

Taken to Access

Volume 3, Issue 6 * June 2, 2014

Question of the month:

Q. When is an Alternate Compliance Method review appropriate and what's the advantage?

R. We recommend that projects which exceed \$20M in construction participate in the ACM review process. However, we have many projects in the \$5M to \$15M range that have participated in the process. As stated in the Memorandum of Understanding submitted to Class Counsel: "The ACM process involves the engagement of a pre-approved Access Specialist as a **member** of the Project Team, from the early formation of the team through the completion of construction. Thus engaged, the Access Specialist will provide advice during the early design and development of Construction Documents..."

The biggest advantage is seen when the access specialists are treated as partners and are kept informed of all design activities. Although it is not practical that they participate in every coordination meeting, keeping them informed by circulating meeting minutes for example ensures that they'll provide input at the right time. It is important to recognize that the ACM is **not** a multiple milestone review. The access specialist is another design consultant who can and should provide design solutions to ensure that the final design is both practical and compliant.

TO COMPLY OR NOT TO COMPLY: IS 2018 THE FINAL OPTION?

Many of you have expressed concern about why you must meet the Consent Decree deadlines. What does this really mean and why is it important?

The Consent Decree is a Court Order mandating that Sutter Health and its Affiliates take certain actions to become compliant with various disability access laws by July of 2018 in order to settle a class action lawsuit. With the exception of reporting to Class Counsel on our compliance measures, all requirements of the Consent Decree are already mandated by law. In other words, the Consent Decree imposes no new legal obligations on Sutter Health Affiliates. The court will supervise our compliance until July 2018, at which time we must demonstrate full compliance with its mandates.

Many of you ask, "Why 2018?" We all know these timelines are challenging, but the Consent Decree went into effect in July of 2008, giving us a ten-year compliance period. If justified by compelling facts, it is possible that the court may provide us with limited compliance deadline extension. This, however, will require public hearings at which the Affiliate requesting the extension must explain the facts necessitating the extension. Class Counsel and the plaintiffs would have the opportunity to object to the extension and provide their own evidence as to why an extension should not be granted. Class Counsel may also seek sanctions for non-compliance by the July 2018 deadline. These sanctions could include:

- a significant monetary award to the Class Plaintiffs,
- an order to pay Class Plaintiffs' attorneys' fees incurred in seeking the sanctions
- financial penalties for every day of non-compliance past the deadline, and
- an extension of the Consent Decree for the entire system.

Accordingly, it is imperative that all Affiliates providing patient care under the Consent Decree be fully compliant by the end of 2017 and provide their final reports to the Office of the General Counsel by March 2018. Those with exceptional circumstances in need of an extension must notify the Office of the General Counsel by the end of 2016 for timely evaluation of the request and consideration of alternative to requesting an extension.

~~~~~