

Medical Settings:

Effective Communication with People Who are Deaf, DeafBlind, or Hard-of-Hearing



A Self-Help Publication
By



**DISABILITY RIGHTS
CONNECTICUT**
Justice. Community. Inclusion.

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Table of Contents

Introduction.....	4
Purpose.....	4
How do I request an accommodation?	6
Who qualifies as an interpreter in Connecticut?	12
Are there limitations on the ADA's auxiliary aids and services requirements?	14
Where can I hire an interpreter?	17
Resources/References.....	18

Introduction

Disability Rights Connecticut, Inc. (DRCT) is an advocacy organization dedicated to identifying and eliminating the barriers that people with disabilities face in exercising their civil, legal, and human rights. As Connecticut's designated Protection and Advocacy (P&A) system, DRCT works to improve the quality of life for individuals with disabilities, their families and our community.

Mission Statement

DRCT's mission is to advocate, educate, investigate, and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities to participate equally and fully in all facets of community life in Connecticut.

Purpose

This booklet focuses on the Americans with Disabilities Act (ADA) of private health care providers to individuals who are Deaf, DeafBlind, or Hard-of-Hearing. There are additional healthcare-related obligations under the ADA that pertain to people with other disabilities, but those are not addressed in this booklet.

The following questions and answers provide practical information to help healthcare practitioners meet their obligations under Title III of the ADA to people who are Deaf, DeafBlind, or Hard-of-Hearing.

Please be advised that the information contained in this publication does not constitute legal advice. It provides basic information and is not intended to substitute for the advice of an attorney.

Real-Life Scenario

A new patient, who is Deaf, DeafBlind, or Hard-of-Hearing contacted a medical office via telephone to schedule a medical appointment and, with the assistance of a relay interpreter, spoke with the receptionist. The receptionist asked whether the new patient needed an interpreter. After she responded “yes,” the receptionist told the new patient that she would have to be responsible for bringing her own interpreter. The new patient then explained to the receptionist that the office is responsible for providing an interpreter under the ADA. The receptionist ultimately responded, “No,” and then hung-up the phone on the new patient.

The new patient filed a complaint with the U.S. Department of Justice and received a favorable settlement as it was found that the healthcare office discriminated against a patient on the basis of disability from full and equal enjoyment of their services.

The healthcare practice was required to pay compensatory relief to the new patient and post notices such as:

“In compliance with the Americans with Disabilities Act, qualified interpreters and other auxiliary aids and services are available free of charge to people who are deaf or hard-of-hearing.”

USAO # 2017v00648/DJ # 202-17M-515

https://www.ada.gov/mangat_sna_sa.html

*This scenario is based on an actual complaint, but the names have been changed.

Does the ADA cover all healthcare providers?

Title III of the ADA applies to all healthcare providers, including doctor's offices and hospitals. The number of employees, its small or large size, status of a nonprofit, and the nature of the care are irrelevant.¹

Accommodations 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.² The focus of this booklet is about providing auxiliary aids and services for people who primarily use sign language to communicate, including people who are Deaf, DeafBlind, or Hard-of-Hearing.

How do I request an accommodation?

A form, or letter, is not required to ask for an accommodation, or by use any "magic" words. The person receiving an accommodation request should respond, even if it is to explain the company's accommodation process. It should be an informal process to clarify what the individual needs and identify the appropriate accommodation including auxiliary aids and services.

It may be helpful to identify the specific problem area and then identify accommodation ideas and resources to resolve the issue as quickly as possible.

The patient, who is receiving services from a healthcare provider, as well as companions of the patient, must be provided a reasonable accommodation.³

¹ Americans with Disabilities Act tit. 3, 42 U.S.C. §§ 12181-12189 (2020); 28 C.F.R. §§ 36.101- 36.607 (2016).

