

The Americans with Disability Act

How It Affects Your Medical Practice and Your Deaf Patients

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

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990 and is one of the most comprehensive pieces of civil rights legislation that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to fully participate in the mainstream of American life -- to enjoy employment opportunities, to purchase goods and services, and to participate in State and local government programs and services. Modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin – and Section 504 of the Rehabilitation Act of 1973 -- the ADA is an equal opportunity law for people with disabilities.

To be protected by the ADA, 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, hearing impairment, is listed.

The ADA's Title III regulations affect businesses and non-profit service providers. All of these regulations are overseen by The US Department of Justice. We will discuss the ADA and its affect on your medical practice and your deaf and hard of hearing patients.



Disability Resource Center, Inc.

300 W. 5th St
Panama City, Florida 32401

Serving Bay, Calhoun, Franklin, Gulf, Holmes, Jackson, Liberty and Washington County

www.drcpc.org

phone: 850-769-6890

fax: 850-769-6891

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.

The ADA and Accessibility for the Deaf

Items in *italics* relate specifically to the deaf

Title III of the ADA covers the private sector. It requires that a wide range of public accommodations in the private sector mitigate physical, communications and procedural barriers to access by people with disabilities. Title III addresses the widespread exclusion of people with disabilities from the routine activities of everyday life which most Americans take for granted. Title III covers sales, rental and service establishments, as well as educational institutions, recreation facilities and service centers. Title III covers public accommodations, commercial facilities and private entities. It is enforced by the United States Department of Justice. Title III states that extra charges may not be imposed on people with disabilities to cover the cost of measures taken to ensure against discrimination. For example, a public accommodation cannot charge a person with a disability for removing barriers in a restaurant or providing a sign language interpreter at a theater performance.

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 caption decoders, open and 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;

(2) Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(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).*

(1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(f) Alternatives. If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

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, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the public accommodation, provided that the method chosen results in effective communication.

If a deaf patient brings his own sign language interpreter for an office visit without prior consultation and bills the physician for the cost of the interpreter, the physician is not obligated to comply with 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).

IRS Tax Credits and Deductions

To assist businesses with complying with the ADA, 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.

Situations That Require an Auxiliary Aid

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

People who are deaf or hard of hearing use a variety of ways to communicate. Some rely on sign language interpreters or assistive listening devices; some rely primarily on written messages. Many late-deaf may speak even though they cannot hear.

The method of communication and the services or auxiliary aid(s) the practice must provide will vary depending upon the abilities and communication preference of the person who is deaf or hard of hearing and also on the complexity, duration and nature of the communications that are required.

Effective communication with patients and their caregivers is critical in health care settings where misdiagnosis, improper or delayed treatment may result from erroneous or marginal information.

If you have a television 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 programs that those who can hear do.

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.

Here is a list of effective auxiliary aids and strategies for your patients.

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.

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: Pre-programmed laptop style computer unit (such as Ubi-Duo) that can display typed messages and send them to other devices or to a computer. Users can have a conversation by reading and typing.

Video Conferencing: Provide immediate remote access to sign language interpreters, oral interpreters, and CART operators.

Exchange of Written Notes: For communications with late-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.

With any aid, always endeavor to clarify unfamiliar medical terms for the patient.

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)}

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. 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 fingerspelled 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.

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.

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 maybe relied upon for temporary conveying of basic information until a qualified interpreter arrives or a VRI is connected.

Video Remote Interpreting—VRI

When in-person, on-site interpreting services are not immediately available, 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 when telecommunication between a person who uses sign language and someone who does not occur. 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 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.

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.

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 visual? 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 the day before the appointment. If someone must cancel, inform the other party. All interpreters have cancellation 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 babysit a classroom. 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 agency is priceless. Did the interpreter communicate easily with the deaf patient? 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.
- **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.

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

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. Credentialed 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.

Disability Resource Center Panama City's Deaf Services

Advocacy Services:

DRC works as an advocate for D/deaf, hard of hearing, latened deaf, and Deaf-Blind to request and ensure the provision of appropriate accommodations for effective communication. For those who believe they may have been denied access to effective communication under the ADA, Rehabilitation Act, or other federal or state laws. We can provide consultation and information regarding the complaint process and other avenues of recourse.

