

# Effective Communication Strategies For Deaf Patients

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Hospitals and healthcare facilities are required, pursuant to the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), to furnish appropriate auxiliary aids and services to afford deaf patients an equal opportunity to participate in, and enjoy the benefits of, their treatment programs.

The type of auxiliary aid or service employed must ensure “effective communication” and will vary in accordance with several factors. Such factors include: the method of communication used by the individual; the nature, length and complexity of the communication involved; and the context in which the communication is taking place. The failure to provide effective communication options to deaf patients may give rise to a cause of action against the hospital for compensatory damages and injunctive relief. Further, non-disabled individuals also may have standing to bring claims under the ADA and RA when they are injured because of their association with a disabled individual.

While it may be difficult to ascertain what constitutes “effective communication” under the law in any given circumstance, one thing remains certain: a hospital or healthcare facility can defend itself against such claims by employing basic procedures and strategies which show the efforts made

to prevent discrimination. This is because plaintiffs who seek compensatory damages are required to prove discriminatory intent or bad faith on the part of the hospital. In other words, effort matters and good faith attempts to pursue legitimate solutions are not sufficient to support an award of compensatory damages.

A plaintiff may prove discriminatory intent by showing that a defendant hospital was deliberately indifferent to his or her statutory rights. To establish deliberate indifference, a plaintiff must show that the hospital or healthcare facility knew that harm to a federally protected right was substantially likely and failed to act on that likelihood. When the substantial likelihood of harm is obvious, a jury is permitted to infer that the hospital had actual knowledge of that substantial risk of harm. Whether the healthcare professionals had the requisite knowledge of a substantial risk is a question of fact, and a factfinder may conclude that the hospital knew of a substantial risk from the very fact that the risk was obvious.

However, even if a plaintiff is able to prove that the auxiliary aids provided by the hospital were insufficient to provide an equal opportunity to benefit from the healthcare provider’s treatment, this is not enough by itself to establish a violation of both the RA and ADA. A plaintiff must prove

that the hospital acted, or failed to act, with discriminatory intent. This is a high burden for the plaintiff to meet, especially when a hospital has key procedures in place designed to prevent discrimination. For example, the simple failure of hospital staff to provide an interpreter when requested by a deaf patient is not necessarily deliberately indifferent to an individual's rights. The regulations do not require healthcare providers to supply any and all auxiliary aids even if they are desired and demanded. The courts have found that construing the regulations in this manner would effectively substitute "demanded" auxiliary aid for "necessary" auxiliary aid. Importantly, for conduct to be deemed deliberately indifferent, there must be both knowledge of likely harm and failure to act on the part of a policymaker. A policymaker is someone capable of making an official decision on behalf of the organization. Thus, helpful strategies which may be employed by hospitals or healthcare facilities include:

- Posting signage in high traffic areas advising of the availability of interpreters;
- Keeping staff informed of all available auxiliary aids;
- Creating a communications policy clearly outlining the expectations of

staff when addressing the needs of deaf patients;

- Distributing employee bulletins regarding the ADA and RA and the needs of deaf patients and visitors;
- Selecting a point person for the organization to specialize in the ADA and RA to serve as a resource for other employees;
- Providing periodic training on the ADA and RA; and
- Providing patient screening forms to ensure that patients are asked about their communications needs.

For claims for injunctive relief, a plaintiff is required to show a real and immediate threat of repeated injury, and the key is to show that discrimination is not likely to occur in the future. Thus, these same strategies can assist in defending claims for injunctive relief.



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