



Regulatory Compliance Topics

Americans with Disabilities Act and Hearing Interpreters

The Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 U.S.C. §12101, *et seq.*, the first civil rights measure to thoroughly address the discrimination facing the disability community, ensures a level playing field for persons with disabilities with respect to employment and access to goods and services offered by private, state, and local government entities. The prohibition against discrimination on the basis of disability includes an obligation to make reasonable accommodations to meet the needs of patients with disabilities. This has been interpreted by some as creating a requirement that physicians provide and pay for the cost of hearing interpreters for their patients who are hearing disabled. While there will be instances where a physician must provide a hearing interpreter, there is no hard and fast requirement for the provision of such services.

The ADA requirement to provide "auxiliary aids and services" includes a responsibility of making aurally delivered materials accessible for hearing disabled patients. This may be accomplished through multiple means, including qualified interpreters, note taking, written materials, and telecommunications devices for deaf persons. The first step is to determine, in consultation with the patient, the appropriate auxiliary aid or service. In some instances, such as when a conversation is particularly important relative to the care and services being provided, or is particularly complex, effective communication may only be ensured through the use of a qualified interpreter. No special accreditation is needed to meet ADA standards, and qualified interpreters may include: family members or friends, as long as they are effective, accurate, impartial (especially in personal or confidential situations), and an acceptable choice to the patient; personnel from the practice or facility; or interpreters from interpreter services.

The ADA does not mandate the use of interpreters in every instance. The health care professional can choose alternatives to interpreters as long as the result is effective communication. Alternatives to interpreters should be discussed with hearing impaired patients, especially those not aware that such alternatives are permissible under the Act. Acceptable alternatives may include: note taking; written materials; or, if viable, lip reading. A health care professional or facility is not required to provide an interpreter when:

- it would present an **undue burden**. An undue burden is a significant expense or difficulty to the operation of the facility. Factors courts use to determine whether providing an interpreter would present an undue burden include the practice or facility's operating income and eligibility for tax credits, and whether it has sources of outside funding or a parent company. Courts also consider the frequency of visits that would require the services of an interpreter. However, the single factor of the cost of an interpreter exceeding the cost of a medical consultation generally has not been found by the courts to be an undue burden.

or,

- it would **fundamentally alter** the nature of the services normally provided. For example, in sensitive situations, utilizing a family member as an interpreter, or an interpreter not affiliated with the practice or facility, may be inappropriate.



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Where use of an interpreter would fundamentally alter the nature of the services provided or constitute an undue burden (difficult elements to prove in a court action), the physician permitted to refer the patient to another physician, if alternatives are not viable.

The health care professional determines whether an interpreter or other alternative is necessary to ensure effective communication. Some circumstances will call for the use of a qualified interpreter more than others. For example, a consultation with a hearing impaired person for a routine matter may warrant only use of a pen and paper as an alternative. However, more complicated situations with serious ramifications may necessitate the use of a qualified interpreter.

Although the health care professional makes the final decision regarding use of an interpreter or other alternative, the patient's choice should be given primary consideration. Also, the reasonableness of a determination not to provide an accommodation may be challenged in court in an enforcement action. If there is a disagreement between the health care professional and the patient over the need for a qualified interpreter, the effectiveness of each viable option should be discussed. Factors or options for consideration include whether an option presents an undue burden to the practice or facility, and what option or options would ensure effective communication.

Courts have found an ADA violation where the health care professional decides not to use an interpreter and there is evidence that the method used did not result in effective communication.

The health care professional or facility responsible for the care must pay for the cost of an interpreter. Health care professionals or facilities cannot impose a surcharge on an individual with a disability directly or indirectly to offset the cost of the interpreter. The cost of the interpreter should be treated as part of overhead expenses for accounting and tax purposes. Tax relief is available for expenditures made toward interpreters. The Internal Revenue Service may allow a credit of up to 50% of cumulative eligible access expenditures made within the taxable year that exceed \$250 but do not exceed \$10,250. This tax credit may be applied to reasonable and necessary business expenditures made in compliance with ADA standards in order to provide qualified interpreters or other accessible tools for individuals with hearing impairments.