Community Education:

DRC provides free-of-charge education about deafness to the eight (8) counties we serve (Bay, Calhoun, Franklin, Gulf, Holmes, Jackson, Liberty, and Washington) through outreach presentations, workshops, and training sessions available upon request. We also have a Business Partnership Program to provide educational materials to businesses and other organizations about using the Florida Relay Service (711) to communicate with hard of hearing and deaf individuals on the phone.

Interpreting Services:

DRC maintains a list of qualified interpreters that live and work in the eight (8) counties we service. Also, through the provision of DRC's qualified sign language interpreters, D/deaf consumers are provided effective communication during medical appointments, mental health counseling, government agency meetings and other public services. For this service, please print and fill out the DRC Interpreter Request Form. The form is on the last page of this booklet, or it can be downloaded from our website www.drcpc.org. The form can then be mailed to 300 W. 5th Street; Panama City, FL 32401, emailed to outreach@drcpc.org or faxed to our Deaf Services Coordinator at (850) 769-6891. Price quotes can be obtained by calling (850) 769-6890 ext 305.

Telecommunications Relay

We are a Regional Distribution Center for Florida Telecommunications Relay Inc. (FTRI). FTRI is a statewide non profit 501(c)3 organization that administers the Specialized Telecommunications Equipment Distribution Program for citizens of Florida who are Deaf, Hard of Hearing, Deaf/Blind and Speech Disabled. FTRI is also responsible for the education and promotion of the Florida Relay Service.

The Florida Legislature passed the Telecommunications Access System Act (TASA F.S. 427) in 1991. The intent of TASA is to provide basic telecommunications services for Hard of Hearing, Deaf, Deaf/Blind, and Speech Disabled individuals, in the most cost effective way possible. TASA mandates that the FTRI equipment distribution program and the Florida Relay Service be funded by a monthly surcharge billed to all telephone customers (landlines) in the State of Florida. The specialized telephone equipment and ring signaling devices provided through this program are loaned to all qualified permanent Florida residents for as long as they need it, at no charge.

FTRI offers a variety of specialized amplified telephones, free of charge, to meet the need of persons with a mild, moderate, or severe hearing loss and specialized telephones to meet the needs of persons with speech impairments. FTRI offers a variety of amplified telephones to meet the need of persons with a mild, moderate, or severe hearing loss.

DRC partners with medical service providers to help educate their patients about the FTRI program, allowing the medical provider to refer qualified patients to the program. We would love to partner with your practice.

The following is taken from the following website:

http://www.pacificinterpreters.com/docs/resources/high-costs-of-language-barriers-in-malpractice_nhlp.pdf

Recommendations for Providers

The avoidable and unreasonably high risk of poor medical care to LEP (limited English proficient) patients, as well as the risk of legal exposure to health care providers, can be significantly reduced when competent language services are provided. To ensure necessary language services are available when needed, providers should collect and record accurate language data; recognize a patient's language needs at each key patient encounter; and document the language services provided throughout the series of patient-provider encounters.⁴¹ With accurate data, providers can identify needed language services and have the appropriate plans in place to ensure the timely provision of language services throughout the care continuum. This could include arranging for a competent interpreter before the patient's appointment; obtaining translated information about health benefits, notices of vaccinations, and other needed medical services or health education; and obtaining translated vital documents used during the health encounter such as consent forms and discharge instructions. Providers can use accurate language data to improve quality and eliminate health care disparities on a larger population basis. Greater appreciation of the significant consequences caused by language barriers can be gained by understanding problems discussed in the cases detailed in this report. Providers should consider following the seven recommendations, beginning with data collection and documentation:⁴²

1. Clearly and consistently document a patient's primary language in the patient's medical chart (and, for patients who are minors or incapacitated, the primary language of the patient's parent(s)/guardian(s));
2. Offer every LEP patient a competent interpreter at each provider encounter and, if refused, document the patient's response in the patient's medical chart;
3. Record the use of language services and name of the interpreter in the medical record;
4. Provide competent interpreters at each key point of non-healthcare contact (such as member services or billing) throughout in the health care encounter;
5. Document and describe the informed consent discussion, not merely the paper consent form, in the patient's chart also noting the use of a competent interpreter;⁴³
6. Translate informed consent forms, written discharge instructions and other key medical and legal documents into the primary language of the patient; additionally, explain the forms and provide time to answer any questions from the patient, using a competent interpreter. Document usage of translated documents and include translations in the patient's chart;⁴⁴ and
7. Use methods to ascertain the patient or patient's family's understanding of the provider's conversations, instructions, diagnoses, and other important verbal and written interactions.⁴⁵



Carol Davis
Deaf Services Coordinator

Phone: 850-769-6890
Fax: 850-769-6891
e-mail: cdavis@drcpc.org

*Serving Bay, Calhoun, Franklin, Gulf, Holmes,
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Disability Resource Center, Inc.
6300 W. 5th Street
Panama City, Florida 32405

www.drcpc.org

What if I Choose NOT to Provide an Interpreter

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 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 an 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.

