

# Federal Laws Regarding Patients with Disabilities

## How They Affect Your Practice and Your Deaf Patients

The Vocational Rehabilitation Act, The Americans with Disabilities Act (ADA), US Dept HHS' Civil Rights Clearance for Medicare Providers, Section 1557 of the Patient Protection and Affordable Care Act and the Assurance of Compliance are civil rights legislation that prohibits discrimination and guarantees that people with disabilities have the equal access and opportunities as everyone else to fully participate in the mainstream of American life, including medical care.

To be protected by the ADA (and other laws to protect persons with disabilities), a person must have a qualifying disability, which is defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically list or make a directory of covered impairments. The disability discussed within, deafness and hearing impairment, is listed.

Medicare Part A providers are required to sign an attestation of their compliance with all applicable civil rights laws enforced by OCR (including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975 and Section 1557 of the Affordable Care Act). This attestation is referred to as an Assurance of Compliance.

We will discuss the laws and their affect on your medical practice and your deaf and hard of hearing patients.

*Brought to you by:  
Disability Resource Center Panama City, Florida; a Center for Independent Living*



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We are your regional Center for Independent Living serving Bay, Calhoun, Gulf, Franklin, Holmes, Jackson, Liberty, and Washington counties in the Florida panhandle. Disability Resource Center-Panama City is a member of FACIL, the Florida Association of Centers for Independent Living. Our Loan Locker Program allows consumers to borrow equipment such as wheelchairs, canes, walkers, or other necessities; and businesses can borrow equipment as well to make any event handicap accessible.

Our Core Services: Independent Living Skills Training: Instruction and skill building for living independently with a disability. Topics include cooking, budgeting, transportation and social skills training. Information and Referral: Community information and referral assistance to other appropriate organizations and agencies to help persons with disabilities. Peer Support: Persons with disabilities helping and supporting other persons with disabilities. Advocacy: Educating consumers about the rights of persons with disabilities, assisting individuals with applicable laws, to self-advocate per, and work within the system to bring about change.

# Accessibility for the Deaf

## Sec.36.303 Auxiliary aids and services of the ADA

(a) General. A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) Examples. The term "auxiliary aids and services" includes --

(1) *Qualified interpreters\*, note takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;*

(4) Other similar services and actions.

(c) *Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.*

(d) *Telecommunication devices for the deaf (TDD's).*

- "Qualified interpreter" means an interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

### Who decides on the aid or service?

The covered entity is responsible for ensuring

that effective communication happens.

Generally, the entity should consult with you and give primary consideration to fulfilling your request. They may use a substitute if the alternative also provides effective communication. **If an auxiliary aid or service is needed, the entity must provide it free of cost, after considering:**

- How many people are participating in the communication and their individual characteristics
- The particular situation or context and the nature, length, complexity, and importance of the communication
- Whether a fundamental alteration of the program or service or would result in an undue burden. This decision must be made on a case-by-case basis.

### Example Scenario:

A person who is deaf went to the doctor's office to have a blood test. The doctor knew that the visit would be very short and that there would be very little communication during the visit. After consulting with the individual, the doctor determined that an interpreter was not needed, and that writing notes and gestures would be effective for this patient in this situation.

For the next appointment to discuss the results of the blood test and to talk about treatment decisions, the doctor provided an interpreter.

In making these decisions, the doctor consulted with the individual, thought about the needs of the individual, the circumstances, the importance, nature, and complexity of the communication, and whether providing an interpreter would constitute an undue burden under the law.

### What is the role of the sign language interpreter?

As a member of the health care team, their role is to facilitate linguistic and cultural communication. Professional interpreters adhere to the NAD-RID Code of Professional Conduct of which confidentiality is a fundamental tenet. Some healthcare facilities request that interpreters have a signed Health Insurance Portability and Accountability Act (HIPAA) business agreement on file. Like other members of the health care team, interpreters are mindful about their safety, security and self-care. Their role is NOT to offer suggestion, ancillary information, or counsel medical staff or patient.

## Cost of Aids Considered an “Undue Burden”

Some medical practices have used the argument that providing sign language interpreters for their patients or a minor patient’s parent or guardian creates an “undue burden” (as stated in Sec.36.303 paragraph a) on the practice because the income derived from the visit (patient’s insurance, co-pay, and/or Medicaid/Medicare) is less than the cost of the interpreter for that visit. They consider their practice to be exempt from providing the interpreter or auxiliary aid.

