbox"/>	Cognitive Disability Profile Assists with reading and focusing	

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Overview of ADA

- ▶ The Americans with Disabilities Act (ADA) is a 1990 civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.
- ▶ The purpose of the law is to make sure that people with disabilities have equal access, rights and opportunities as everyone else. The ADA is divided into five titles (or sections) that relate to different areas of public life.¹

1. <https://adata.org/factsheet/ADA>

ADA Titles: Other Sections

- ▶ Title I – Employment: Helps people with disabilities access the same employment opportunities and benefits available to people without disabilities; and it applies to employers with 15 or more employees.
- ▶ Title II - Public Services: State and Local Government: Prohibits discrimination based on disability by “public entities” such as state and local government agencies; and requires public entities to make their programs, services, and activities accessible to individuals with disabilities.
- ▶ Title IV – Telecommunications: Requires telephone and Internet companies to provide a nationwide system of interstate and intrastate telecommunications relay services that allows individuals with hearing or speech disabilities to communicate over the telephone.
- ▶ Title V - Miscellaneous Provisions: Contains a variety of provisions relating to the ADA, including its relationship to other laws, state immunity, its impact on insurance providers and benefits, prohibition against retaliation and coercion, illegal use of drugs, and attorney’s fees.

Title III - Public Accommodations and Services Operated by Private Entities

- ▶ Prohibits places of public accommodation from discriminating against individuals with disabilities.
- ▶ “Places of public accommodation” include a wide range of businesses, like restaurants, hotels, theaters, **health care providers**, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers.
- ▶ Private clubs and religious organizations are exempt. (2)
- ▶ Title III generally sets the minimum standards for accessibility to new construction of commercial facilities and privately owned public accommodations.

Title III - Public Accommodations and Services Operated by Private Entities (cont.)

- ▶ Directs businesses to make "reasonable modifications" to their usual ways of doing things when serving people with disabilities.
- ▶ Requires businesses to take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities.
- ▶ U.S. Department of Justice (DOJ) and its Office of Civil Rights (OCR) regulate ADA compliance and enforces laws on behalf of disabled Americans

What is “Accessibility”?

- ▶ The Department of Justice (DOJ) published the Americans with Disabilities Act (ADA) Standards for **Accessible** Design in September 2010. These standards state that all electronic and information technology must be **accessible** to people with disabilities.
- ▶ “Accessibility” in general describes using design and software to eliminate barriers for people with disabilities to access and navigate physical and virtual spaces in a business entity or gov’t agency.
- ▶ “Accessibility design” is used to eliminate physical and technology barriers for people with a disability.
- ▶ The purpose of accessible design and function is to establish greater inclusion and equal access to products, services and information for all consumers.(3)

3. <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>

Accessibility in Virtual Spaces

- ▶ For the past 5 years a battle has been playing-out online and in the courts, where many businesses are questioning whether they must make their websites and mobile apps ADA accessible – and Disabilities Rights Advocates are tenaciously insisting they do.
- ▶ Currently, there are no explicit federal laws enacted describing the technical requirements needed for businesses to make their websites and mobile apps ADA accessible.
- ▶ But the Federal Courts have consistently interpreted the ADA in deciding cases in favor of plaintiffs protecting disabled persons' rights to internet/website access and usability under ADA protections.(4)

4. <https://mashable.com/article/americans-with-disabilities-act-website-accessibility/>

Federal Courts agree - the legal theory

- ▶ Business websites are a “places of public accommodation”
 - ▶ 2016: The first case to go to trial over internet accessibility (Gil v. Winn-Dixie) occurred in Florida after a man with visual impairments was unable to navigate the grocery-chain's website on his own.
 - ▶ 2017 Federal court held that Winn-Dixie’s “website was/is a service of public accommodation” finding that, if a website is substantially connected to a physical location and operates as a “gateway” to the physical location..., it is considered a “service” of the public accommodation, which is enough to bring it under the umbrella of the ADA. (5)

