



The Duty of Health Care Professionals to Provide Sign Language Interpreters

A Self-Advocacy Guide

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Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community, if you require further information.

This guide is available in alternative formats upon request.

Introduction

Title III of the Americans with Disabilities Act ("ADA") prohibits health care professionals from discriminating against individuals on the basis of disability. Generally, a health care professional discriminates on the basis of disability if:

- (1) a sign language interpreter is necessary to ensure effective communication between a patient and health care professional,
- (2) the patient has requested an interpreter, and
- (3) the health care professional refuses to provide a qualified interpreter and does not offer to provide other auxiliary aids and/or service that would result in effective communication.

However, there are two exceptions to this general rule that are discussed on pages 4-5.

This guide contains questions and answers about the provision of sign language interpreters by private doctors, psychologists, dentists, and other health care professionals. The guide focuses on private health care professionals, not those employed by federal, state, or local government agencies. The answers are based upon regulations and a technical assistance manual issued by the U.S. Department of Justice. The questions and answers are organized under four headings:

- I. When Does A Health Care Professional Have to Provide a Sign Language Interpreter?
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The Arizona Center for Disability Law is a non-profit, public interest law firm providing free advocacy, information and referral services, legal research, community legal education, and, in selected cases, legal

representation to individuals with disabilities and advocacy organizations throughout Arizona. The Center is the protection and advocacy (P&A) system providing services for Arizonans with a wide range of physical and mental disabilities. Assistance is provided for disability-related issues in established priority areas. Information about the eligibility requirements and priorities are available from the Center's website at www.azdisabilitylaw.org. Assistance is provided according to program eligibility requirements, priorities, and staff availability.

I. When Does a Health Care Professional Have to Provide a Sign Language Interpreter?

Q. When does a health care professional have to provide a sign language interpreter?

A. A health care professional must provide a qualified interpreter if: (1) an interpreter is necessary to ensure effective communication between you and the health care professional, and (2) you have asked the health care professional to provide an interpreter. However, there are two exceptions to this general rule that are discussed below on pages 4-5.

Q. When is an interpreter necessary to ensure effective communication?

A. The answer to this question depends upon the length and complexity of the conversation you will be having with the health care professional. For example, if you will be discussing whether to have major surgery, an interpreter would certainly be necessary to ensure effective communication. On the other hand, if you will be visiting your doctor's office solely for a simple blood test, an interpreter might not be necessary. Instead, you may be able to communicate effectively by, for example, writing notes or taking turns at a computer terminal.

Q. Is an interpreter required only in the most extreme situations, such as when a doctor and patient will be discussing whether the patient should have surgery?

A. No. A wide range of other situations may also require an interpreter to ensure effective communication. For example, during a routine physical, the communication may be sufficiently lengthy and complex to require an interpreter. In a psychotherapy session, the communication is sufficiently lengthy and complex to require an interpreter. The U.S. Department of Justice gives

the following example in its technical assistance manual to explain when an interpreter is required:

H goes to his doctor for a bi-weekly check-up, during which the nurse records H's blood pressure and weight. Exchanging notes and using gestures are likely to provide an effective means of communication at this type of check-up.

BUT: Upon experiencing symptoms of a mild stroke, H returns to his doctor for a thorough examination and battery of tests and requests that an interpreter be provided. H's doctor should arrange for the services of a qualified interpreter, as an interpreter is likely to be necessary for effective communication with H, given the length and complexity of the communication involved.

Q. If the patient is a minor child who can hear, does the health care professional have to provide an interpreter for a parent who is deaf?

A. Yes, if (1) an interpreter is necessary to ensure effective communication between the health care professional and parent, and (2) the parent has asked the health care professional to provide an interpreter. For example, an interpreter would be required if a parent who is deaf will be discussing with a doctor whether the parent's child should have surgery.

Q. Who ultimately decides whether an interpreter is required – the patient or health care professional?

A. The health care professional. However, the health care professional should consult with the patient to determine whether an interpreter is necessary for effective communication. The Department of Justice explains in the technical assistance manual:

Public accommodations [such as doctors] should consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication. . . . While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective

communication rests in the hands of the public accommodation, provided the method chosen results in effective communication.

Q. Can a patient bring the patient's own interpreter for an office visit without first asking the health care professional and then bill the health care professional for the cost of the interpreter?