Today, more and more deaf persons are standing up for their rights by following the US Department of Justice's 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.

A person who is deaf alleged that a medical practice in Pennsylvania refused to provide her with a sign language interpreter at their main office, even though they were willing to provide her with an interpreter at a satellite office that was not as convenient for her. The medical practice agreed to adopt a communication policy that is more effective; one that provides both auxiliary aids and services at all of their locations, as well as training for staff members in regards to the policy. The medical practice agreed to train its staff members in regards to the policy, post the policy in its offices, and pay the woman who complained \$2,000.

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.

Procedures

Admission: ER

Triage:

Many people with hearing loss do not use sign language or sign language interpreters. They rely on residual hearing, hearing aids, cochlear implants, and/or assistive listening devices; some use Communication Access Realtime Translation (CART) (which needs to be pre-arranged) or sign language interpreters. It is important to note that hearing aids and cochlear implants do not restore normal hearing. Cochlear implants are small, computerized, electronic devices that can provide sound to a person who has a severe, to profound, hearing loss. An implant does not restore normal hearing. Instead, under the appropriate conditions, it provides useful auditory understanding of the environment and speech. Hearing loss ranges from mild to profound and can vary across the frequency range, with many people experiencing a greater loss at the high frequency. With a mild loss, hearing is compromised in a noisy setting and with a moderate loss, people require a hearing aid or assistive listening device that amplifies sound. Those with a severe to profound hearing loss may need to utilize speech reading, written communication, and captioning. Speech reading, often called lip-reading, is useful as a supplement to residual hearing, although not everyone has this skill. In addition, some speakers are harder to speech read than others.

1. Identifying Hearing Loss

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Hospitals staff can identify a person with hearing loss if the person:

- asks to have things repeated often;
- misunderstands conversations;
- does not always respond when spoken to or responds inappropriately;
- indicates that he or she hears but does not understand;
- complains that people are mumbling;
- has trouble understanding when it is noisy or when in large group settings;
- has trouble understanding women's or children's voices but can understand deeper voices;
- has trouble understanding when the speaker's face is not visible;
- must be close to the person speaking in order to understand;
- has trouble understanding when spoken to from another room; does not react to loud noise;
- ignores sounds coming from behind;
- turns the TV or radio volume up loud;
- has trouble understanding on the telephone; strains to hear;
- turns head toward the person speaking;
- speaks too loudly or too softly; and has nasal speech or less distinct articulation.

2. Deaf Consumers

Most people that work in hospitals are not aware that there are two different types of mode

of communication: Tactile, American Sign Language (ASL); and Signing Exact English (SEE). If a deaf person uses ASL then it will be very hard for them to understand someone that uses SEE. The difference between the two is that SEE executes a sign for every word in a sentence where as ASL seeks to convey a concept. For example, if one were to sign "I have two sisters" in Signed English, I would make a sign for each word. In ASL, I might make the signs for "two" and "sister" and then point to one self, conveying the thought "two sisters, me." Also, ASL requires knowledge of signing space, gestures, and facial expressions. When someone is signing SEE, they place the word order the same as one does when writing English. Hospital staff should identify the consumers preferred mode of communication and relay this information to appropriate staff in all units throughout the hospital.

Interpreter Policy-State registered Interpreter must be contacted upon the consumer's arrival at the hospital.

A state registered Interpreter should be contacted at all times even if a family or friend of the consumer is capable of communicating. (See Family and Friends section)

3. While waiting for the interpreter, the following assistive devices/services can be utilized:

TTY;
Video Relay equipment / VRI;
telephone amplifiers;
hearing aid compatible phones;
voice carryover text telephones;
captioned telephones (such as CapTel made by Ultratech);
the UbiDuo (a portable, wireless, battery-powered, stand-alone communication device that facilitates simultaneous face-to-face communication by means of two displays and two keyboards);
Kwikpoint Visual Language Translators; and
communication cards. The communication cards are usually kept at the hospitals for use with patients,
and it is suggested that the hospital staff have one or more available in strategic locations, i.e., emergency rooms, patients' rooms, nurse stations, patient relations offices, etc.

