

MEMORANDUM

TO: National Association of Community Health Centers
FROM: Feldesman Tucker Leifer Fidell LLP
DATE: August 3, 2017
RE: ADA Demand Letters - Background, Mitigation, Strategy

Background

- Community Health Centers (“CHCs”) in multiple states have been served with pre-litigation demand letters from serial plaintiffs alleging violations of the Americans with Disabilities Act Title III (“ADA”) for CHC websites that are not fully accessible to the blind and allegedly inhibit blind individuals’ access to services at the CHC site.
- We expect these demand letters to continue proliferating across the country.
- Typically, the demand letter threatens that the plaintiff will file suit in federal court unless the CHC agrees to the terms of the plaintiff’s settlement offer: damages ranging as high as \$48k, and onerous, expensive, long-term compliance requirements.
- Some CHCs may have settled; others are already in state or federal court; many are in the process of deciding how to proceed.
- One such serial plaintiff has filed over 100 similar federal lawsuits.

Mitigation

- We are not aware of any federal guidelines for website compliance with the ADA.
- Case law is developing in a patchwork fashion at the federal district court level. However, there is no general consensus for compliance.
- CHCs can take steps to establish alternate means of communication with people who have visual impairments. For example, CHCs could place a large font phone number on the CHC’s website, and train employees answering that line to assist visually impaired persons with scheduling appointments, accessing information about available CHC services, and addressing relevant insurance or payment questions and concerns. For other examples of how CHC websites can be made more

accessible, please visit NACHC's technical assistance page on the topic: <http://www.nachc.org/health-center-issues/emerging-issues-resources/website-accessibility-people-disabilities/>

Our Defense Strategy

- Entities that receive a pre-litigation demand letter or a complaint should obtain legal counsel for advice specifically tailored to their individual circumstances prior to deciding on a course of action.
- At NACHC's request, its general counsel, Feldesman Tucker Leifer Fidell LLP, has evaluated various legal defenses to these ADA claims. If you would like more information, the FTLF points of contact are Matthew Freedus (mfreedus@feldesmantucker.com), and Daryl Berke (dberke@feldesmantucker.com).