² 28 C.F.R. § 36.303(a)

³ 28 C.F.R. § 36.303(c)

Example Accommodation Request Letter *For informational purposes only*

[Date]

Sent via **[email, U.S. Mail, fax]**

[Contact Name]

[Mailing Address]

[email address]

[Fax]

Dear **[e.g., Doctor, To Whom It May Concern]:**

I am **[Deaf, DeafBlind, or Hard-of-Hearing, fill in the blank]** and therefore limited in my ability to **[hear, see and hear, speak, fill in the blank]**. I primarily communicate using **[American Sign Language, Tactile Sign Language, ProTactile Sign Language, fill in the blank]**. I do not possess the ability to **[lip read, write, read English proficiently]**.

I am requesting an auxiliary aid and/or service to ensure effective communication under the Americans with Disabilities Act and any other relevant state and federal laws.

Specifically, for my appointment on **[date, time]** I am requesting:

- **[Qualified American Sign Language Interpreter]**, preferably **[in-person, through video]**

Please respond in writing within **10** business days to inform me whether you will grant my request for an accommodation. Please reach out if you have any additional questions.

Please note this letter in my patient file.

Sincerely,

[First name, Last Name]

[Contact Information]

[Date of Birth]

What does “effective” communication mean?

In order to be “effective,” auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with the disability.⁴ Additionally the auxiliary aid must allow the Deaf, DeafBlind, or Hard-of-Hearing individuals to understand audible information and participate in discussions.

In determining what type of auxiliary aids and services are necessary, the healthcare provider’s office must consult with the persons who are requesting the accommodation.⁵

Note: Each person varies greatly in the ability to use sign language, read lips, and communicate in written English. Do not assume that an auxiliary aid or service that is effective for one client will be effective for another.

What’s an example of an accommodation for effective communication?

Title III entities are encouraged to have an **interactive approach** with the person with a disability to discuss what aid or service is appropriate. The goal is to provide an aid or service that will be effective, given the nature of what is being communicated and the person’s method of communicating.

Examples of accommodations for people who primarily use sign language to communicate:

- Qualified sign language interpreters
 - On-site
 - Video Remote Interpreting (VRI)
- Notetakers
- Oral interpreters

⁴ 28 C.F.R. § 36.303(c)(ii)

⁵ 28 C.F.R. § 36.303(c)(1)(ii)

- Cued Speech transliterators
- Tactile interpreters for DeafBlind people
- Certified Deaf Interpreters (CDI)
- Text-based services
- Communication Access Realtime Transcription (CART)
- Other effective methods of making aurally delivered information available to individuals who are Deaf, DeafBlind, or Hard-of-Hearing.⁶ The type of auxiliary aid or service to ensure effective communication may vary as each person may need a different method of communication.

Factors to take into consideration for effective communication include:

- Method of communication
- Nature, length, and complexity involved
- Context of the situation⁷

What is Video Remote Interpreting?

Video Remote Interpreting (VRI) uses a qualified interpreter provided through video conferencing equipment. This is a fee-based service for real-time sign language interpreting. The following criteria must be met if a place of a public accommodation provides qualified interpreters via a VRI service as a method to achieve effective communication:

Requirements for VRI equipment include:

1. Real-time, full-motion audio and video over high-speed, wide-bandwidth video or wireless connection that delivers high-quality video that does not produce lags, blurry or grainy images, or irregular pauses in communication;
2. A sharply delineated image large enough to display the

⁶ 28 C.F.R. § 36.303(b)

⁷ 28 C.F.R. § 36.303(c)(1)(ii)

- interpreter’s face, arms, hands, and fingers, and the participating individual’s face, arms, hands, and fingers, regardless of body position;
3. A clear, audible transmission of voices; and
 4. Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.⁸

What is “CART?”

“Real-time Captioning,” also called “Computer-Assisted Real-time Translation (CART) is a service that provides audible information into a written text format. The transcriber types the speaker’s words and almost immediately, the words appear in text on a screen. The person with a disability can follow along and “read” what the person is saying. This service is useful for people who can read and understand English.

What is “Tactile Interpreting?”