5. https://www.adasoutheast.org/ada/publications/legal/Gil_v_Winn-Dixie.php

Quick history of other legal cases

- ▶ 2018: A visually impaired legally blind person, Cedric Bishop could not navigate Amazon's site even with the help of a screen reader. Amazon was sued for not providing alternative text descriptions for visual elements & images on the its website.
- ▶ 2019: Singer Beyonce's company Parkwood Entertainment faced a class-action suit for violations of the Americans with Disabilities Act (ADA) for allegedly failing to accommodate users with visual impairments.
- ▶ 2019: The 9th Circuit Court of Appeals found Domino's Pizza responsible for ADA Title III Website Accessibility violations. ⁽⁶⁾

6. <https://www.boia.org/blog/adp-sued-for-not-making-accessible-products-and-services>

Quick history of other legal cases

- ▶ 2020: LightHouse for the Blind and Visually Impaired, a non-profit organization based in San Francisco, filed the complaint against ADP TotalSource and its parent company, Automatic Data Processing, Inc, alleging that ADP's cloud-based payroll and HR services are not accessible for people who use screen readers to access content. (7)
- ▶ **Finally, in 2020 that the Supreme Court** declined to hear the Domino's Pizza appeal, which means the lower court's decisions on its ADA protections for website and app accessibility was affirmed - stands. (8)

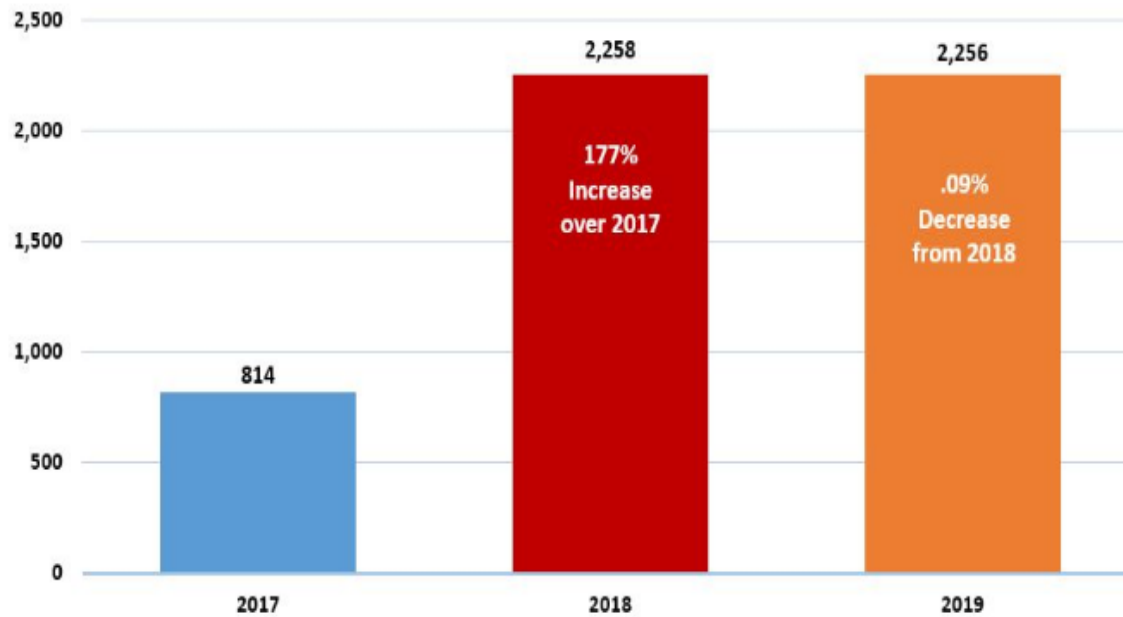
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8. https://www.adasoutheast.org/ada/publications/legal/Gil_v_Winn-Dixie.php

Does my business have to comply with the ADA & Website Accessibility standards?

- ▶ Self Test: Ask yourself?
 - ▶ Does my business have a public website? If yes, then YES
- ▶ Where is this written in the law?
 - ▶ Federal Law ADA Title III - specifies that ‘places of public accommodation’ must be accessible for those people with disabilities. Federal Court includes Websites
 - ▶ State Law:
 - ▶ [CA: The Unruh Act](#): This requires that all persons within California are treated equally, including for any facilities, services, or business establishments. Fine: \$4000/incident; and the [California Consumer Protection Act \(CCPA\)](#) requires that businesses provide notices to consumers, in an **accessible and understandable format**, regarding use of their personal information, and affords guidance to the how consumers can control personal information. Fine: 7,500

ADA Title III Website Accessibility Lawsuits in Federal Court (2017 - 2019)



[Graph: ADA Title III Website Accessibility Lawsuits in Federal Court 2017-2019: 2017: 814; 2018: 2,258; 2019: 2,256. *The number of cases that could be identified through a diligent search.]


