

Disability Discrimination under ADA

- No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C.A. § 12182 (a)

- Discrimination includes a failure to take such steps as 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 entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.

42 U.S.C.A. § 12182 (b)(2)(A)(iii)

- ADA requires businesses to take the steps necessary to communicate effectively with customers with disabilities regardless of the business' size or number of employees.
- A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

28 C.F.R. § 36.3019 (c)

- If the health care provider refuses to pay sign language interpreting fees and asks the patient to bring their own interpreter, this is considered discrimination.
- The health care provider refuses to hire a qualified sign language interpreter and uses other modes of communication such as writing notes, but the patient is not able to communicate effectively or understand him/her; that is considered discrimination.
- The health care provider provides an unqualified sign language interpreter, is considered discrimination.
- The health care provider requests that your family member or friend interpret for you.

Legal Resources

U.S. Department of Justice: (202) 514-0716

- www.justice.gov/crt/index/php
- ADA Business Brief on Communicating with People who are Deaf and Hard of Hearing in Hospital Settings: <http://www.ada.gov/hospcombr.htm>
- Final Regulations implementing the ADA Title II & Title III on Effective Communication: <http://www.ada.gov/effective-comm.htm>

Americans with Disabilities Act: 800-514-0301

- www.ada.gov
- File an ADA complaint about disability discrimination at:
 - * <http://www.ada.gov/complaint/>
 - * ADA.complaint@usdoj.gov
 - * (202) 307-0663
 - * www.justice.gov/crt/complaint/

State & National Deaf Advocates

National Association of the Deaf: (301) 328-1443

- The nation's premier civil rights organization of, by and for deaf and hard of hearing individuals in the U.S.
- Questions and Answers for Health Care Providers: <http://www.nad.org/issues/health-care/providers/questions-and-answers>
- Additional Information on Hospitals and Other Health Care Facilities: <http://www.nad.org/issues/health-care/providers/hospitals>

Advocacy Center: 800-960-7705

- Federal law requires that a protection and advocacy system operate in every state to protect the rights of persons with mental or physical disabilities.

Louisiana Commissions for the Deaf: 800-256-1523

- Provides accessibility services for persons whom are Deaf to gain equal access to any public or private service.

Tax Incentives

Tax Incentives for Improving Accessibility:

- Businesses may utilize two tax initiatives for the costs incurred in providing ADA accessibility.
- There is a Tax Credit and a Tax deduction available for businesses at: <http://www.ada.gov/archive/taxpack.pdf>
- DISABLED ACCESS TAX CREDIT
(Title 26, Internal Revenue Code, Section 44)
www.eeoc.gov/facts/fs-disab/html

***Disclaimer:** This brochure should be used for informational purposes, not as legal advice. If there are issues in obtaining accommodations in a medical setting, contact an attorney.

Deaf Individuals Legal Rights to a Sign Language Interpreter In Medical Settings



I communicate using American Sign Language (ASL) and require the use of an ASL interpreter for effective communication and equal access, under Title II of the Americans with Disabilities Act (ADA) & Section 504 of the Rehabilitation Act of 1973.

Call my preferred Interpreting Agency:

Preferred Interpreters:

Health Care Providers Are Required to Provide Effective Communication

- Healthcare providers have a duty to provide patients who are deaf with auxiliary aids and services, including qualified sign language interpreters to provide effective communication.
- All healthcare providers are covered by federal laws and required to provide an auxiliary aid or service under state and federal laws. This applies to, among others, programs and services, Medicaid or Medicare providers, physicians in private practice, clinics, hospitals, and other health care providers such as dentists, podiatrists, and psychologists or counselors, regardless of the size of the practice.

Legal Provisions

- *Auxiliary Aids and Services* includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments. **42 U.S.C.A. § 12103 (1)(A)**
- The healthcare provider has the obligation to provide sign language interpreters to ensure effective communication with patients who are deaf: "A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities." **28 C.F.R. § 36.303 (c)**
- Sign language interpretation must be provided to allow a patient who is deaf to effectively communicate with health care providers, i.e. physicians, nurses and other staff members.