Tactile interpreting is a way of communication for those who are blind and Deaf/Hard-of-Hearing. When DeafBlind consumers have little to no vision and need to receive linguistic information by feeling the interpreter's hands while the interpreter signs or fingerspells, this is called tactile interpreting.⁹

Who pays for the accommodation?

Healthcare provider’s offices must furnish (that is, obtain and pay for) auxiliary aids and services for people who are Deaf, DeafBlind, or Hard-of-Hearing that are necessary to achieve effective communication.¹⁰

Such aids and services should enable the healthcare provider to

⁸ 28 C.F.R. § 36.303(f)(4)

⁹ https://www.westerninterpreting.net/win_defs.cfm

¹⁰ 28 C.F.R. § 36.303(c)

communicate as effectively with people who are Deaf, DeafBlind, or Hard-of-Hearing as with people who do not have these disabilities.

Healthcare provider's offices may not charge the individual requesting the auxiliary aid or service (e.g., the Deaf, DeafBlind, or Hard-of-Hearing patient) for the provision of these services, even if the healthcare provider is providing services at no cost.¹¹

- a. The office should view the cost of providing interpreters as part of its overhead. Thus, the healthcare provider may increase charges for all clients to cover the cost of the interpreter but may not bill the Deaf, DeafBlind, or Hard-of-Hearing patient individually.
- b. The office may **not** require the Deaf, DeafBlind, or Hard-of-Hearing client to bring an interpreter to the appointment.
- c. Paying for an auxiliary aids or service does not constitute making a loan or advancing funds to a Deaf, DeafBlind, or Hard-of-Hearing patient, as the client is not responsible for paying for such services.

Can healthcare providers receive any tax credits for the costs of providing auxiliary aids and services?

Eligible small businesses may claim a tax credit which may include the costs of providing interpreters, purchasing Telecommunication Devices for the Deaf (TDD), and providing other auxiliary aids and services.¹²

Healthcare providers are encouraged to consult a tax advisor regarding available tax credits and other tax consequences of providing auxiliary aids and services. More information can be found at <https://www.irs.gov/forms-pubs/about-form-8826>.

¹¹ 28 C.F.R. § 36.301(c)

¹² 26 U.S.C.A. § 44

Who qualifies as an interpreter in Connecticut?

Under the ADA an interpreter provided must also be qualified but does not need to hold a particular certification to be “qualified.” However, the interpreter must be able to “interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.”¹³

In Connecticut, medical settings mean situations related to mental health treatment, psychological evaluations, substance abuse treatment, crisis intervention and appointments or treatment, requiring the presence of a doctor, nurse or other health care professional.¹⁴

No person shall provide interpreting services in medical settings unless such person is registered with the Connecticut Department Aging and Disability Services and has met additional qualifications specific to Connecticut:

- (1) holds a comprehensive skills certificate from the National Registry of Interpreters for the Deaf,
- (2) holds a certificate of interpretation or a certificate of transliteration from the National Registry of Interpreters for the Deaf,
- (3) holds a level four or higher certification from the National Association of the Deaf,
- (4) holds a reverse skills certificate or is a certified deaf interpreter under the National Registry of Interpreters for the Deaf,

¹³ 28 C.F.R. § 36.104

¹⁴ C.G.A. Section 46a-33a(4) Registration of persons providing interpreting services. Required qualifications.

(5) or situations requiring an oral interpreter only, holds oral certification from the National Registry of Interpreters for the Deaf,

(6) or situations requiring a cued speech transliterator only, holds certification from the National Training, Evaluation and Certification Unit and has passed the National Registry of Interpreters for the Deaf written generalist test, or

(7) holds a National Association of the Deaf-National Registry of Interpreters for the Deaf national interpreting certificate.¹⁵

Accepted Interpreter Certifications for Medical Settings:

- Comprehensive Skills Certificate (**CSC**)
- Certificate of Transliteration (**CI**)
- Certificate of Transliteration (**CT**)
- National Association of the Deaf, Level Four (**NAD V**)
- National Association of the Deaf, Level Five (**NAD IV**)
- Reserve Skills Certificate (**RSC**)
- Certified Deaf Interpreter (**CDI**)
- Oral Transliteration Certificate (**OTC**)
- Oral Interpreting Certificate: Comprehensive (**OIC: C**)
- Oral Interpreting Certificate: Spoke-to-Visible (**OIC: S/V**)
- Oral Interpreting Certificate: Visible-to-Spoke (**OIC: V/S**)
- National Interpreter Certification Master (**NIC Master**)
- National Interpreter Certification Advanced (**NIC Advanced**)
- National Interpreter Certification (**NIC**)
- Approved Certified Deaf Interpreter (**CDI**) by the Mass. Commission on Deaf and Hard-of-Hearing

The requirements apply to persons who receive compensation for the provision of interpreting services and include those who

¹⁵ C.G.A. Section 46a-33a(d)(1-7)

provide interpreting services as part of their job duties.

The following individuals are not “qualified interpreters”:

1. An office employee or staff member who knows basic sign language.
2. Family members, adult companions, and minor children of the client or service recipient, except in certain cases of emergency.¹⁶
3. Any interpreter who does not communicate proficiently with the Deaf, DeafBlind, or Hard-of-Hearing individual (i.e. the interpreter cannot understand the individual, or the individual cannot understand the interpreter).

Can Healthcare Providers require patients to bring their own interpreter?

No. You cannot require a client to bring an interpreter. If a client prefers to bring an interpreter, then the ADA permits you to accept the arrangement, if agreed upon in advance. In a case like this, the healthcare provider is still responsible for paying the interpreter’s fees. If a client shows up with an interpreter, unarranged, the healthcare provider is not obligated to use or pay for the interpreter’s services. The client may request to use a different interpreter than the one provided.¹⁷

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

Yes. The ADA does not require the provision of any auxiliary aid or service that would result in an undue burden or a fundamental

¹⁶ 28 C.F.R. § 36.303(c)(3)

¹⁷ Conn. Gen. Stat. § 46a-33a(g)

alteration in the nature of the goods or services provided by a healthcare provider.¹⁸ An undue burden is a significant difficulty or expense; a fundamental alteration is a significant change in the basic nature of a service or goods.

Under some circumstances, multiple entities may have an obligation to provide auxiliary aids and services. When the law does not specify which entity has the sole obligation to provide auxiliary aids and services, any covered entity may be held liable if they are not provided.

- a. The nature of the burden is measured in the context of the business’s overall resources.
- b. Healthcare providers providing services at no-charge or reduced fee basis must still provide auxiliary aids and services.
- c. A lack of advance notice of the need for an auxiliary aid does not excuse the healthcare provider from making best efforts to secure the aid or service.

Do businesses have to accept TTY or video relay calls?

Yes. Many people use a video relay service to make calls through an interpreter. People who are not used to receiving these calls may initially think they are talking to a telemarketer and hang up. This is frustrating for people who are using the relay service to make calls. A public accommodation, such as a lawyer’s office, must respond to telephone calls from a telecommunications relay service in the same manner that it responds to other telephone calls.¹⁹

¹⁸ 28 C.F.R. § 36.303(a)

¹⁹ 28 C.F.R. § 36.303(d)(4)

What is a Video Relay Service (VRS) call?

Video Remote Interpreting (VRI), as described in a previous section, is different from the Video Relay Service (VRS). VRS is a means of giving persons with hearing disabilities access to the telephone system. A VRS call flows back and forth, similar to a telephone conversation between two hearing persons. VRS offers several features:

- Allows people to make phone calls using their primary signed language.
- Callers are able to more fully express themselves through facial expressions and body language as part of the sign language, which cannot be expressed in text.
- Provides a natural conversational arena for interrupting, a quicker pace of the conversation
- VRS calls have trilingual capabilities with signed languages
- VRS offers 24/7 access.