In fact, the number of federal ADA Title III website accessibility lawsuit filings decreased in the fourth quarter of 2019, contrary to our [prediction](#) that the U.S. Supreme Court's refusal to review the Ninth's Circuit's pro-plaintiff decision in

[Criticisms of "Quick-Fix" Website Accessibility Products Highlighted in New Lawsuit](#)


[Crystal Ball 2021: Our Predictions for the ADA Title III Legal Landscape](#)

[No More Friendly Skies for Emotional Support Animals](#)

Topics

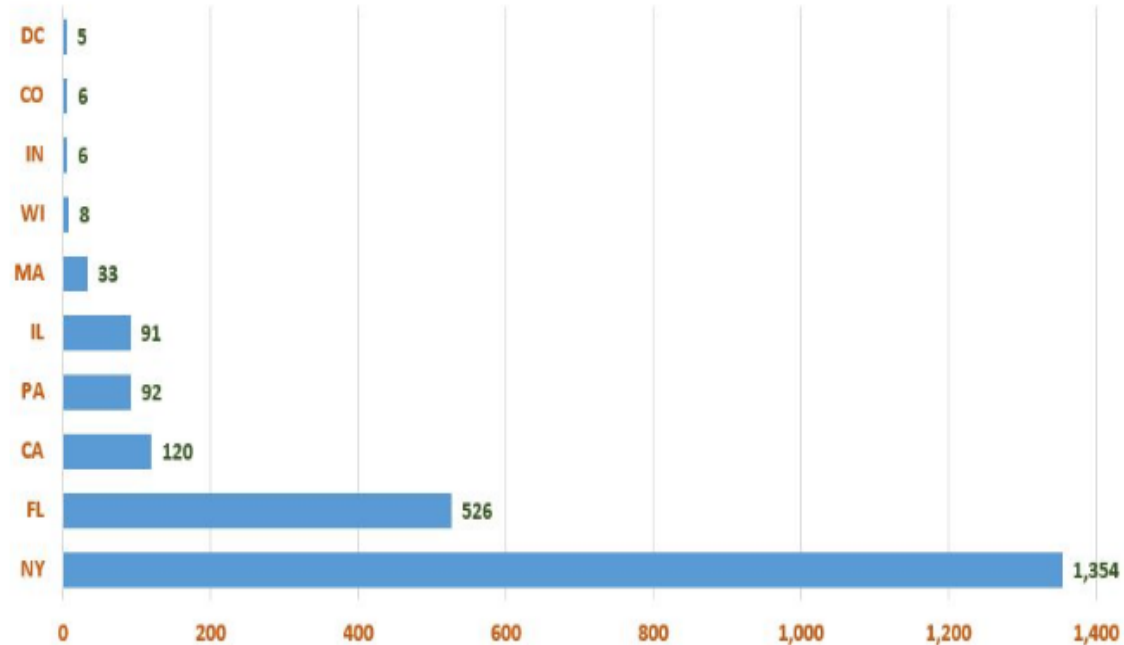
Select Category 

Archives

Select Month 

Links & Resources

Top 10 States for Federal ADA Title III Website Accessibility Lawsuits 2019



[Graph: Top 10 States for Federal ADA Title III Website Accessibility Lawsuits
2019: NY 1,354, FL 526, CA 120, PA 92, IL 91, MA 33, WI 8, IN 6, CO 6, DC 5.

*The number of cases that could be identified through a diligent search.]

The number of New York federal website accessibility lawsuits continues to be

Disabilities that require website accessibility support

- ▶ People with impaired vision and hearing loss in the United States number nearly 8 million. 6.6 million more people identify as deaf or hearing impaired. So, magnification, brightness settings, transcriptions, and captions are necessary for these individuals.
- ▶ Those with cognitive & learning difficulties: age can be a factor for recalling large amounts of information, as well as educational levels, so uncomplicated web page layouts and the removal of animation and automated videos are helpful for dyslexia and Attention Deficit Hyperactivity Disorder (ADHD).
- ▶ Emotional, behavioral disabilities, or a temporary anxiety: page layouts, sentence structure, white space, and much more help users perceive information and stay on task with websites or apps.
- ▶ Permanent or temporary brain injuries & neurological diseases: we may take it for granted that everyone uses a mouse, pointer, or touch screen to navigate. Audible software and keyboard tab navigation are just two examples of alternative and inclusive web access.