Many factors are considered to determine whether undue burden applies, such as:

- (1) The nature and cost of the action needed under this part;
- (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- (4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

The March 2011 ADA Update: A Primer for Small Businesses says, in part:

It is a business's responsibility to provide a sign language, oral interpreter, or VRI [video remote interpreting] service unless doing so in a particular situation would result in an undue burden, which means **significant difficulty or expense**. A business's overall resources determine (rather than a comparison to the fees paid by the customer needing the interpreter) what constitutes an undue burden. If a specific communications method would be an undue burden, a business must provide an effective alternative if there is one. Comparing the cost of an interpreter – national

average is around \$100 - \$120 for a two hour minimum – to the potential reimbursement for that one patient is not sufficient to prove undue burden. The cost of the interpreter has to be weighed against your practice’s overall financial resources. For example, a practitioner with \$100,000 in annual income likely would find it difficult to prove that several hundred dollars to cover the costs of an interpreter for a few appointments posed an undue financial burden.

You should consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is strongly encouraged, under the provisions of the ADA, the ultimate decision as to what measures to take and which auxiliary aid is used to ensure effective communication rests in the hands of the public accommodation, provided that the method chosen results in effective communication. However, the Patient Protection and Affordable Care Act (PPACA) places stricter requirements on medical facilities to give primary consideration to the type of auxiliary aid that is provided. This will be discussed later on in this brochure.

If a deaf patient brings his own sign language interpreter (or other fee-for-service aid) for an office visit without prior consultation and the interpreter or the patient attempts to bill the physician for the cost of the interpreter, the physician is not obligated to comply and/or be financially responsible for the unilateral determination by the patient that an interpreter is necessary. The physician must be given an opportunity to consult with the patient to ensure effective communication. If the patient believes that the physician's decision will not lead to effective communication, then the patient may challenge that decision under title III by initiating litigation or filing a complaint with the Department of Justice (see III-8.0000). It is also inconsistent with the ADA and PPACA for the medical practice to suggest, imply, request or require that the patient bring their own sign language interpreter (or other auxiliary aid).

## IRS Tax Credits and Deductions

To assist businesses with complying with these laws, Section 44 of the IRS Code allows a tax credit for small businesses and Section 190 of the IRS Code allows a tax deduction for all businesses.

The tax credit is available to businesses that have total revenues of \$1,000,000 or less in the previous tax year or 30 or fewer full-time employees. This credit can cover 50% of the eligible access expenditures in a year up to \$10,250 (maximum credit of \$5000).

The tax credit can be used to offset the cost of undertaking barrier removal and alterations to improve accessibility; providing accessible formats such as Braille, large print and audio tape; making available a sign language interpreter or a reader for customers or employees, and for purchasing certain adaptive equipment.

The tax deduction is available to all businesses

with a maximum deduction of \$15,000 per year. The tax deduction can be claimed for expenses incurred in barrier removal and alterations.

Visit the IRS website:

<http://www.irs.gov/uac/Form-8826,-Disabled-Access-Credit-1>

Download IRS Form 8826:

<http://www.irs.gov/pub/irs-pdf/f8826.pdf>

To find out more, please visit the US Department of Justice's website for the ADA at:

<http://www.ada.gov/infoline.htm>

Please consult your tax professional.

**If you have a television or other videos playing in your waiting room or other common areas, turn the closed captioned setting to “on” so that deaf and hard of hearing persons waiting have access to the same information and programs that those who can hear do.**

## Situations Requiring Auxiliary Aid Under the ADA

Every appointment with deaf patients will not require an auxiliary aid, however, there are situations that would necessitate ensuring detailed communication is clear, accurate, complete, and fully comprehended. These apply when the deaf or hard of hearing person is the patient, the patient is a minor and the parent/guardian is deaf or hard of hearing, or the primary caregiver for an aged parent is deaf or hard of hearing. Although not all encompassing, here a few examples:

- discussing a new patient's medical history,
- discussing a patient's symptoms and medical condition, medications side effects,
- making changes to a patient's medication or treatment,
- explaining and describing medical tests, treatment options, surgery and other procedures,
- pre-op consultation,

- providing a diagnosis, prognosis, and recommendation for treatment,
- obtaining informed consent for treatment,
- communicating with a patient during treatment, testing procedures, and during physician's rounds,
- providing instructions for post-surgical medications, post-treatment activities and limitations, and follow-up treatments,
- providing mental health services, including group or individual therapy, or counseling for patients and family members,
- providing information about blood or organ donations,
- discussing complex billing or insurance matters,
- educational presentations, such as birthing and new parent classes, nutrition and weight management counseling.

