

Healthcare Providers' Obligations
Under the
Americans with Disabilities Act
for
People with Deafness or
Hearing Impairments



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Introduction

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in: employment; operation of state and local government programs and services; provision of public accommodations (by private organizations and businesses); and federal communications.

Public accommodations are covered under Title III of the ADA. A public accommodation is an entity that provides goods and services for members of the public. Other examples of public accommodations include restaurants, banks, hotels, non-profit social service agencies, etc. Hospitals and various other health care provider organizations are considered to be places of public accommodation under Title III.

This booklet focuses on the ADA obligations of private health care providers to individuals with deafness or hearing impairments. There are other healthcare-related obligations under the ADA that pertain to people with other disabilities, but those are not addressed in this booklet.

The following questions and answers provide practical information that will help the healthcare provider meet his or her obligations under Title III of the ADA to people with deafness or hearing impairments.

Does the ADA cover all healthcare providers?

Title III of the ADA applies to all private health care providers, regardless of the location or size of the office or the number of employees. The ADA makes an exception, however, for entities controlled by religious organizations. 28 C.F.R. §36.104

What specific requirements do health care providers have under the ADA for individuals who are deaf or hearing impaired?

Health care providers have a duty to provide auxiliary aids and services for people who are deaf or have a hearing loss. Such aids and services enable the healthcare provider to communicate as effectively with people who are deaf and hearing impaired as with people who do not have these disabilities. C.F.R §36.303(c)

For whom must a health care provider provide effective communication?

A health care provider must ensure that it can communicate effectively with customers, clients and other individuals who are deaf or have hearing loss and who are seeking or receiving its services. [56 Fed. Reg. at 35565] This requirement does not only apply to patients. For example: A child who is being treated does not have a hearing loss, but the parent does. If that parent has to give consent for treatment, provide a medical history or follow detailed discharge instructions, an auxiliary aid or service may be required to ensure that communication with the parent is effective.

What are examples of auxiliary aids and services that may be required by the ADA to ensure effective communication?

The Department of Justice lists the following examples of auxiliary aids and services:

Qualified sign language interpreters; notetakers; computer-aided transcription services; written materials; telephone handset amplifiers; assistive listening systems; assistive listening devices; telephones compatible with hearing aids; closed caption decoders; open and closed captioning; telecommunications devices for deaf persons (TDDs) and videotext displays; or other effective methods of making aurally delivered materials available to individuals with hearing impairments. [28 C.F.R. §35.104; 28 C.F.R. §36 (b)(1)] This list is not exhaustive. Individuals with hearing impairments use a wide variety of methods to communicate. The most important thing to consider is what an individual needs to communicate effectively in a particular situation.

How does the health care provider determine which auxiliary aid or service is best for a patient with a hearing loss?

The requirement is flexible and the health care provider may choose among the various alternatives as long as the result is *effective communication* for the individual with the hearing loss. The Justice Department expects that the health care provider will consult with the person and carefully consider his or her self-assessed communication needs before acquiring a particular aid or service. 56 Fed. Reg. at 35566-67

Are there limitations on the ADA's auxiliary aids and services requirements?

Yes. The ADA does not require the provision of any auxiliary aid or service that would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a health care provider. [28 C.F.R. §36.303(a)] However, the healthcare provider has the duty to furnish an alternative auxiliary aid or service that would not result in an undue burden or fundamental alteration. [28 C.F.R. §36.303(f)] An undue burden is a significant difficulty or expense; a fundamental alteration is a significant change in the basic nature of a service or goods.

When would providing an auxiliary aid or service impose an undue burden?

Factors to consider include the cost of the aid or service; the overall financial resources of the health care provider; legitimate, necessary safety requirements; the effect on the resources and operation of the provider; and the difficulty of locating or providing the aid or service. 28 C.F.R. §36.104

Does a health care provider have to pay for an auxiliary aid or service if the cost of the aid or service exceeds the provider's charge for the appointment?

Yes. A health care provider is expected to treat the costs of providing auxiliary aids and services as part of the overhead costs of operating a business. Accordingly, so long as the provision of the auxiliary aid or service does not impose an undue burden on the provider's business and does not fundamentally alter the provider's services, the provider may be obligated to pay for the auxiliary aid or service in a given situation.

Can a health care provider charge a patient who is deaf or hearing impaired for part or all of the costs of providing an auxiliary aid or service?

No. A health care provider cannot charge a patient for the costs of providing auxiliary aids and services, either directly or through the patient's insurance carrier. Such surcharges are not permissible under the ADA. 28 C.F.R §36.301(c)

Who is qualified to be an interpreter in a health care setting?

