

**OFFICE OF THE ATTORNEY GENERAL
CIVIL RIGHTS BUREAU
Disability Rights Project**



**ACCESSING
EFFECTIVE COMMUNICATION**

**For persons who are deaf, hard of hearing, or
have a speech impairment and legal obligations
of the health care provider and the patient**

Eric T. Schneiderman
Attorney General





**STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
ALBANY, NY 12224**

ERIC T. SCHNEIDERMAN
Attorney General

Dear New Yorker:

Individuals with disabilities are entitled, as a matter of law and social justice, to fair and equal opportunities in all aspects of their daily lives.

For all individuals who are deaf, hard of hearing, or have a speech impairment, communication must be effective to achieve full and equal accessibility to goods and services.

The following information is provided to facilitate communication access and ensure compliance with state and federal law.

I hope this information is useful. If you have any questions, please contact my Civil Rights Bureau at (212) 416-8250(Voice) or (800) 788-9898 (TDD).

Sincerely,

ERIC T. SCHNEIDERMAN

ACCESSING EFFECTIVE COMMUNICATION

QUESTIONS AND ANSWERS

Q. What is the obligation of health care providers under the Americans with Disabilities Act (ADA) for individuals who are deaf, hard of hearing or have a speech impairment?

A. Health care providers have a duty to provide auxiliary aids and services that ensure that communication with people who have speech impairments or who are deaf or hard of hearing is as effective as communication with others.

Q. For who must a health care provider offer effective communications?

A. A health care provider must ensure that effective communication is available to customers, clients, and other individuals who are deaf, hard of hearing, or have a speech impairment and who are seeking or receiving services. Such individuals may not always be “patients” of the health care provider. For example, a deaf parent of a hearing child may require an auxiliary aid or service to give informed consent for the child’s treatment.

Q. What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals who are deaf, hard of hearing, or have a speech impairment?

A. Appropriate auxiliary aids and services are required by the ADA to ensure effective communication. According to the federal rules, appropriate auxiliary aids and services may include, but are not limited to: qualified interpreters (manual or oral), assistive listening devices, notetakers, written materials, telephone handset amplifiers, telephones

compatible with hearing aids, videotext real time captioning devices, television decoders, and teletype machines (TTYs).

Q. How does a health care provider determine which auxiliary aid or service is required?

A. The auxiliary aid requirement is flexible. There are many types of auxiliary aids and services available. The intent of the law is to encourage discussion between the health care provider and the person with a disability to arrive at an agreement as to what type of auxiliary aid will result in effective communication. Several factors should be discussed, such as the complexity of the communication, the urgency of the communication, and reasonable advance notification of the need for communication assistance by the individual with the disability. A choice can then be made by the provider among the various alternatives as long as the result is effective communication for all parties involved. The United States Department of Justice, which is charged with enforcement of Title III of the ADA, experts that the health care provider will, when possible, consult with the individual with the disability and consider carefully the self-assessment of the individual with the communication need before providing a particular aid or service.

Q. Are there any limitations on the ADA's auxiliary aids and services requirements?

A. Yes, the ADA does not require the provision of any auxiliary aid or service that would result in an "undue burden" or in a "fundamental alteration" in the nature of the goods or services provided by a health care provider.

Q. In what medical situations should a health care provider obtain the services of a sign language interpreter?

A. A sign language interpreter should be provided in all situations in which the information exchanged is sufficiently lengthy or complex and other auxiliary aids do not provide effective communication.

Q. Must health care providers make conferences, health education, and training sessions that are open to the general public accessible to individuals who are deaf, hard of hearing, or have a speech impairment if such a request is made?

A. Yes, health care providers who offer training sessions, health education, or conferences to the general public must make these events accessible to individuals who are deaf, hard of hearing, or have a speech impairment upon request. In addition to interpreters, there are a variety of assistive listening devices that may be appropriate to eliminate problems with distance and background noise for individuals who are deaf or hard of hearing who wish to attend these sessions.

Q. Can health care providers receive any tax credits for the costs of providing auxiliary aids and services?

A. Yes, businesses, including health care providers, may claim a tax credit of up to 50 percent of eligible access expenditures that are over \$250, but less than \$10,250. The amount credited may be up to \$5,000 per tax year. Eligible access expenditures include the costs of providing interpreters, purchasing TTYs, and providing other auxiliary aids and services.

Q. Who is a “qualified interpreter”?

A. A qualified interpreter is an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. In the medical setting, this will mean that the interpreter may need to interpret

complex medical terminology. A member of the health care provider's staff may know some sign language and may understand complex medical terminology, but often is not qualified to interpret effectively or accurately, either receptively or expressively.

Q. Can a health care provider require family members or friends to interpret for patients who are deaf or hard of hearing?

A. Using family members or friends is generally not recommended. Family members may not possess sufficient sign language skills to effectively interpret in a medical setting. Even if they are skilled enough in the particular sign language required by the individual, family members and friends may be too emotionally or personally involved to interpret "effectively, accurately, and impartially." In addition, problems with patient confidentiality may occur when family members and friends are asked to act as interpreters.

Q. Is it the patient's responsibility to ask for effective communication?

A. Yes. Whenever possible, an individual with a disability should give advance notification of his/her need and preference for an auxiliary aid or service.