# Your Auxiliary Aid Choices

Not all deaf and hard of hearing patients use the same method to communicate. Speechreading (also known as lip-reading) is a non-universal communication strategy, and leaves much room for error and not considered effective for medical usage. Here is a list of effective auxiliary aids and strategies for you and your patients to discuss.

**Handwritten/Typed Text:** Pen and paper, Computer and tablet programs and applications, such as Word, Notes, voice to text, can be used for brief communications that do not involve serious medical discussion, consent to treatment, or diagnosis. This choice can be utilized while waiting (short-term not instead of) other aid(s) to be secured. For communications with latened deaf whose primary language is English; for simple, non-complex and short duration communications with patients who use sign language. It is important to use clear, concise statements/questions. Remember English may not be the patient's first language. Ask for clarification as ASL and written English syntax are not uniform and can lead to miscommunication.

**On-Site Sign Language Interpreter:** For complex and/or long duration communications when the customer's primary method of communication is sign language. There are several sign languages used in the United States. American Sign Language (ASL), Signed English, and Pidgin Signed English. These are the three most prevalent; ask which one your patient prefers.

**Ubi-Duo:** The [Ubi-Duo](#) is a method to communicate via two "keyboard" type devices. It's portable, runs on batteries, and allows for uncomplicated text-written conversation between two to four people. The UbiDuo allows the user to carry it anywhere in their office or facility and interact with anyone anytime in any situation with zero barriers. The Ubi-Duo is a clearer, faster, and easier to follow than exchanging

handwritten notes. Remember English may not be the patient's first language. Ask for clarification as ASL and written English syntax are not uniform and can lead to miscommunication.

**Oral & Cued Speech Interpreter:** Recommended to communicate with a patient who has been trained to speech read (read lips). Normally, only about a quarter of English words can be seen on the mouth. An oral interpreter uses specialized mouth and hand gestures to reinforce what the speaker is saying to the patient.

**"Real-time Captioning," (CART):** Transcriber takes down the speaker's words. The words appear in text on a screen so the person can read what the speaker has said. This service is useful for people who can read and understand complex English vocabulary and concepts fluently and who can respond verbally

**Communication Devices:** Many deaf and hard of hearing persons use their personal handheld and/or "smart" devices and apps for voice to text and text to voice to communicate.

**Video Conferencing and/or Remote Interpreting:** Provides immediate remote access to sign language interpreters, oral interpreters, and CART operators via video conference equipment or apps like Facetime or Skype.

There may be other aids that your patient is accustomed to using that is not listed and if it is available and provides effective communication, then it certainly can be considered.

With any aid listed above, endeavor to clarify or explain in simple terms any new or unfamiliar medical terms, medications and side effects, procedures, and diagnosis or treatment for the patient or caregiver.

**REMEMBER, EFFECTIVE COMMUNICATION AND THE USE OF APPROPRIATE AUXILIARY AIDS, INCLUDING MEDICAL SIGN LANGUAGE INTERPRETERS, PRESERVES THE PATIENT'S HIPPA RIGHTS, REDUCES THE CHANCE OF MISDIAGNOSIS, AND CONFIRMS PATIENT'S INFORMED CONSENT.**

# HIPPA and The Sign Language Interpreter

Must healthcare organizations obtain a patient's authorization to use or disclose protected health information to an interpreter?

Covered entities may use and disclose protected health information for treatment, payment and health care operations without a patient's authorization [45 CFR 164.506(c)]. A covered health care provider might use interpreter services to communicate with patients who speak a language other than English or who are deaf or hard of hearing, and provision of interpreter services usually is a health care operations function of the covered entity.

When a covered health care provider uses an interpreter to communicate with a patient, the patient's authorization is not required when the provider meets the conditions outlined below.

When using interpreter services, a covered entity may use and disclose protected health information regarding a patient without the patient's authorization as a health care operation, in accordance with the Privacy Rule, in the following ways:

When the interpreter is a member of the covered entity's workforce (i.e., a bilingual employee, a contract interpreter on staff, or a volunteer) [45 CFR 160.103]

When a covered entity engages the services of a person or entity, who is not a workforce member, to perform interpreter services on its behalf, as a business associate, as defined at 45 CFR 160.103. A covered entity may disclose protected health information as necessary for the business associate to provide interpreter services on the covered entity's behalf, subject to certain written satisfactory assurances set forth in 45 CFR 164.504(e).

