

PART 1

THE REQUIREMENT FOR EFFECTIVE COMMUNICATION

The Americans with Disabilities Act (ADA) is civil rights legislation that prohibits discrimination against individuals with disabilities.

"A public accommodation shall take those steps that 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 unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense."

Americans with Disabilities Act
28 C.F.R. s. 36.303(c)

This applies to state and federal agencies (Title II) and to places of public accommodation (Title III), which includes most businesses. The professional office of a health care provider and hospitals are specifically mentioned in the regulation.

Provider Duty

For health care providers and facilities, there is a duty to provide effective communication to all patients and their families or caregivers, including people with disabilities.

The nature of health care elevates the magnitude of consequences for miscommunication. A misdiagnosis or inaccurate medication dosage can be serious or even fatal.

Some specifics about providing effective communication

- Providers are responsible for ensuring effective communication, regardless of the size of the office or the number of employees.
- This duty extends to “companions” – not just the patient – if it will impact the patient’s care. For example:
 - a father who is deaf in a childbirth preparation class, or
 - a parent who is deaf when the child is the patient.
- Providers cannot rely on family members or friends to interpret when a sign language interpreter is requested. There are two exceptions to this requirement: 1) when the patient’s preference is to have a family member or friend interpret, and 2) in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.
- Providers cannot charge patients for the cost of supplying auxiliary aids or services.

Deciding what accommodation is needed

The U.S. Department of Justice expects that the health care provider will consult with the patient and carefully consider his or her self-assessed communication needs. The ultimate decision as to what measures to take rests with the provider, provided that the method chosen results in effective communication.

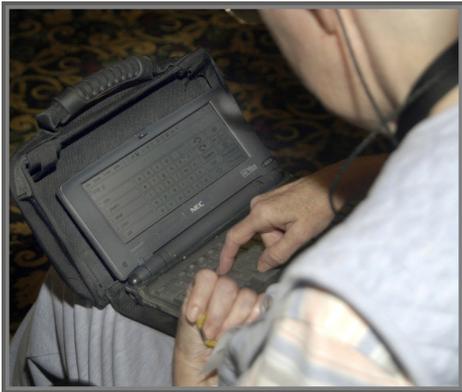
Health care providers and their staff must decide what assistance is appropriate, depending on the nature of the communication and the patient’s preferred method of communication.

The rules are intentionally flexible. Different health care settings — a dentist’s office, a surgery center, and a home health agency, for example — may need different solutions, because the nature of their communications are different. Also, different patients need different solutions, because the nature of their disabilities will be different. Some factors that can influence the selection of the accommodation are:

- the nature, length and importance of the communication;
- the individual’s communication skills and knowledge;
- the patient’s health status;
- the patient’s and/or companion’s request for an interpreter or other specific auxiliary aid or service;
- the reasonably foreseeable health activities of the patient; and
- the availability at the required times, day or night, of appropriate auxiliary aids and services.

Examples of auxiliary aids and services

There are many options available for creating effective communication with a patient with a disability. The choices can be simple — paper and pen — or they can be more sophisticated technology, such as video relay services. Some examples include: qualified sign language interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, qualified readers, taped texts, audio recordings, Brailled materials, or large print materials.



Limits

The ADA has limits on how far a business must go in providing effective communication. Businesses are not expected to provide any services that would “**fundamentally alter**” the business’s goods and services or that would cause an “**undue burden.**” Many providers are unsure about how to interpret these concepts.

A fundamental alteration is a change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages or accommodations offered by a business. In health care settlements, the Department of Justice has indicated that very rarely will this be a legitimate defense for failing to provide effective communication.

The ADA does not require businesses to furnish any communication aids or services that place an undue burden on the business. An undue burden is defined as “significant difficulty or expense.” It is evaluated on a case-by-case basis, relative to the business’s overall resources.

Settlement agreements negotiated with the Department of Justice are clear. Being reimbursed less than the cost of services for a sign language interpreter is not considered an undue burden.

It is important to note that, even when a particular communication aid or service would cause an undue burden, a business still has a duty to provide another communication aid or service that is effective but is less difficult or costly, if one is available.

Tax incentives for improving access

Businesses can take advantage of two federal tax incentives available to help cover costs of improving access for customers with disabilities:

- A tax credit for small businesses who remove access barriers from their facilities, provide accessible services, or take other steps to improve accessibility for customers with disabilities
- A tax deduction for businesses of all sizes that remove access barriers in their facilities or vehicles.

A business that annually incurs eligible expenses to bring itself into compliance with the ADA may use these tax incentives every year. The incentives may be applied to a variety of expenditures; however, they may not be applied to the costs of new construction. All barrier removal must comply with applicable federal accessibility standards.

Tax Credit

Small businesses with 30 or fewer employees or total revenues of \$1 million or less can use the Disabled Access Credit (Internal Revenue Code, Section 44). Eligible small businesses may take a credit of up to \$5,000 (half of eligible expenses up to \$10,250, with no credit for the first \$250) to offset their costs for access, including barrier removal from their facilities (e.g., widening a doorway, installing a ramp), provision of accessibility services (e.g., sign language interpreters), provision of printed material in alternate formats (e.g., large-print, audio, Braille), and provision or modification of equipment.

Tax Deduction

Businesses of all sizes may take advantage of this tax deduction. Under Internal Revenue Code, Section 190, businesses can take a business expense deduction of up to \$15,000 per year for costs of removing barriers in facilities or vehicles.

Tax Incentives in Combination

These two incentives can be used together by eligible businesses if the expenditures qualify under both Sections 44 and 190. If a small business' expenses exceed \$10,250 for the maximum \$5,000 tax credit, then the deduction equals the difference between the total spent and the amount of the credit claimed.



For further details and information, review these incentives with an accountant or visit the Internal Revenue Service website at www.irs.gov. Request IRS Publications 535 "Business Expenses" (tax deduction) and 334 for further information on tax incentives, or Form 8826 (Disabled Access Credit) to claim your tax credit (<http://www.irs.gov/pub/irs-pdf/f8826.pdf>). Questions for the IRS can be directed to 800-829-1040 (voice) or 800-829-4059 TDD.

Source: Expanding Your Business, Tax Incentives for Businesses, U.S. Dept. of Justice, Civil Rights Division, Disability Rights Section (<http://www.ada.gov/taxincent.pdf>).