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English ▼

Enhances the website's visuals

- OFF ON Cognitive Disability Profile
Assists with reading and focusing
- OFF ON ADHD Friendly Profile
More focus and fewer distractions
- OFF ON Blind Users (Screen-reader)
Use the website with your screen-reader
- OFF ON Keyboard Navigation (Motor)
Use the website with the keyboard

Content Adjustments

Content Scaling

Default

Readable Font

Disability Assistance Software

- ▶ Keyboard Access: Keyboard equivalents for mouse actions, documentation for keyboard functions, and logical tabbing order.
- ▶ Screen Elements: Descriptions and labels for elements, placed nearby to the elements.
- ▶ Sounds: Visual cues and format options in addition to audio files, plus show sounds functionality. In-sync captioning for videos on site.
- ▶ Display + Color: Color is not the only way used to differentiate items or navigation, and display allows for removal of patterns or flashing elements.
- ▶ Documentation: Manuals and documentation are available in electronic format as well as ASCII text file.
- ▶ Alt Text: Ensure images include alt text and descriptions associated with them.
- ▶ Transcripts: For podcasts and other media

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Color Adjustments



Dark Contrast



Light Contrast



Monochrome



High Saturation



High Contrast

Adjust Text Colors



Cancel

Adjust Title Colors



Cancel

Technical Guidelines for Website Accessibility WCAG 2.1 AA (2021)

- ▶ WCAG stands for the Web Content Accessibility Guidelines. These guidelines are published by the World Wide Web Consortium (W3C) under its Web Accessibility Initiative (WAI). The W3C publishes standards to make the web operate more uniformly for all users.
- ▶ Bottom line: Federal District Courts have determined that public websites must currently meet or exceed WCAG 2.1 AA technical standard.

What is WCAG 2.1 AA?

- ▶ Web Content Accessibility Guidelines (WCAG) are updated periodically, and to include the newest technical standards websites must meet to be compliant.
- ▶ Public websites must be:
 - ▶ Perceivable
 - ▶ Operable
 - ▶ Understandable
 - ▶ Robust

WCAG 2.1 AA Has Become
The Prevailing Standard

OVER 75%

of all Federal claims now reference
WCAG 2.1 AA, which adds 12
additional success criteria
above 2.0 AA.



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Default Readable Font

H Highlight Titles

Highlight Links

Text Magnifier

A Adjust Font Sizing

Default

Align Center

Adjust Line Height

Default

Align Left

Adjust Letter Spacing

Accessibility Solutions offered by Patient Data Protection, LLC

Complaint Letters, Lawsuits & Fines

- ▶ There are two basic sources of complaint letters
 - ▶ 1. The Dept of Justice: someone has filed a complaint with the OCR
 - ▶ 2. From an attorney representing an individual or group of Individuals
 - ▶ Claiming your location or website discriminates based on lack of access.
- ▶ If the Department of Justice receives a complaint, then it will likely be referred to mediation for compliance with or without fines.
- ▶ The ADA Mediation Program is an important part of DOJ compliance strategy. Using professional ADA-trained mediators throughout the United States, mediation is a confidential, voluntary way to resolve ADA complaints fairly and quickly.
- ▶ If an attorney or law firm sends you a demand letter it will usually contain details about the alleged violation, a date to appear in court and/or a settlement offer. Call your attorney right-away to review and discuss your best options.

Complaint Letters, Lawsuits & Fines

REALITY CHECK

- ▶ Most healthcare providers will never be served a lawsuit or demand letter, but following the law is required and not optional.
- ▶ Unfortunately, navigating physical and technical accessibility barriers is a daily reality for people with disabilities, and by voluntarily following the ADA law, you create a more inclusive practice and avoid the cost and embarrassment of a legal challenge or fine.