For instance, many providers including those that are recipients of federal financial assistance and are required under Title VI of the Civil Rights Act of 1964 to take reasonable steps to provide meaningful access to persons with limited English proficiency — will have contractual arrangements with private commercial companies, community-based organizations, or telephone interpreter service lines to provide such language services.

If a covered entity has an ongoing contractual relationship with an interpreter agency or with a freelance provider, that service arrangement should comply with the Privacy Rule business associate agreement requirements. {45 CFR 164.510(b)(2)}

## *Can't their family member interpret for the appointment?*

Someone who has only a rudimentary familiarity with sign language or fingerspelling, does not have the ability to interpret specialized medical terminology. Most hearing family members of deaf persons develop only an elementary knowledge of sign language. Most do not possess the skill, training and ability to interpret is not qualified to provide effective communication.

Likewise, the family member is emotionally connected and may be unable to disassociate themselves from those emotions. Someone who has emotional ties to the patient, or is under the stress of a family member being in an emergency situation is not able to provide effective communication. The need for a family member to ease the distress of a prognosis or to soften the blow is counterproductive to the medical treatment.

Family members (especially minor children), companions, friends and untrained health care staff are also not bound by the NAD-RID Code of Professional Conduct, and there is no assurance the interpretation will be accurate, complete, reliable, or neutral. With non-healthcare professions, privacy rights may be compromised.

For emergency situations that require immediate communication, a family member **may be** relied upon for temporary conveying of basic information until a qualified interpreter arrives or a VRI is connected.

## Interpreters: Certified=Qualified; Qualified= Certified?

**Who is a qualified interpreter?** There are a number of sign language systems in use by persons who use sign language. Individuals who use a particular system may not communicate effectively through an interpreter who only uses another system. When an interpreter is required, the public accommodation should provide a qualified interpreter as required by the ADA and PPACA. A qualified interpreter is an interpreter who is able to sign to the individual who is deaf what is being said by the hearing person **and** who can voice to the hearing person what is being signed by the individual who is deaf. This bi-lingual, bi-cultural communication must be conveyed effectively, thoroughly, accurately, and impartially, taking into consideration the differences in both language and culture differences. A qualified interpreter will also be familiar through the use of any necessary specialized vocabulary.

**Can a public accommodation use a staff member who signs "pretty well" as an interpreter for patients who use sign language to communicate?** Signing and interpreting are not the same thing; just as knowing first aid and CPR is not enough to be a medical practitioner. Having rudimentary knowledge of sign language does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and effectively communicate their signed or finger-spelled message into spoken words. The interpreter must be able to interpret both receptively and expressively.

**If a sign language interpreter is required for effective communication, must only a certified interpreter be provided?** No. The key question in determining whether effective communication will result is whether the interpreter is "qualified," not whether he or she has been actually certified by an official licensing body. A qualified interpreter is one "who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary." An individual does not have to be certified in order to meet this standard. A certified interpreter may not meet this standard in all situations, e.g., where the interpreter is not familiar with the specialized vocabulary involved in the communication at issue. Prior to hiring an interpreter or interpreting agency, it is prudent to ask the patient whether the potential interpreter is considered "qualified" by the patient. There may be a conflict of interest or previous situations that cause the patient to view a particular interpreter as not qualified for them.

## How Can Qualified Providers Be Obtained?

Qualified interpreters either maintain a private, freelance practice or work through interpreter agencies. Which you choose is based on many different factors. Freelance interpreters have less flexibility when scheduling. An agency that employs several qualified interpreters can arrange the schedules of their interpreters to coordinate with the appointment schedule of your patient.

Disability Resource Center maintains a list of qualified interpreters and interpreter agencies for Bay, Calhoun, Franklin, Gulf, Holmes, Jackson, Liberty, Washington and surrounding counties. Information changes regularly, so feel free to contact DRC for up-to-date referrals. There are also lists of video remote interpreting agencies throughout the country that can be employed when a local, on-site interpreter is not readily available or financially reasonable.

It is vital that information on how to access and work with an interpreter be readily available to designated staff member, but it is more important that the information be used correctly and in a timely manner. Training is key. DRC can also assist with on-site training on adapting current policies and practices to accommodate the need to obtain qualified interpreter services. DRC is here to assist your practice by referral, education, and advocacy. No question is too simple or too complicated.