A qualified interpreter is an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using the necessary specialized vocabulary. [28 C.F.R. §36.104] In the medical setting, this means that the interpreter must be able to interpret complex medical terminology. Connecticut General Statutes §46a-33a(d) includes additional requirements for interpreters in health care settings. The Connecticut Commission on the Deaf and Hearing Impaired can retain interpreters for you who meet these requirements. Their phone numbers are (860) 231-1690 or (800) 708-6796 (toll-free, TDD/voice). The emergency/after business hours telephone number is (860) 231-1623 (voice/TDD).

Do all individuals with hearing loss use the same kind of interpreter?

No. There are various kinds of interpreters. The health care provider should ascertain the particular language needs of the person who is deaf or hearing impaired before hiring an interpreter. Some individuals may require interpreters who are fluent in American Sign Language, a language that has a grammar and syntax that is different from the English language. Others require interpreters who use Signed English, a form of signing that uses the same word order as does English. Still others who do not know any sign language may require oral interpreters, who take special care to articulate words for individuals with hearing loss.

May the health care provider require family members and friends to interpret for the patient who is deaf?

No. Family members often do not possess sufficient sign language skills to effectively interpret in a medical setting. However, even in cases where family members or friends are skilled enough in sign language to communicate with the patient, such people are often too emotionally or personally involved to interpret "effectively, accurately, and impartially." Additionally, problems with maintaining patient confidentiality may cause problems when family members and friends are used as interpreters. 56 Fed. Reg. at 35553

In what medical situations should a health care provider obtain the services of an interpreter?

There should be an interpreter present if the information to be discussed is sufficiently lengthy or complex. In that case, an interpreter would be required for truly effective communication. Some examples include discussing medical history; obtaining informed consent; explaining diagnoses, treatment and prognoses of an illness; conducting psychotherapy; communicating prior to and after major medical procedures; providing complex instructions regarding medication and after care and explaining costs and Insurance.

Is lip reading an effective form of communicating?

Not often. Some individuals with hearing impairments rely on lip reading for communication. For these individuals, an oral interpreter may be the best means of ensuring effective communication. A common misconception is that if a person with a hearing impairment can speak clearly he or she can also lip read effectively. Regardless of how good a person is at lip reading, there is still some guesswork. Very few individuals with hearing impairments or deafness rely completely on lip reading for important instructions. On the average, even the best lip readers only understand about 25% of what is said to them and many individuals understand far less. Lip reading can be particularly difficult in the medical setting when the vocabulary used might not be familiar.

May written notes be considered an effective means of communication?

This will depend on the reading level of the individual and the complexity of the information to be communicated. The reading level of many individuals with deafness is much lower than that of hearing people. Also, written communication is slow and cumbersome in a health care setting. For many individuals with deafness, a sign language interpreter offers the only effective method of communication. However, some individuals with deafness or hearing impairments who do not use sign language may communicate more effectively in writing with their health care professionals. If the person is comfortable using a keyboard, a word processing program can be used to effectively communicate. For people who are able to read, written notes are appropriate for communicating minor matters and simple information, such as scheduling an appointment.

Do health care providers need to provide accessible telephone services to deaf and hard of hearing individuals?

Health care providers that routinely provide telephone services must make these services available to deaf and hard of hearing individuals. [28 C.F.R §36.303] There are several ways of doing so.

A provider may purchase a Telecommunication Device for the Deaf (TDD). A TDD is an inexpensive device with a keyboard that sends and receives written messages over the telephone lines. Many deaf and hard of hearing individuals use TDDs

Health care providers who lack TDDs may receive incoming TDD calls through relay systems.

Relay enables those who use TDDs to communicate by telephone with individuals who use voice telephones. In a relay system, a third person, called a communications assistant, reads to the voice telephone user what the TDD user types, then types what the voice telephone user says to the TDD user. Health care providers are not charged for the use of the relay center. Relay operators are required to maintain confidentiality. The telephone numbers for Relay Connecticut are (800) 842-9710 (TDD) and 1 (800) 833-8134 (voice).

Effective communication may also be provided through e-mail, although caution should be exercised in communicating confidential information through this method.

Must certain health care providers provide TDDs for outgoing calls from their facilities?

TDDs must be available to deaf patients in hospitals, nursing homes and other locations where hearing patients are given access to telephones on a more than incidental basis for outgoing calls. 28 c.P.R. §36.303(d)(1)

Can health care providers receive any tax credits for the costs of providing auxiliary aids and services?

Yes. Businesses may claim a tax credit of up to 50% of eligible access expenditures that are over \$250, but less than \$10,250. The amount credited may be up to \$5,000 per tax year. Eligible access expenditures include the costs of providing interpreters, purchasing TDDs and providing other auxiliary aids and services. Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, §44.

Note: The above information is a revised version of Department of Justice publications.

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