Complaint Letters, Lawsuits & Fines

- ▶ In 2020, there were approximately 2,200 new ADA Website lawsuits filed in the US, mostly in CA, NY and FL, but most states are seeing these cases.
- ▶ The steep increase in new ADA website accessibility cases flattened between 2018-2019-2020, mostly due to COVID, but about 50 new cases are still filed each week in the US.
- ▶ 97% of the top one million websites failed a basic test of accessibility and over 25% of all website lawsuits are “re-suits” where a company is not being sued for the first time.[9]

- ▶ [9] <https://www.slideshare.net/Usablenet/beyond-ada-compliance-realworld-strategies-to-mitigate-legal-risk>

What if I receive a Complaint Letter?

- ▶ Complaint and Demand Letters from an ATTORNEY usually contain a quick settlement offer
 - ▶ Example: Pay \$4500 plus attorneys' fees today and we will drop the lawsuit against you. Otherwise, additional legal will apply and see in court.
- ▶ CA and NY have separate Consumer Protection and ADA Technology Accessibility laws.
 - ▶ State fines \$4000-\$7500 per incident
- ▶ ADA Accessibility complaints resulting in DOJ investigation usually result in a mitigation hearing with or without fines, but when fines are assessed, these can be \$\$\$:
 - ▶ Federal Law: 1st offense \$75,000
 - ▶ Federal Law: 2nd offense \$150,000

Complaint Letter: What's next?

- ▶ Do not ignore the letter - ignoring the issue can only lead to bigger problems requiring more time and money.
- ▶ Seek legal counsel - so that your attorney can fully research the complaint.
- ▶ Conduct an ADA Website Accessibility Audit with a specialist using Automated and Manual testing of your website. Identify the problems and fix ASAP
- ▶ Document a website remediation plan that illustrates what steps you have taken and your timeline for WCAG 2.1 AA compliance and ADA conformance.

Following the Law - Ethical Practice

- ▶ The courts have already ruled that ignorance of the law is no excuse for not complying with the ADA by providing accommodations/accessibility software where needed.
- ▶ The ADA is not a new law...it's been around for 30+ years.
- ▶ Website Accessibility is not a new issue...the increase in investigations and lawsuits have just elevated this topic.
- ▶ Ethical Practice requires providers to follow the law and to be proactive in making their practices compliant and more inclusive
- ▶ **Technology Accessibility requires effort and investment: Being attentive is your best compliance strategy.**

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












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Orientation Adjustments

 Mute Sounds	 Hide Images	 Read Mode
 Reading Guide	 Useful Links <input type="text" value="Select an option"/>	
 Stop Animations	 Reading Mask	 Highlight Hover
		

Installing, Monitoring and Updating Accessibility Software

- ▶ Several companies develop and update Accessibility Software that can be downloaded.
- ▶ Computer programming knowledge is needed to manually install this software.
- ▶ Additional hand-coding (website programming) is required to achieve full ADA conformance.
- ▶ If you have no experience with computer programming, then hiring a trusted expert to install, monitor and update your website accessibility system is your best option.
- ▶ Getting started on ADA compliance with a professional that will install, monitor and update your ADA software starts at less than \$49 monthly.
- ▶ Plan and budget annually for hand-coding updates \$100-\$300yr

Installing, Monitoring and Updating Accessibility Software

- ▶ Your software installer should be running compliance audits on your website to identify content that needs additional software coding updates for ADA conformance, including:
 - ▶ page and tab headings
 - ▶ image and object descriptions
 - ▶ video closed captioning
 - ▶ PDF conversion
 - ▶ templates and forms
 - ▶ ARIA landmarks
 - ▶ Navigation
 - ▶ Plug-ins.
- ▶ **ADA Website Compliance is a continuous quality improvement process**



Thank you Everyone for viewing - joining Comments and Questions??

- ▶ [Click: FREE ADA Website Audit with Report](#)
- ▶ There is no cost/obligation to review your audit/report
- ▶ Rate Discounts are Available for Professional State Association Members. Thank you for your supporting your State Assoc.

- ▶ Questions for David Bibbey, MSOM, Dipl.Ac, L.Ac
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- ▶ Conflict of interest statement: David Bibbey, L.Ac is a founding partner of Patient Data Protection, LLC a technology consulting company that sells software as a service (SaaS) licensed by subscription for use with HIPAA Privacy & Security Rule compliance, ADA Website Accessibility compliance and related software services.

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