A. No. A patient should not do this because the health care professional should be given an opportunity to consult with the patient and make his/her own determination of whether an interpreter is necessary for effective communication. The Department of Justice gives the following example in the technical assistance manual:

A patient who is deaf brings his own sign language interpreter for an office visit without prior consultation and bills the physician for the cost of the interpreter. The physician is not obligated to comply with the unilateral determination by the patient that an interpreter is necessary. The physician must be given an opportunity to consult with the patient and make an independent assessment of what type of auxiliary aid, if any, is necessary to ensure effective communication. If the patient believes that the physician's decision will not lead to effective communication, then the patient may challenge that decision under Title III (of the Americans With Disabilities Act) by initiating litigation or filing a complaint with the Department of Justice

Q. What are the two exceptions to the general rule that a health care professional must provide an interpreter when necessary to ensure effective communication?

A. First, a health care professional does not have to provide an interpreter if doing so would result in a "fundamental alteration" of the professional's services. However, this exception will probably never apply because a sign language interpreter would not result in a fundamental alteration of a health care professional's services.

Second, a health care professional does not have to provide an interpreter if doing so would result in an "undue burden, i.e., significant difficulty or expense." However, in determining whether providing an interpreter would result in an "undue burden," the professional must consider: (1) the cost of the interpreter and (2) the professional's overall financial resources. The professional may not refuse to provide an interpreter because the cost of the interpreter exceeds the professional's fee for the office visit.

Providing an interpreter will hardly ever result in an "undue burden" on a doctor because the cost of an interpreter will likely be insignificant when compared to the doctor's overall financial resources. However, providing an interpreter may result in an "undue burden" if the doctor has a very large number of patients who are deaf, and most of the doctor's patients are covered by a government health care program that pays minimum rates.

II. Who Has to Pay for the Interpreter?

Q. Who has to pay for the interpreter?

A. The health care professional. A health care professional may not charge a person who is deaf or the person's insurance company for the cost of providing an interpreter. The U.S Department of Justice gives the following example in its technical assistance manual:

In order to ensure effective communication with a deaf patient during an office visit, a doctor arranges for the services of a sign language interpreter. The cost of the interpreter's services must be absorbed by the doctor.

Q. If the cost of an interpreter for an office visit exceeds the fee for that visit, can the health care professional charge the person who is deaf for providing an interpreter?

A. No. The health care professional still must pay for the interpreter. Health care professionals, like lawyers, accountants, and other public accommodations covered by the ADA, are expected to treat the cost of an interpreter as part of the overhead cost of operating a business.

III. Who is a "Qualified Interpreter"?

Q. If an interpreter is necessary to ensure effective communication, the health care professional must provide a "qualified interpreter." 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.

Q. Can a health care professional use a staff member who signs "pretty well" as an interpreter for meetings with individuals who use sign language to communicate?

A. No, unless the person is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. The Department of Justice explains in the technical assistance manual:

Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or finger-spelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.

Q. If a sign language interpreter is required for effective communication, must only a certified interpreter be provided?

A. No. Though unlikely, an interpreter who is not certified might be a "qualified interpreter." The Department of Justice explains in the technical assistance manual:

The key question in determining whether effective communication will result is whether the interpreter is "qualified," not whether he or she has been actually certified by an official licensing body. A qualified interpreter is one "who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary." An individual does not have to be certified in order to meet this standard. A certified interpreter may not meet this standard in all situations, e.g., where the interpreter is not familiar with the specialized vocabulary involved in the communication at issue.

Of course, a lack of certification may be considered evidence that an interpreter is not "qualified."

Q. If a family member or friend is able to interpret, is that person a "qualified interpreter"?

A. The Department of Justice has answered this question by stating the following in Appendix B to its ADA regulations:

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."

Thus, if a health care professional asks a family member or friend of a patient who is deaf to interpret, and the patient does not want that person to interpret, the patient should ask the professional to provide someone else.

IV. What Can I Do to Make Sure that the Health Care Professional Provides an Interpreter, and What Can I Do If the Health Care Professional Still Refuses?

Q. What can I do to make sure that a health care professional provides an interpreter?

A. At the time you schedule the appointment, tell the professional's office that you are deaf and ask that the professional provide an interpreter. Because it may take the professional several days to get an interpreter, make sure to request an interpreter at the time you make the appointment. Keep the TDD printout of the conversation as proof that you asked for an interpreter. Also, we suggest that you write a letter to the health care professional requesting an interpreter. Although this is not required under the ADA, it will establish evidence of your request. (Attached to this guide is a sample letter requesting an interpreter.)