# Working with Sign Language Interpreters

## BEFORE HIRING AN INTERPRETER

- **Ask questions.** As with most of us, preferences can vary. It is appropriate to ask the deaf patient to let you know if he/she has preferences (or objections) for a specific interpreter or agency, or ASL versus SEE, or if there are other mitigating conditions or situations that also need addressing. Some may and some may not. Interpreters are not a 'one size fits all' expectation.
- **Be specific.** When booking an interpreter through an agency, alert the agency to any extenuating circumstance. Is the deaf patient in need of an English speaking interpreter? Spanish speaking? Other language? Sign language is not universal. Is the deaf patient also low vision? There are interpreters who specialize in interpreting for the Deaf/Blind and there are differences in low-vision and tactile interpreters. Every detail helps determine which interpreter would be the best fit for the job. If the patient is female, hiring a male interpreter may not be appropriate and vis-a-versa.
- **Allow sufficient time.** Begin the requesting process as early as possible. This gives enough lead time to secure an appropriate interpreter. Many agencies require at least a 3-business-day window. Always confirm with the patient and interpreter or interpreter agency the day before the appointment. If someone must cancel, inform the other party. All interpreters and interpreter agencies have cancelation policies.

## DURING THE APPOINTMENT

- **Speak normally.** Try to avoid the natural temptation to speak in a loud voice and/or exaggerate the enunciation of your words in an effort to help the deaf patient understand you. Speak to the deaf person as you would to a hearing person. The interpreter will do the rest. There is no need to worry about using phrases like, "Have you heard from your insurance agency?" The interpreter will culturally mitigate the "hearing" nature of the message.
- **Direct communication.** Please speak to the deaf person directly and not as if they aren't there. The interpreter is there to facilitate a 2-way conversation, much the same way a telephone

does. The telephone does not participate in the conversation, neither does the interpreter. While talking on the telephone, we would not say, "ask her if..." So, there is no need to do the same while working through an interpreter.

- **Respect roles.** The sign language interpreter is there solely to interpret. They are not there to assist in any other way. Many have been asked to fill out forms, pass out papers, help lift items or people, offer opinions, run errands and even monitor vitals. In a medical setting, if the medical practitioner leaves the room, the interpreter usually leaves the room as well.
- **Allow for differences.** Did you know that American Sign Language (ASL) and spoken English are different in their word order? ASL is a conceptual language and may be the deaf client's native language. This is why the seemingly simple solution to write notes back and forth (instead of using an interpreter) can be confusing and frustrating for all involved. Allow for "lag time" as the interpreter will always be moments behind the speaker.

## AFTER THE APPOINTMENT

- **Give feedback.** Providing feedback to the interpreter or interpreter agency is priceless. Did the interpreter communicate easily with the deaf patient and office staff? Was the sign language interpreter professional and on time? Did you have an ideal experience and prefer to always work with this interpreter if possible? Even if the experience was not ideal, providing feedback gives the interpreter constructive criticism leading to professional growth. Outside of the interpreter's presence, possibly in a telephone call, ask the patient whether the interpreter performed satisfactorily. Take their response into consideration in the future. Ask the patient if they would prefer that interpreter in the future or would prefer someone else.
- **Schedule the next appointment.** If there will be a follow-up appointment, request the services of an interpreter for another appointment as soon as possible. This will alleviate the problem of scrambling the day of the appointment.

## Video Remote Interpreting—VRI

When in-person, on-site interpreting services are not immediately available or is financially burdensome, technology now provides for an interim solution in the form of off-site interpreting services, called Video Remote Interpreting (VRI). VRI is not to be confused with VRS (Video Remote Services) when video phone providers such as Sorenson and ZVRS provide, under the oversight of FCC, relay services when telecommunication between a person who uses sign language and someone who does not occur over telephone lines or cellular service. VRS services are only to be used when persons are not in the same or adjacent rooms and they use the telephone to communicate.

VRI uses videoconferencing technology, equipment, and a high speed Internet connection with sufficient bandwidth to provide the services of a qualified interpreter, usually located at a call center, to people at a different location. VRI is currently being used in a wide variety of settings including hospitals, physicians' offices, mental health care settings, police stations, schools, financial institutions, and workplaces. Entities may contract for VRI services to be provided by appointment or to be available "on demand" 24 hours a day, seven days per week. As such, there are significant possibilities for the use of VRI technology and services.

