

Effective Communication for people who are Deaf and Hard-of-Hearing

The Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) is a law that makes it illegal to discriminate against people with disabilities, including people who are Deaf and people who are Hard-of-Hearing (Deaf/HH). The ADA requires that Title II entities (State and local government) and Title III entities (businesses and nonprofit organizations that serve the public) communicate effectively with people who are Deaf/HH.

Specifically, the ADA states:

“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.”

Additionally, 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...”

Auxiliary Aids and Services

The ADA definition of “auxiliary aids and services” includes “qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.”

Examples of auxiliary aids and services for people who are Deaf/HH include, but are not limited to:

- Video Relay Service (VRS)
- Open and closed captioning
- Transcription services
- Written materials
- Telephone handset amplifiers
- Assistive listening devices
- Qualified interpreters
- Qualified note takers
- Video text displays
- Computer-aided transcription services
- Telephone compatibility with hearing aids
- Any other effective means

The auxiliary aid requirement is a flexible one. The goal is to find an effective means of communication that is appropriate for the particular circumstance. In some cases, the ADA specifies that an effective form of communication may consist simply of a written note, however, if a conversation is more complicated— such as explaining a patient’s symptoms, or a medical procedure — a qualified ASL interpreter may be necessary.



This fact sheet has general information. It is not intended as legal advice. Only an attorney can give you legal advice to help you with a problem or answer a question.

Effective Communication

Appointments with much communication, or new/complex information, may require a sign language interpreter to assure that the information is communicated effectively. For example, your doctor should use a sign language interpreter to explain a new medication, treatment, or procedure, or to obtain your informed consent. However, a sign language interpreter may not be necessary to refill prescriptions or for follow-up and routine appointments. The ADA also extends beyond medical settings to cover legal, education, law enforcement, and employment systems.

Use of Interpreters

If effective communication is provided through an interpreter, it is important to remember that the interpreter must be qualified. A “qualified” interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to the person) using any necessary specialized vocabulary. (28 C.F.R. Sec. 35.104 303(c)(ii))

NOTE: If a family member or friend can sign, it does not make them a qualified interpreter. There may also be issues of emotional involvement and confidentiality to consider.

Companions

In many situations, covered entities communicate with someone other than the person who is receiving their goods or services. For example, school staff usually will talk to a parent about a child’s progress; hospital staff often talk to a patient’s spouse, other relative, or friend about the patient’s condition or prognosis. The rules refer to such people as “companions” and require covered entities to provide effective communication for companions who have communication disabilities.

(28 C.F.R. Sec. 35.160(a) Title II, 28 C.F.R. Sec. 36.303(c) Title III)

Responsibilities

According to ADA standards, it is usually up to the institution in question to provide—and pay for—any necessary auxiliary aids and services. However, it is the responsibility of the individual who is Deaf/HH to inform the entity that they need an interpreter, or auxiliary aid/service.

When choosing an aid or service, Title II entities are **required** to give primary consideration to the choice of aid, or service requested, by the person who has a communication disability. Title III entities are encouraged to consult with the person with a disability to discuss what aid or service is appropriate.

(28 C.F.R. Sec. 36.303 Title II, 28 C.F.R. Sec. 104 Title III)

The key phrase used by the ADA when it comes to individuals who are Deaf/HH, is “effective communication”. Whatever is necessary to ensure effective communication is required, by law, to be done. However, what is “necessary” depends on many factors, including the context, complexity, and purpose of the interaction.

For more information

If you have further questions, or would like more information in general, please contact Disability Rights Montana. Our services are offered statewide and free of charge.

Call 1-800-245-4743 or visit our office to speak confidentially with an Advocate. Office hours are Monday-Friday, 8:00 AM to 4:00 PM.



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