Is it appropriate for a healthcare provider to use VRS to meet with a client?

No. VRS should not be used during in-person meetings with a healthcare provider. Any improper use of VRS as a means to gain free “in-person” interpreting services may be reported to the Federal Communication Commission (FCC) in order to ensure that the Interstate Telecommunications Relay Service (TRS) fund is compensating only legitimate phone calls.²⁰

Is lip reading an effective form of communicating?

Not often. Some individuals with residual hearing rely on lip reading for communication. For these individuals, an oral

²⁰ 20 FCC Rcd 14528 (Sept. 7, 2005)

interpreter may be the best means of ensuring effective communication. A common misconception is that if a person who is Deaf or Hard-of-Hearing can speak clearly, then the person can lip-read effectively. Regardless of how well a person lip-reads, there is still some guesswork. Very few individuals with hearing loss or deafness rely completely on lip reading for important instructions. According to one source, professional lip readers err at a rate of 93%, especially with no given context.²¹ Lip reading can be particularly difficult in the medical setting when the vocabulary used might not be familiar.

May written notes be considered an effective means of communication?

This will depend on the reading level of the individual and the complexity of the information to be communicated. Written communication is slow and requires a higher-level of English reading comprehension. For many Deaf or Hard-of-Hearing individuals, a sign language interpreter offers the only effective method of communication.

For people who are able to read, written notes are appropriate for communicating minor matters and simple information, such as scheduling an appointment.

Where Can I Hire an Interpreter?

There are a number of interpreting agencies, as well as individual freelance interpreters. The more advance notice the better. For a smoother request process, be sure to have ready:

- Client’s name
- Client’s preferred mode of communication
- Time (length)
- Location

²¹ <https://www.sciencemag.org/news/2018/07/lip-reading-artificial-intelligence-could-help-deaf-or-spies>

- Date
- Type of appointment

Resources/References

ADA – Americans with Disabilities Act

Federal Communications Commission Public Notice: Reminder that Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot be Used as a Substitute for “In-Person” Interpreting Services or Video Remote Interpreting (VRI)

<https://bit.ly/2QEzzk7>

National Association of the Deaf

Resources on Americans with Disabilities Act (ADA) legal questions for providing accommodations such as auxiliary aids and services for effective communication.

(301) 328-1443 (videophone/voice)

(301) 587-1789 (TTY)

Email: Nad.info@nad.org Website: www.nad.org

- Advocacy Letter for Healthcare Provider Offices by the National Association of the Deaf <https://bit.ly/2GeV0q8>

New England ADA Center

Provides information regarding the ADA to the public and businesses. Have a request for an auxiliary aid or service such as sign language interpreter and want to know who pays for that?

Phone: (800) 949-4232 (voice)

Email: adainfo@newenglandada.org

Website: <https://www.newenglandada.org/>

United States Department of Justice Civil Rights Division

For technical assistance for businesses or individuals about the ADA or to file an ADA complaint.

(800) 514-0301 (voice)

Website: www.ADA.gov

Interpreting

Connecticut Deaf, DeafBlind, and Hard-of-Hearing Interpreters Registry; This is a list of all Sign Language, Oral and Cued Speech Interpreter registered in Connecticut.

Phone: (860) 424-5055 (voice)

Email: DORS.Interpreting@ct.gov

Website: <https://bit.ly/37shHPF>

Registry of Interpreters for the Deaf

Resources about the types of interpreters, roles of interpreters, and qualifications.

(703) 838-0030 (voice)

(571) 257-3957 (videophone)

Email: RIDinfo@rid.org Website: www.rid.org

- Find an interpreter listed on the National Registry of Interpreters for the Deaf
<https://myaccount.rid.org/Public/Search/Member.aspx>

For more resources on sign language interpreting agencies check out DRCT's resource page:

<https://www.disrightsct.org/resource-center/#effective-communication>

Publication Source

Disability Rights Connecticut

If a healthcare provider has denied you an accommodation, please contact DRCT for information about your rights.

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