Americans with Disabilities Act (ADA)

- The Americans with Disabilities Act (ADA) requires all public facilities to provide reasonable accommodations to individuals with disabilities.
- In order to provide equal access, all public entities are required to provide auxiliary aids and services (i.e. sign language interpreting services) to ensure **EFFECTIVE** communication.
28 C.F.R. § 36.303(c)
- Providing an interpreter allows the opportunity for both parties to fully understand what is being com-

Louisiana Revised Statutes

LA Rev Stat § 22:245:

Insurance: Hearing Impaired Interpreter Expenses

As a requirement for authorization to do business in this state pursuant to R.S. 22:244, all health maintenance organizations shall provide coverage for expenses incurred by any hearing impaired enrollee for services performed by a qualified interpreter, other than a family member of the enrollee, when such services are used by the enrollee in connection with medical treatment or diagnostic consultations performed by a health care provider.

LA Rev Stat § 22:1027:

Insurance: Hearing Impaired Interpreter Expenses

Any hospital or medical expense insurance policy delivered or issued for delivery in this state on or after December 1, 1991, shall contain a provision or endorsement requiring payment for expenses incurred by the insured for services performed by a qualified interpreter, other than a family member of the insured, when such services are used by the insured in connection with medical treatment or diagnostic consultations performed by a physician, dentist, chiropractor, or podiatrist, provided such medical treatment or consultation is covered under said insurance policy and provided the services are required because of a hearing impairment of the insured or a failure of the insured to understand or otherwise communicate in spoken language.

LA Rev Stat § 40:2208:

Public Health & Safety: Hearing Impaired Interpreter Expenses; Coverage

As a requirement for authorization to do business in this state pursuant to R.S. 40:2203, all preferred provider organizations shall provide coverage for expenses incurred by any hearing impaired covered patient for services performed by a qualified interpreter, other than a family member of the covered patient, when such services are used by the covered patient in connection with medical treatment or diagnostic consultations performed by the health care provider.

***Please Note:** Although there are charges incurred to have an interpreter, the state laws above make it clear that insurances can be billed.

- BlueCross BlueShield of Louisiana, Magnolia Local Plus manual (p.55) states, "Interpreter Expenses for the Hearing Impaired: **Services performed by an In-Network qualified interpreter are covered at 100%** of the allowable charge when the Plan participant needs such services in connection with medical treatment or diagnostic consultations performed by a Physician or Allied Health Professional, if the services are required because of the Plan Participant's hearing impairment or his failure to understand or otherwise communicate in spoken language."
- Medicaid & Medicare: State laws above can be used to request coverage of fees incurred by sign language interpreting services.

Who is Entitled to a Sign Language Interpreter?

- Any patient who is deaf, including those seeking or receiving services from a health care provider, is entitled to a qualified sign language interpreter for effective communication.
- A qualified sign language interpreter is strongly recommended to explain diagnosis and prognosis, provision of informed treatment recommendations and decisions, and instances requiring the consent of the patient who is deaf.
- Sign language interpreters must be qualified, and be able to interpret effectively, accurately and impartially, both receptively and expressively.
- *The use of family members or friends of the patient is not appropriate because of the qualifications to interpret effectively, accurately, and impartially.

Healthcare Providers Responsibilities

- Healthcare providers have an obligation to ensure effective communication when the patient expresses the need for it, or when it is evident.
- Each patient who is deaf has different needs and preferences regarding their mode of communication, desired profile of interpreters, and the services interpreters provide. Therefore, before deciding what type of auxiliary aid or service is necessary, health care providers are strongly encouraged to consult the patient.
- Healthcare providers have the responsibility to make arrangements with sign language interpretation services and to cover the cost.
- The cost may never be charged to the patient, and a health care provider shall not refuse to serve the person with a disability because his/her insurance company does not cover the costs.

Can the Healthcare Provider Use Other Auxiliary Aids & Services?

- The effectiveness of alternative auxiliary aids and services varies among patients who are deaf and requires individualized assessment.
- **Written communication may not be appropriate for a patient who is deaf whose primary language is sign language.**
- The use of Video Remote Interpreting (VRI) does not replace the high standard of on-site interpretation and its use must be assessed with the patient's mode of communication, needs and preferences, and the specific situation.