



Medical Providers and the Americans with Disabilities Act

Part 2: Effective Communication

The Americans with Disabilities Act (ADA) is a federal civil rights law that prohibits discrimination against individuals with disabilities and requires medical providers to make their services accessible. Last month, Part 1 of this series offered an overview of the ADA. In Part 2, we consider what the ADA says about providing effective communication to patients who are deaf, hard of hearing, blind or have low vision.

The ADA states that medical practitioners must provide appropriate auxiliary aids and services to ensure effective communication with patients who have sensory disabilities or with a patient's companion who has a disability when that companion is someone with whom the medical provider would normally communicate. Auxiliary aids and services may include qualified sign language interpreters, video remote interpreting services, exchanging written notes, assistive listening systems, captioning, computer-assisted real time transcription services (CART), written materials, electronic documents accessible to screen readers, qualified readers, Braille, large print, etc..

The choice of auxiliary aid or service should be individualized for each patient and for each situation. The nature, length, importance, context and complexity of the communication should be considered as well as the patient's preferred communication method and health status. For individuals who are deaf, their skill with English should be considered. For many such individuals, their native language is American Sign Language and English is a second language. If their skills with English have not been fully developed, their skills at reading and writing English may be poor. Whichever auxiliary aid or service is chosen, it must result in effective communication.

Many settlement agreements regarding effective communication have arisen between medical providers and the Department of Justice (DOJ) which provide clear direction as to what type of circumstances call for the provision of a sign language interpreter. These include the determination of a patient's medical history and description of ailment or injury; determination and explanation of a patient's diagnosis or prognosis; explanation of procedures, tests, and treatment options; explanations of medications prescribed; explanation of follow-up treatment; explanation of patient's rights, informed consent or permission for treatment; provision of mental health services; educational presentations; and explanation of complex billing or insurance issues.

Medical providers must provide and pay for auxiliary aids and services under the ADA. A patient with a disability cannot be charged for those auxiliary aids and services but can only be charged the same fees as everyone else. However, there are tax deductions and credits available to help offset the cost. In addition, the DOJ expects medical providers to treat the cost of auxiliary aids and services as an overhead expense. Just as you would plan ahead to cover the cost of electricity, you should plan ahead to cover the cost of auxiliary aids and services. Budget in advance and spread the cost among all patients just as you spread the cost of electricity among all patients. Because the DOJ expects medical providers to plan in advance, they generally do not allow providers to claim the cost of an interpreter as an undue burden.

Under the ADA, medical providers cannot require an individual who is deaf to bring their own interpreter. Providers cannot require a companion or a child to interpret. Also, a provider should not use a staff member who “signs pretty well” as an interpreter. Signing and interpreting are two different things. A qualified interpreter has received specialized training to be able to interpret, and a person who signs but has not been trained to interpret is not going to be capable of providing effective communication. Medical providers want interpreters who are able to accurately, effectively, impartially and confidentially interpret otherwise you will open yourself up to liability issues.

Always remember that the ADA does not allow medical providers to deny service to a patient with a disability simply because of their disability if it is person whom they would otherwise serve.

For additional information regarding effective communication and the ADA, please contact the Rocky Mountain ADA Center at 1-800-949-4232. The Rocky Mountain ADA Center is available to answer questions, provide trainings and disseminate materials regarding the ADA.