While there are many benefits to using VRI services, there are limits to the effectiveness of VRI in some settings including but not limited to medical, legal, and court situations. In such settings, the NAD (National Association of the Deaf) strongly believes that VRI services should be provided only if on-site interpreter services are unavailable, or in a life threatening situation until an on-site interpreter arrives.

Many medical providers are unprepared for this technology and do not have the benefit nor include the direct involvement of the deaf and hard of hearing community in deciding how to best provide this service. In the last few years, too many medical providers have suddenly chosen VRI as the sole auxiliary aid option in the healthcare context, and the limitation to a sole option is completely inappropriate. The deaf and hard of hearing community has become increasingly concerned about the over-reliance on this new technology without a thorough examination and dialogue on the appropriateness of the service. Moreover, because so many deaf and hard of hearing individuals have had adverse experiences in hospitals that rely on VRI technology, there have been numerous lawsuits against hospitals seeking to curtail such overuse of VRI.

VRI must provide real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication. VRI must provide a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of their body position. VRI must also provide a clear, audible transmission of voices.

For more detailed information regarding the NAD's position on VRI, visit this website:

<https://www.nad.org/about-us/position-statements/minimum-standards-for-video-remote-interpreting-services-in-medical-settings/>

# The Patient Protection and Affordable Care Act

## OPERATIONALIZING COMPLIANCE WITH SECTION 1557 OF THE AFFORDABLE CARE ACT

- **Background.** Section 1557 is a part of the ACA and entitled “Nondiscrimination.” The U.S. Department of Health and Human Services (HHS) considers Section 1557 “important to achieving the ACA’s goals of expanding access to health care and coverage, eliminating barriers, and reducing health disparities.” Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability. HHS issued regulations under Section 1557 in 2016.
- **Who is covered:** Any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance. . . .” This includes Medicare, Medicaid, grants, tax-subsidies, and credits. This includes hospitals, health clinics, physicians’ practices, nursing homes, community health centers and all of these entity’s operations. Federal financial assistance may be direct or indirect. (Caveat: Providers that accept Medicare Part B only are not covered—according to HHS. ) The regulation applies to health programs or activities that receive federal financial assistance from HHS.

## DISABILITY DISCRIMINATION IS PROHIBITED

- **Disability means:** 1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; 2) having a record of such an impairment; or 3) being regarded as having such an impairment.
- **Physical or mental impairment** means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting major body systems; any mental or psychological disorder such as emotion or mental illness, mental retardation, or learning disabilities. This also includes visual, speech, and hearing impairments, diabetes, cancer, heart disease, HIV disease, drug addiction, and alcoholism.
- Unless they would result in an undue financial burden or would fundamentally alter the program, covered entities must take the following steps: 1) Make reasonable changes to policies, procedures, or practices where necessary to provide equal access for individuals with disabilities. 2) Make all health programs and

activities provided electronically accessible to individuals with disabilities. 3) Ensure newly constructed and altered facilities are physically accessible to individuals with disabilities. 4) Provide effective communication with individuals with disabilities, including patients and their companions.

## AUXILIARY AIDS AND SERVICES

- **A Covered Entity Must** provide auxiliary aids and services free of charge and in a timely manner when necessary to ensure an equal opportunity to participate and benefit from the health program. Such aids and services include: Sign language interpreters, large print materials, text telephones, captioning, screen reader software, video remote interpreting services.
- **Primary Consideration:** Covered entities must honor a patient or companion’s requested aid, unless it can demonstrate that another equally effective means of communication is available—or the use of the chosen means would fundamentally alter the program or activity or result in an undue financial or administrative burden.
- **A Covered Entity May Not:** 1) require an individual to provide their own interpreter. 2) rely on minor children to interpret (except in an emergency). 3) relay on interpreters an individual prefers where there are competency, confidentiality, or other concerns. 4) Relay on unqualified staff interpreters.

## ENFORCEMENT

- **Federal.** HHS OCR is responsible for enforcing Section 1557 and the final rule. HHS OCR may suspend or terminate a covered entity from receiving Federal financial assistance or refer matters to the US Department of Justice.
- **Private.** Private plaintiffs can also enforce Section 1557 and has a right of action for claims.