Q. What can I do if the health care professional refuses to provide an interpreter?

A. First try to explain to the health care professional why you need an interpreter to ensure that the communication between you and the health care professional will be effective. If the professional says that you can read his or her lips, explain why lipreading is not effective. For

example, explain that many sounds, such as T and D, look identical on the lips; and that lipreading may be particularly difficult in the medical setting because of complex medical terminology. If the professional says that you can communicate by writing notes, explain why this method would not be effective. Keep the TDD printout of your conversation with the professional if you use a TDD.

If the health care professional still refuses to provide an interpreter, you may do any one or all of the following things:

- (1) File a written complaint with Civil Rights Division of the Arizona Attorney General's Office. Arizona has its own anti-discrimination law, called the Arizonans with Disabilities Act ("AzDA"). The Arizona Attorney General's office enforces the Arizonans With Disabilities Act ("AzDA"), not the ADA. However, because the AzDA is very similar to the ADA, the AzDA also requires health care professionals to provide a sign language interpreter when necessary to ensure effective communication.

To file a complaint with the Arizona Attorney General's Office, you should contact that Office by calling either of the following TDD telephone numbers: (520) 628-6872 [Tucson] or (602) 542-5002 [Phoenix]. (The voice telephone numbers are: (520) 628-6500 [Tucson] and (602) 542-5263 [Phoenix].) Tell the person who answers the telephone that you have a hearing impairment and that you want to file a complaint against a health care professional because the professional refused to provide a sign language interpreter.

Keep in mind that there is a deadline for filing such a complaint. The AzDA states that a complaint must be filed "within one hundred eighty days (180) after the occurrence or the termination of the alleged discriminatory practice." (Emphasis added.)

- (2) File a written complaint with the U.S. Department of Justice. Such a complaint should be a letter that contains the following information: (a) your name and address; (b) a statement that you have a hearing impairment and need a sign language interpreter to

communicate effectively with others; (c) the name and address of the health care professional; (d) an explanation of what you did to try to get the professional to provide an interpreter; (e) an explanation of what you were going to discuss with the doctor (such as risks of surgery, risks and benefits of medications, etc.); (f) a statement that the professional refused to provide an interpreter; (g) the date on which the professional refused to provide the interpreter; (h) any other information that you believe would be helpful in understanding your complaint; (i) a statement that the professional violated the Americans With Disabilities Act; and (j) a request that the Department of Justice investigate your complaint.

The letter should be sent to the following address:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue NW
Washington, DC. 20530

Although neither the ADA nor the regulations of the Department of Justice contain a deadline for filing a complaint, you should do so as soon as possible.

- (3) File a written complaint with the Office for Civil Rights of the U.S. Department of Health and Human Services. This Office enforces a federal law called the Rehabilitation Act. Section 504 of that law prohibits recipients of federal financial assistance from discriminating on the basis of disability. Since many health care professionals receive federal financial assistance in the form of Medicare or Medicaid reimbursement, they are prohibited by Section 504 from discriminating on the basis of disability.

To file such a complaint, you can call the Office for Civil Rights in San Francisco and request a "Discrimination Complaint Form" or you can download it from their website at: www.hhs.gov/ocr/discrimhowtofile.doc. Alternatively, you may write a letter containing the information suggested above for a letter to the U.S. Department of Justice. The letter should be mailed to the following address:

Office for Civil Rights
U.S. Department of Health and Human Services
90 7th Street, Suite 4-100
San Francisco, California 94103
(415) 437-8310 voice/relay
(415) 437-8311 TDD
(415) 437-8329 fax

There is a deadline for filing a complaint with the Office for Civil Rights of the U.S. Department of Health and Human Services. The complaint must be filed "not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee." (Emphasis added.)

- (4) File a lawsuit against the health care professional. To file a lawsuit, you should contact an attorney. The deadline for filing a lawsuit claiming violations of the ADA and/or the Rehabilitation Act may be as short as one year or may be two years. Because the law is unclear on the deadline, the safest course of action is to file the lawsuit within one year of the doctor's refusal to provide an interpreter. The deadline for filing a lawsuit claiming a violation of the AzDA is "not later than two years after the occurrence or the termination of" the doctor's refusal. (Emphasis added.)

Sample Letter Requesting a Sign Language Interpreter

April 7, 2016

Bonnie Freyer, M.D.
31315 North Country Club Road
Tucson, AZ 85718

Re: Linda Murray

Dear Dr. Freyer:

I have an appointment with you on (date) to establish myself as a new patient with your practice and provide you my medical history. Because I am deaf, I will need a sign language interpreter to communicate effectively with you. I therefore request that you provide an interpreter during my appointment. Thank you.

Sincerely,

Linda Murray