

ADA RESOURCES

PROVIDING COMMUNICATION ACCESS SERVICES

SIGN LANGUAGE INTERPRETER SERVICES



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- Places of public accommodation must give persons with disabilities an equal opportunity to participate in and to benefit from their services. They cannot provide unequal or separate benefits to persons with disabilities. They must modify their policies and practices when necessary to provide equal access to services and facilities.
- In order to provide equal access, all public accommodations are required to provide auxiliary aids and services to ensure effective communication. 28 C.F.R. § 36.303(c).
- Businesses may not impose a surcharge on a particular individual with a disability to cover the cost of ensuring equal access for that person. 28 C.F.R. § 36.301(c).
- Businesses are expected to “consult with the individual with a disability before providing a particular auxiliary aid or service.” 56 Fed. Reg. at 35567. A comprehensive list of auxiliary aids and services required by the ADA for deaf and hard of hearing people includes, but is not limited to: “[q]ualified 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, telecommunication devices for deaf persons, videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.” 28 C.F.R. § 36.303(b)(1).
- In choosing which auxiliary aid or service to provide, the most important consideration is the type of service that will be necessary to ensure “effective communication” with an individual who is deaf or hard of hearing. For example, in addition to providing a qualified interpreter, it may be necessary to change seating arrangements or lighting so that there is a clear line of sight to the interpreter, and so that the interpreter is clearly visible.
- Businesses may need to instruct employees to accept calls made through a relay service, even though such calls may take longer to complete than other telephone calls. Policies and practices may have to be altered in order to provide access.
- A public accommodation may deny an auxiliary aid or service only if it can demonstrate that it would fundamentally alter the nature of the service, or would constitute an undue burden (a significant difficulty or expense).

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- Title III of the ADA applies to all private businesses and agencies regardless of the size of the office or the number of the employees.
- Public entities must communicate effectively with customers, clients and other individuals who are deaf and hard who are seeking or receiving its services. (Note: in healthcare settings, the individual seeking services may not always be “patients” of the health care provider”).
- Activities that are open to the public must also be accessible to deaf and hard of hearing participants.
- In medical situations, health care staff run the risk of not understanding the patient's symptoms, misdiagnosing the patient's medical problem, and prescribing inadequate or even harmful treatments. Likewise, patients may not understand medical instructions and warnings or prescription guidelines.
- ADA allows a consideration for an “undue burden”, however, demonstrating undue burden criteria under ADA is not easy to demonstrate for most entities and an alternative auxiliary aid or service to ensure effective communication is still required to be provided.
- Under ADA, entities are expected to treat the cost of providing interpreting services and auxiliary aids and services as part of the overhead costs of operating a business. In addition, an entity cannot charge a patient for the costs of providing auxiliary aids and services.
- A qualified interpreter is one who is able to interpret effectively, accurately and impartially, both receptively and expressively using any necessary specialized vocabulary.
- Entities cannot request or require family members or friends to interpret for deaf or hard of hearing patients.
- Lipreading is typically not considered an effective form of communicating with individuals who are deaf or hard of hearing. Forty to 60 percent of English sounds look alike when spoken. On average, even the most skilled lipreaders understand only 25 percent of what is said to them and many individuals understand far less. Lipreading is often used as a supplement to the use of residual hearing, amplification or other assistive listening technology.
- Exchanging written notes are typically not effective for in-depth communication. Written notes tend to be an abbreviated form of communication, is often much slower than verbal or manual communication and is more cumbersome. Understanding written materials is also dependent upon the reading level or literacy skills of the individual. The reading level of deaf and hard of hearing individuals is as variable as the reading levels found in the general population. Exchanging written notes may not provide effective communication between a deaf or hard of hearing patient and a health care provider.
- Eligible small businesses can 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 year.
- With deaf children, language barriers have higher rates of aggression, low self-esteem and little ability to develop meaningful bonds with peers and adults.
- Deaf individuals need to have access to their language and mode of communication
- It is the position of the National Association of the Deaf that access to language is a human right for all children.
- Professionals working with children who are deaf need to have knowledge on the child's cultural and linguistic needs.
- Public entities should establish a written policy and procedure for the use of interpreters and other auxiliary aids and services for persons with disabilities. The Office of Civil Rights has a policy template available online through their website.

- If the public accommodation is able to demonstrate that there is a fundamental alteration or an undue burden in the provision of a particular auxiliary aid or service it must, however, be prepared to provide an alternative auxiliary aid or service, where one exists. 28 C.F.R. § 36.303(f).
- Whether or not a particular auxiliary aid or service constitutes an “undue burden” depends on a variety of factors, including the nature and cost of the auxiliary aid or service and the overall financial and other resources of the business. The undue burden standard is intended to be applied on a case-by-case basis. Undue burden is not measured by the amount of income the business is receiving from a client, patient or customer. Instead, undue burden is measured by the overall financial impact on the whole entity. Therefore, it is possible for a business to be responsible for providing auxiliary aids or services even if it does not make a sale or receive income from a deaf or hard of hearing customer, if the cost would not be an undue burden on its overall operation. We are not aware of any court decision that has held that providing interpreter services resulted in an undue burden.
- The cost of interpreters and other auxiliary aids and services may entitle a business to an income tax credit, as well as the usual business-related expense deduction. Congress has amended the Internal Revenue Code to provide business tax incentives for removing barriers or increasing accessibility. The "Tax Deduction to Remove Architectural and Transportation Barriers to People with Disabilities and Elderly Individuals" (Title 26, I.R.C. Section 190) allows a deduction for qualified barrier removal expenses not to exceed \$1500 for any taxable year. The "Disabled Access Tax Credit" (Title 26, I.R.C. Section 44) is available to eligible small businesses. It provides a tax credit of 50 per cent of eligible access expenditures that exceed \$250 but do not exceed \$10,250, made for the purpose of complying with the ADA. Businesses should consult their tax or financial advisors on this issue.

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