

ADA Accessibility Attestation Forms for FIDA (Medicare-Medicaid Advantage Duals) Plans

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The Financial Alignment Initiative of the Centers for Medicare & Medicaid Services (“CMS”) is a test program designed to better coordinate care for dual Medicare-Medicaid enrollees by aligning the financing of Medicare and Medicaid. Pursuant to this initiative, states may partner with CMS to test one of two model programs for the coordination of Medicare and Medicaid benefits.

Both CMS and state Departments of Health regulate the content of what New York State calls FIDA (“Fully Integrated Duals Advantage”) health plans that may be created pursuant to this initiative. Included in the requirements of these plans is a commitment to compliance with the public accommodation requirements of the Americans with Disabilities Act (“ADA”). This Client Alert concerns the recent demand by New York State that all participating providers in FIDA plans complete an “ADA Attestation” form *for each facility* at which plan services are offered.

The New York State ADA Attestation form (to be signed by a responsible provider) is a detailed, four-page long questionnaire that seeks to verify compliance with the numerous and extremely detailed ADA accessibility standards defined by the U.S. Access Board and adopted by the U.S. Department of Justice. These include whether the provider has:

1. accessible examination tables and all medical equipment;
2. wheelchair access to exam rooms and lavatories;
3. ramps with compliant slopes;
4. compliant width and surfaces of paths of travel;
5. accessible entrances;
6. appropriate doors, door clearance, and hardware;
7. the requisite number of accessible and van accessible parking spaces; and
8. many other accessibility requirements.

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Completion of this form may be a labor-intensive process, especially in the case of providers with multiple facilities, and in all cases requires an in-depth understanding of the ADA Standards for Accessible Design—particularly those for health care facilities. States other than New York may require these detailed attestations from FIDA plan providers.

Health care providers should not treat ADA attestation forms lightly as they might later be used in audits of FIDA compliance or as potential adverse evidence in ADA public accommodations litigation. Health care providers may want to seek experienced legal and other guidance when completing these forms—particularly if there is any doubt whether a facility is compliant with ADA requirements. EBG both advises and assists health care plans, providers, and other entities in all aspects of compliance with the ADA, similar state laws, and CMS requirements. EBG is therefore well qualified to advise interested parties at the intersection of these two statutory and regulatory schemes.

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*This Client Alert was authored by **Frank C. Morris, Jr.**, and **Andrea R. Calem**. For additional information about the issues discussed in this Client Alert, please contact one of the authors or the Epstein Becker Green attorney who regularly handles your legal matters.*

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