Q. Can a health care provider charge a patient who is deaf, hard of hearing, or has a speech impairment for part or all of the costs of providing an auxiliary aid or service?

A. No. A health care provider cannot charge a patient for the costs of providing auxiliary aids and services either directly or through the patient's insurance carrier.

Q. Who must pay for an auxiliary aid or service if the cost of that aid or service exceeds the provider's charge for the appointment?

A. A health care provider is expected to treat the costs of providing auxiliary aids and services as part of the overhead costs of operating a business. Therefore, as long as the provision of the auxiliary aid or service does not impose an undue burden on the provider, the provider is obligated to pay for the auxiliary aid or service.

Q. Do written notes offer an effective means of communicating with individuals who are deaf or hard of hearing?

A. This depends on the reading level of the individual. Additionally, written communications in the health care setting may be difficult. For many individuals who are deaf or hard of hearing, the services of a sign language interpreter offer the only effective method of communication.

Q. When does a health care provider need to provide accessible telephone services to individuals who are deaf, hard of hearing, or have a speech impairment?

A. Health care providers who routinely provide telephone services must make these services available to individuals who are deaf, hard of hearing, or have a speech impairment. A TTY is used by many individuals who are deaf, hard of hearing, or have a speech impairment to send and receive written messages over the telephone lines. In many instances, health care providers can receive incoming calls for TTY users through relay services. Title IV of the ADA requires telephone companies to provide relay services across the nation by July 26, 1993.

Q. Who is considered an individual with a disability under Title III of the ADA?

A. An “individual with a disability” is defined as someone who: (a) has a physical or mental impairment that substantially limits one or more major life activities; or (b) has a record of such impairment; or (c) is

regarded or perceived as having such an impairment, (even if the individual does not actually have the impairment.)

**This document is available
in the following alternate
formats:**

- Braille**
- Large Print**
- Audiotape**
- Computer Disk**

HELPFUL RULES FOR COMMUNICATING WITH INDIVIDUALS WHO ARE DEAF OR HEARD OF HEARING:

- 1. Obtain the person's attention before you begin to speak;**
- 2. Focus directly at the person and speak naturally;**
- 3. Do not raise your voice or become louder and louder;**
- 4. Do not cover your mouth with objects or your hands;**
- 5. Have good room lighting when you are speaking, if possible;**
- 6. Ask the person how you can best accommodate his/her particular communication mode;**
- 7. Keep written notes short;**
- 8. If you are asked to repeat a sentence, try to use other words and phrases to express the same ideas; and**
- 9. Use facial or gestural communication.**

WHERE TO FILE A COMPLAINT

State of New York
Office of the Attorney General
Civil Rights Bureau
120 Broadway, 23rd Floor
New York, New York 10271
212-416-8250 (Voice)

United States Department of Justice
Civil Rights Division
Office of the Americans With Disabilities Act
P.O. Box 66738
Washington D.C. 20035-9998
202- 514-0301 (Voice)
202-514-0381 (TTY)

GENERAL INFORMATION

Centers for Independent Living offer services and programs designed to facilitate equal access in society for persons with disabilities. To locate the center nearest you, call:

The New York State Independent Living Council, Inc. at
(518) 427-1060 (phone/TDD)

New York State Relay Service

Allows people who have speech impairments or who are deaf or hard of hearing who use a TTY to contact persons without a TTY, and vice-versa, at no cost. Operates 24 hours a day, seven days a week.

1-800-421-1220 (Voice)
1-800-662-1220 (TTY)

**REGIONAL OFFICES OF THE
ATTORNEY GENERAL**

Albany

State Capitol
Albany, NY 12224-0341
(518) 474-7330

Binghamton

44 Hawley Street - 17th Floor
Binghamton, NY 13901
(607) 721-8778

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55 Hanson Place, Suite 1080
Brooklyn, NY 11217
(718)722-3949

Buffalo

Statler Towers
7 Delaware Avenue
Buffalo, NY 14202-3473
(716) 853-8400

Harlem

163 West 125th Street
New York, NY 10027-8201
(212) 961-4475

Nassau

200 Old Country Road
Mineola, NY 11501-4241
(516) 248-3300

New York City

120 Broadway
New York, NY 10271
(212) 416-8000

Plattsburgh

43 Durkee Street, Suite 700
Plattsburgh, NY 12901-2958
(518) 562-3282

Poughkeepsie

235 Main Street - 3rd Floor
Poughkeepsie, NY 12601
(914) 485-3900

Rochester

144 Exchange Boulevard
Rochester, NY 14614
(716) 546-7430

Suffolk

300 Motor Parkway
Hauppauge, NY 11788-5127
(631) 231-2400

Syracuse

615 Erie Boulevard West - Suite
102
Syracuse, NY 13210-2339
(315) 448-4800

Utica

207 Genesee St. --Rm 504

Utica, NY 13501-2812

(315) 793-2225

Watertown

317 Washington Street

Watertown, NY 13601-3744

(315) 785-2444

Westchester

101 East Post Road

White Plains, NY 10601-5008

(914) 422-8755

Attorney General's**Complaint Number:**

1-800-771-7755 (Voice)

1-800-788-9898 (TTY)

Visit our Website at:

<http://www.ag.ny.gov>

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