4. Signs should be posted to direct the deaf, hard of hearing, and deaf-blind consumers toward information about assistance with communications devices.

To facilitate communication between hospital staff and deaf, hard of hearing and deaf-blind consumers, standardized signage should be posted at admissions, registration and

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Admission: ER

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emergency care areas. The signage should state that the hospital provides reasonable accommodations free of charge. Posted signs should specifically mention the availability of assistive listening devices and CART (real time captioning) as well as interpreters by displaying the appropriate symbols (shown as below). Written information listing available auxiliary aids and services for communication access should also be provided to consumers when they arrive. Posted signs should specifically mention the availability of assistive listening devices and CART as well as interpreters by displaying the appropriate symbols. The symbols for assistive strategies are as shown below:

5. Personal interaction with consumers who are Hard of Hearing

Keep in mind that some consumers may not be aware that they are losing their hearing.

Ask the consumer how you can best communicate with him or her or what are the proper accommodations that they need to communicate effectively.

Keep in mind that many people with hearing loss generally know what would facilitate communication. This includes type of interpreter if required.

Don't attempt to communicate when there is a great deal of noise in the background.

Write down important information that may be misunderstood.

Be aware that some people who have been hard of hearing since childhood have limited English proficiency, and notes may not be effective for them.

Get the consumer's attention first by touching or by waving your hand so that the person is looking at you before you begin talking.

Face the consumer when communicating and ensure there is adequate lighting.

Avoid any lights or windows behind yourself.

If the consumer normally wears glasses, make sure that he or she is wearing them in order to be able to speechread, read notes, use communication cards, etc.

Ensure that your mouth is visible and clear of hands, pencils, gum, and food so your speech can be more easily seen. Be aware that it is difficult for the consumer to speechread if the consumer has to look up.

Do not shout as this distorts speech and makes it harder for the consumer to understand.

Speak clearly and at a natural pace, neither too rapid nor too slow, taking care not to over-enunciate.

Use short sentences and rephrase, instead of continually repeating if necessary.

Check that the consumer fully understands what you have communicated.

People who are hard of hearing will often smile and nod as if they understand you even when they did not.

To verify, ask the person to repeat back what you have said, and give notes to consumers to refer to and follow up at later time.

Be aware that it may be difficult for hard of hearing people to understand staff members with accents.

Get another staff member with clear spoken English if the consumer has trouble understanding an accent.

Provide a one-to-one communicator if the consumer doesn't use a hearing aid.

Go over to the consumer in a waiting area instead of calling his or her name or using an intercom. Convey any important information prior to the surgical staff entering a sterile environment wearing surgical masks (which prevents speechreading) and prior to removing hearing aids and cochlear implants.

Allow the consumer to use hearing aids, cochlear implants, one-to-one communicators, and glasses (for speechreading) until the last possible moment before being anesthetized. The staff should be trained on how to remove and put hearing devices back in.

Ensure that these devices are secure and made available as soon as the consumer is able to resume using them. Hospital Employees must be trained properly in order to use these techniques, procedures, and devices in the right manner.

Individuals who are hard of hearing may not hear as well if they are tired or ill and will not be able to hear when hearing aids and cochlear implants are removed, as for sleeping. The means by which staff communicates with the consumer will change based on whether the consumer is using the device. Therefore, it should be established in advance of removing the device how communication will take place after removal.

Family and Friends

Patients who are deaf, deaf-blind and hard of hearing should be communicated directly by all hospital personnel. There may be family members and/or friends who may be present and they should generally be excluded from one-on-one dialogues with patients.

Friends and family are NOT an appropriate substitution for a qualified interpreter.

Family or friends should not be made responsible for telling the consumer what is going on.

If a family member or friend accompanying the consumer is a person who is hard of hearing, the same accommodations should be used for family/friends as the ones for a consumer with the same disabilities.

Make sure that there is an interpreter there, or other listening or communication devices are available upon their arrival.

If a family member or friend brings a consumer that is deaf-blind to the hospital with them, then that family member should help guide that person to the correct place designated for consumers who are deaf, hard of hearing, or deaf-blind so the hospital can get the right accommodations for them. This will help them get the proper listening and communication devices and also help them get registered and admitted to the hospital faster than if they were by themselves.