

Information on Providing Interpreters for Hearing Impaired Patients

The Americans with Disabilities Act:

Under the ADA, any place of public accommodation may not discriminate against an individual with a disability. 42 U.S.C. § 12182(a). Offices of professional health care providers and hospitals are included under the statute as a place of public accommodation. 42 U.S.C. § 12181(7)(F).

The ADA requires providers to take steps to ensure "effective communication" with individuals with disabilities. 28 C.F.R. § 36.303(c). In essence, effective communication is facilitated with a deaf patient when the provider uses a level of auxiliary aid that will ensure that a deaf patient is not treated differently than others. Auxiliary aids for the deaf under the ADA include qualified interpreters, note-takers, computer aided transcription services, and telephone compatible hearing aids. 24 C.F.R. § 36.303.

The provider is required to use "reasonable" practices when providing services to deaf patients. Therefore, other auxiliary aids such as note taking and computer aided transcription may be used instead of an interpreter for visits involving minor illnesses such as a cold. For a minor visit, it may be reasonable, based on the communication skills of an individual patient, for a physician to communicate via note writing rather than an interpreter. However, a physician must also ensure effective communication while discussing more complicated medical issues. For example, it is likely that an interpreter will be needed when discussing complex patient issues such as a complex diagnosis, prognosis, and recommendation for treatment or informed consent for surgery.

Providers should also have reasonable policies and procedures in place to provide services to people with disabilities. 24 C.F.R. § 36.302. That is, providers should have policies in place to address accommodations provided for individuals with disabilities such as deaf patients.

Physicians are generally required to pay for interpreter service, unless the provider meets an exception under the ADA. The ADA grants an exception to the provider if the accommodation may "fundamentally alter the nature of the goods [and] services . . ." or presents an "undue burden" to the provider. 28 C.F.R. § 36.303(a).

An "undue burden" is described as a significant difficulty or significant expense to the provider. To determine if a cost qualifies as an undue burden, the provider must weigh several factors including the overall cost and nature of the of the service, the overall financial resources of the entity, and type of entity involved. 28 C.F.R. § 36.104. Even if the cost of the interpreter exceeds the cost of the patient visit, the provider is still required to pay unless an undue burden exists.

If the service fundamentally alters the nature of the goods and services provided, then the provider may qualify for an exemption. For example, the Department of Justice

states that it would not be discriminatory under the ADA for a provider who only treats burn patients, to refer a deaf patient to another physician for treatment of a broken limb. Stating that requiring a physician to accept a patient outside of the provider's specialty would fundamentally alter the nature of the medical practice. However, even if one of the exemptions apply, the provider is still required to furnish an alternative auxiliary aid or service to the patient, if one exists, to ensure "to the maximum extent possible" that the patient may receive services. 28 C.F.R. § 36.303(f).

The Rehabilitation Act of 1973: "Section 504":

Section 504 of the Rehabilitation Act of 1974 prohibits programs receiving Federal financial assistance from discrimination against individuals with disabilities. 29 U.S.C. § 794(a). There is some case law implying clinics receiving Medicare and Medicaid funds may qualify under Section 504 as an entity receiving federal funds, although Section 504 is most often applied to hospitals. *See, Davis v. Flexman*, 109 F. Supp. 2d 776 (1999) (agreeing with precedent stating health clinics receiving Medicare and Medicaid funds qualify under section 504). Section 504 requires facilities employing over fifteen people to provide "an equal opportunity" for individuals with "impaired sensory skills" to benefit from services. 45 C.F.R. § 84.52(d).

Auxiliary aids include "brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision." 45 C.F.R. 84.52(d)(3). The primary exemption in Section 504 states, recipients with fifteen or fewer employees are not required to provide auxiliary aids unless required by the director of Health and Human Services. 45 C.F.R. § 84.52(d)(2).

Ohio Law:

Ohio statutes and regulations applicable to disability discrimination include Ohio Revised Code § 4112.02 and Ohio Administrative Code § 4112-5-06. These provisions have been interpreted in case law to apply primarily to structural accommodations of facilities. Therefore the court has held, in the past, that these provisions pertain more to facility access of individuals with disabilities than accommodations to individuals with disabilities. *See Davis v. Flexman*, 109 F. Supp. 2d 776 (1999) (the Ohio Revised Code Statute and Rule discussed here were not applicable to a clinic providing psychological services that did not provide an interpreter for a deaf client).

Analysis and Summary:

As noted in a 2005 news letter highlighting the activities of the group, the Deaf and Deaf-Blind Committee on Human Rights ("DDBCHR") in North Olmsted have previously expressed concerns with the "reasonableness" of provider choice of communication with deaf individuals. Specifically, English is often a second language for many people who communicate by American Sign Language, and therefore note taking between provider and patient may not be appropriate. The group is also concerned that family members and friends are asked to translate where privacy and emotions may inhibit effective communication. Admittedly, these are valid concerns under the applicable laws. However, physicians are not necessarily required to provide interpreters

in every circumstance, but is required to use reasonable practices to ensure effective communication.