## DESIGNATION OF RESPONSIBLE EMPLOYEE

**Each Covered Entity** that employs 15 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Section 1557 and this part, including the investigation of any grievance communicated to it alleging noncompliance with Section 1557 or this part or

# The Patient Protection and Affordable Care Act

- **Continued**
- alleging any action that would be prohibited by Section 1557 or this part.
- **Adoption of Grievance Procedures:** Each covered entity that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by Section 1557 or this part.
- **A Covered Entity May Not:** 1) require an individual to provide their own interpreter. 2) rely on minor children to interpret (except in an emergency). 3) relay on interpreters an individual prefers where there are competency, confidentiality, or other concerns. 4) Relay on unqualified staff interpreters.

## EFFECTIVE COMMUNICATION WITH PERSONS WITH DISABILITIES

- Section 1557 requires effective communications with individuals with disabilities, incorporating longstanding Department of Justice interpretations of the requirements of federal law. • The rule incorporates standards under Title II of the Americans with Disabilities Act, which apply to state and local government, rather than the lower standards of Title III, which govern public accommodations.

## AUXILIARY AIDS

- Auxiliary aids and services to individuals with impaired sensory, manual, or speaking skills must be provided.

## VIDEO REMOTE INTERPRETING SERVICES

- Video remote interpreting services. A covered entity that provides a qualified interpreter for an individual with limited English proficiency through video remote interpreting services in the covered entity's health programs and activities shall provide: • (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; • (2) A sharply delineated image that is large enough to display the interpreter's face and the participating individual's face regardless of the individual's body position; • (3) A clear, audible transmission of voices; and • (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the video remote interpreting.

## INTERPRETING “HEALTH PROGRAM OR ACTIVITY” ORGANIZATIONAL SCOPE

- “the law provides that the term “health program or activity” must be interpreted in a manner that uniformly covers all of the operations of any entity that receives Federal financial assistance and that is principally engaged in health services, health insurance coverage, or other health coverage, even if only part of the health program or activity receives such assistance. This interpretation serves the central purposes of the ACA, and effectuates Congressional intent, by ensuring that entities principally engaged in health services, health insurance coverage, or other health coverage do not discriminate in any of their programs and activities, thereby enhancing access to services and coverage. “

## RECOMMENDED EMPLOYEE TRAINING AND EDUCATION

Although not required by Section 1557, DRC recommends annual in-service required for Patient Advocates, Risk Management, Nurse Leadership, Office of Compliance, and any “front line” staff such as registration, appointment scheduling, ER screening, or any other staff that would regularly or act as for relief/stand-in/interim for any of the above on any shift. Disability Resource Center offers training on the topics of the ADA, the PPACA and other federal and state laws affecting providing services to persons with disabilities.

## *What if I Choose NOT to Provide an Interpreter or other Auxiliary Aid?*

As a business in the medical field, administrators, supervisors, managers and doctors make hundreds of decisions a week that can affect every aspect of their medical practice. Every decision has the potential to positively or negatively impact the practice. When presented with a request for an accommodation of a sign language interpreter, your practice can choose to either (1) provide effective communication by contracting the services of a freelance interpreter or sign language agency, or (2) refuse to provide effective communication. If your practice chooses not to provide effective communication then the deaf patient has options as to what to do next.

Many deaf patients may simply accept your practice's decision. Some may agree to write notes back and forth even though they do not fully understand what those notes mean. Some may agree to bring in a family member to act as an interpreter even though the family member only has a elementary school age level sign language vocabulary and cannot effectively express the medical terminology. Their doing so does not negate the fact that their civil rights have been violated. Nor does it waive their rights to file a complaint with various Federal and state oversight agencies. The patient also has a right to begin litigation in court for discrimination against you and/or your practice.

Today, more and more deaf persons are standing up for their rights by following the US Department of Justice's and the US Department of Health and Human Services' recommendation to file complaints for discrimination based on disability. The deaf patient can file complaints on a federal level with the US Department of Health and Human Services and the US Department of Justice ADA Division. On the state level deaf patients can file complaints with the State Attorney General office Consumer Protection Division and the Florida Commission on Human Relations. Deaf patients may also file civil lawsuits for damages resulting from failure to provide effective communications. The cost of non-compliance can vary on the federal and state levels.

A failure to follow ADA accommodation requirements can lead to various penalties for businesses. The U.S. Department of Justice said it will increase the maximum civil penalty to \$75,000 for the first violations of ADA provisions requiring restaurants, movie theaters, schools and other businesses open to the public to be accessible and accommodate people with disabilities. This includes medical practices.

