

Medical Office Accommodation for the Deaf, the Hard of Hearing, and Those with Limited English Proficiency

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We routinely receive questions from physician's offices and hospitals on what level of accommodation the law requires for deaf or hard of hearing individuals or those with limited English proficiency. The extent of the requirements and the government's expectation for who must cover the expense may surprise you.

Accommodating deaf or hard of hearing individuals

The Americans with Disabilities Act of 1990 (“**ADA**”) prohibits discrimination on the basis of disability in places of public accommodation, including health care facilities regardless of size. Health care facilities must provide appropriate auxiliary aids and services to ensure effective communications with disabled individuals and their companions.

Effective communication with a deaf or hard of hearing individual may include, for example, the following auxiliary aids: the use of sign language interpreters, written materials, the exchange of notes, video interpreting services, and other similar devices and services. The type of auxiliary aid necessary to ensure effective communication depends on the nature, length, and complexity of the communication required, and the regulations in this area are flexible. Therefore, the appropriate auxiliary aid required depends on the circumstances.

Effective communication for simple and routine procedures is likely achieved by simply exchanging notes and gestures with a deaf or hard of hearing individual. For example, auxiliary aids of this type are appropriate where a health care provider records blood pressure and weight during a routine check-up. However, situations that require communication of complex, time sensitive, or relatively important topics likely require a sign language interpreter to ensure effective communication. For example, a patient who exhibits symptoms of a stroke and requires a thorough examination and battery of tests likely requires an interpreter to ensure effective communication.

Notably, surcharges on a disabled individual to cover the costs of auxiliary aids are illegal. The Department of Justice's ADA Manual contains the following example: “[i]n order to ensure effective communication with a deaf patient during an office visit, a doctor arranges for the services of a sign language interpreter. The cost of the interpreter's services must be absorbed by the doctor.” There are, however, exceptions where the expense of providing effective communication would be an “undue burden,” but establishing these circumstances is difficult. Moreover, the health care facility must still provide an alternative aid or service that would not be an undue burden and, to the maximum extent possible, provide effective communication.

Accommodating individuals with limited English proficiency

In addition to laws regulating communication with deaf or hard of hearing individuals, there are also regulations on the level of accommodation that is required for those with limited English proficiency (“**LEP**”). The legal precedent for providing assistance to LEP patients is not

as well established as that for deaf and hard of hearing patients, but the Department of Health and Human Services (“HHS”) has issued guidance that outlines certain requirements for some health care facilities.

Federal government agencies, including HHS, have determined that the failure to provide meaningful access to services for LEP persons is potentially discrimination based on national origin. Drawing on Title VI of the Civil Rights Act of 1964, HHS regulations require all recipients of federal financial assistance from HHS to provide meaningful access to LEP persons. Financial assistance includes federal grants, training, use of equipment, and other sources received directly or indirectly.

Health care facilities benefiting from such financial assistance must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. Like the regulations for accommodating deaf and hard of hearing individuals, the standards for LEP persons are flexible. The required accommodation depends on certain factors: (1) the number of potential LEP patients a program will encounter; (2) the frequency of LEP patients; (3) the nature and importance of the service; and (4) the resources available to the health care facility. The type of accommodation ranges from using volunteer or paid interpreters, using a telephone interpreter service, and hiring bilingual staff.

Conclusion

Federal law requires health care facilities to reasonably accommodate deaf or hard of hearing individuals and those with LEP. The degree of accommodation depends largely on the information that must be communicated, but there are other considerations as well. In most cases, the health care facility must cover the costs of accommodation.