



State of New Jersey

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF THE DEAF AND HARD OF HEARING**

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**Memorandum On The Obligation Of Doctors And Other Health Care
Providers Under The Americans With Disabilities Act (ADA)**

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against deaf and hard of hearing people in places of public accommodation. Included within the definition of places of public accommodation is any "professional office of a health care provider," regardless of the size of the office or the number of employees. 28 C.F.R. 36.104. The ADA therefore applies to doctors, dentists, psychiatrists and psychologists, hospitals, nursing homes and health clinics, and all other providers of mental and physical health care.

Places of public accommodation must be accessible to individuals with disabilities. For deaf and hard of hearing people, this means that they must remove barriers to communication. Doctors and health care providers must make sure that they can communicate effectively with their deaf patients and clients by providing "auxiliary aids and services" for these individuals:

- (c) Effective communication. 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.

"Auxiliary aids and services" expressly include qualified interpreters, transcription services, and written materials, as well as the provision of telecommunications devices for the deaf (known as TDDs or text telephones), telephone handset amplifiers, television decoders and telephones compatible with hearing aids. 28 C.F.R. 36.303 (b) (1).

For individuals who use sign language, interpreters are often needed to provide safe and effective medical treatment. Unless a doctor can communicate effectively and accurately with a patient, there is a grave risk of not understanding the patient's symptoms, misdiagnosing the patient's problem, and prescribing inadequate or even harmful treatment. Similarly, patients may not understand medical instructions and warnings or prescription guidelines without the provision of an interpreter.

The doctor may not charge the patient for the cost of interpreter service, either directly or by billing the patient's insurance carrier:

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, barrier removal... and reasonable modifications...that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

28 C.F.R. 36.301 (c).

The Justice Department regulation defines a "qualified interpreter" as follows:

Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

28 C.F.R. 36.104. The Justice Department warns that family members and friends may not be able to provide impartial or confidential interpreting in the medical context, even if they are skilled sign language users:

In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret "effectively, accurately, and impartially."

56 Fed. Reg. 35553 (July 26, 1991).

When there is a dispute between the health care provider and the deaf individual as to the appropriate auxiliary aid, the Justice Department strongly urges the doctor to consult with the deaf person about the effectiveness of a proposed auxiliary aid. It also cautions that complex discussions, such as those about health issues, may require interpreter service if that is the communication method used by the deaf individual:

The Department wishes to emphasize that public accommodations must take steps necessary to ensure that an individual with a disability will not be excluded, denied services, segregated or otherwise treated differently from other individuals because of the use of inappropriate or ineffective auxiliary aids. In those situations requiring an interpreter, the public accommodations must secure the services of a qualified interpreter, unless an undue burden would result.

It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication.

56 Fed. Reg. 35566-67 (July 26, 1991). Typical examples of situations in which interpreters should be present are obtaining a medical history, obtaining informed consent and permission for treatment, explaining diagnoses, treatment and prognosis of an illness, conducting psychotherapy, communicating prior to and after major medical procedures, explaining patient care upon discharge from a medical facility.

Source:

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