If you are a health care provider with Medicare Part A certification, your office is required to have a civil rights clearance from the Office for Civil Rights (OCR) to be certified as a Medicare Part A provider by the Centers for Medicare and Medicaid Services (CMS). Medicare Part A providers are required to sign an attestation of their compliance with all applicable civil rights laws enforced by OCR (including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975 and Section 1557 of the Affordable Care Act). This attestation is referred to as an Assurance of Compliance. New applicants for Medicare funding and current providers undergoing a change of ownership are responsible for submitting this attestation electronically to OCR. Violations based on discrimination can affect your practice's clearance. OCR will determine if their office can investigate; if it can and does find violation/violations, OCR will grant a specific time period to correct the violation with a plan of correction. If continued violations occur or unwillingness to take corrective action, a final decision upholding a finding of violation may result in the termination of Federal financial assistance to the recipient (including the ability to accept Federally issued (directly or indirectly) insurance payments such as Medicaid, Medicare, grants, tax subsidies and credits.

In a 2008 disability discrimination and punitive damages case, a deaf woman successfully sued a New Jersey doctor who refused to provide her with a sign language interpreter after she asked for one on multiple occasions. The jury agreed that this qualified as discrimination and ruled unanimously in favor of a \$400,000 award.

# Interpreter's Code of Professional Conduct

A code of professional conduct is a necessary component to any profession to maintain standards for the individuals within that profession to adhere. It brings about accountability, responsibility and trust to the individuals that the profession serves.

RID, along with the National Association of the Deaf (NAD), co-authored the ethical code of conduct for interpreters. Both organizations uphold high standards of professionalism and ethical conduct for interpreters. At the core of this code of conduct are the seven tenets, which are followed by guiding principles and illustrations. The tenets are to be viewed holistically and as a guide to complete professional behavior. When in doubt, one should refer to the explicit language of the tenet.

## **TENETS**

### **Interpreters:**

1. **Adhere to standards of confidential communication.** Interpreters hold a position of trust in their role as linguistic and cultural facilitators of communication. Confidentiality is highly valued by consumers and is essential to protecting all involved.
2. **Possess the professional skills and knowledge required for the specific interpreting situation.** Interpreters accept assignments using discretion with regard to skill, communication mode, setting, and consumer needs. Interpreters possess knowledge of American Deaf culture and deafness-related resources.
3. **Conduct themselves in a manner appropriate to the specific interpreting situation.** Interpreters are expected to present themselves appropriately in demeanor and appearance. They avoid situations that result in conflicting roles or perceived or actual conflicts of interest.
4. **Demonstrate respect for consumers.** Interpreters are expected to honor consumer preferences in selection of interpreters and interpreting dynamics, while recognizing the realities of qualifications, availability, and situation.
5. **Demonstrate respect for colleagues, interns, and students of the profession.** Interpreters are expected to collaborate with colleagues to foster the delivery of effective interpreting services. They also understand that the manner in which they relate to colleagues reflects upon the profession in general.
6. **Maintain ethical business practices.** Interpreters are expected to conduct their business in a professional manner whether in private practice or in the employ of an agency or other entity. Professional interpreters are entitled to a living wage based on their qualifications and expertise. Interpreters are also entitled to working conditions conducive to effective service delivery.
7. **Engage in professional development.** Interpreters are expected to foster and maintain interpreting competence and the stature of the profession through ongoing development of knowledge and skills.

The full version of the interpreter's Code of Professional Conduct can be found at

[http://rid.org/UserFiles/File/NAD\\_RID\\_ETHICS.pdf](http://rid.org/UserFiles/File/NAD_RID_ETHICS.pdf)

If at any time your practice or a patient of your practice experiences difficulties or breach of the Code of Professional Conduct with an interpreter or interpreter agency, please contact our Program Coordinator or Deaf Services Coordinator for assistance in filing a complaint. Breach of the code can include, but is not limited to, repetitive tardiness (T3), failure to attend a scheduled assignment (T3), violation of HIPPA (T1), accepting an assignment but not having the skills to provide effective communication (T2), disrespect towards staff or patient (T4), regularly over bill or double bill without correction (T6), being inappropriately dressed/attired (T3), acting outside of their role as neutral and impartial communication facilitator (i.e. providing opinions, information, or conflicting details gathered outside of this office visit) (T3), accepting an assignment where there is a known history of conflict of interest (T3), or other various violations.

In the event that your patient states that they would prefer not to work with a specific interpreter or interpreter agency because of previous violations and breaches of the code of conduct, it is advisable to act accordingly with their request to avoid placing the patient or your practice at risk.