



OPERATING YOUR PRACTICE

## Accommodating Your Hearing-Impaired Patients

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*Question: I have a patient with a hearing disability and they indicate a need for an interpreter. Do I have to arrange for such and may I charge the patient or their insurance the added cost?*

This is a question that has come up several times this year at our continuing-education seminars, so I am not surprised by your inquiry. The simple answer is yes, you need to provide adequate communication capabilities, which may require a sign language interpreter. The cost is borne by the provider of service, but you may write it off as a business expense.

Eligible small businesses may 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 tax year. Eligible access expenditures include the costs of qualified interpreters, computer-aided transcription services (CART), and other auxiliary aids and services.

Understanding Your Responsibility



Now that you are likely surprised, here is some background. Under the Americans with Disabilities Act (ADA), health care providers are required to ensure effective communication with patients through reasonable accommodations, and this may require the provision of an interpreter unless the provider can demonstrate that this would result in significant difficulty or expense for the physician. Title III of the ADA applies to all private health care providers, regardless of the size of the office or the number of employees.

In some situations, the cost of providing an auxiliary aid or service (e.g., a qualified interpreter) may exceed the charge to the patient for the health care service. A health care provider is expected to treat the costs of providing auxiliary aids and services as part of the overhead costs of operating a business.

Accordingly, so long as the provision of the auxiliary aid or service does not impose an undue burden on the provider's business, the provider is obligated to pay for the auxiliary aid or service. A health care provider also cannot charge a patient for the costs of providing auxiliary aids and services per 28 *C.F.R. § 36.301(c)*.

Health care providers have a duty to provide appropriate auxiliary aids and services when necessary to ensure communication with patients who are deaf or hard of hearing is as effective as communication with others.

#### Ensuring "Effective Communication"

Effective communication is defined as follows: "Whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities." While

providers are not required to make unduly burdensome and fundamental alterations to their practices to accommodate patients who have hearing, speech or visual impairments, they must make reasonable modifications or otherwise provide auxiliary aids and services at no additional cost to the patient to comply with the statutes.

Auxiliary aids and services include equipment or services a person needs to access and understand aural information and to engage in effective communication. For example, the rule includes qualified interpreters, computer-aided transcription services (CART), written materials, assistive listening devices, captioning, or other effective methods of making aural information and communication accessible [28 C.F.R. § 303(b)(1)].

The auxiliary aid and service requirement is flexible, and the health care provider can choose among various alternatives as long as the result is effective communication with the deaf or hard-of-hearing individual. An individual who is deaf or hard of hearing likely has experience with auxiliary aids and services to know which will achieve effective communication with his or her health care provider.

The U.S. Department of Justice expects that the health care provider will consult with the person and consider carefully his/her self-assessed communication needs before acquiring a particular auxiliary aid or service.

#### Other Considerations

Some providers may think of using a family member of the patient who may interpret as an adequate accommodation; however, using family members as interpreters may impede both effective communication and practitioner-patient confidentiality. It is inappropriate to ask family members or other companions to interpret for a person who is deaf or hard of hearing. Family members may be unable to interpret accurately due to emotional involvement.

Exchanging written notes will likely be effective communication for brief and relatively simple face-to-face conversations. Written forms or information sheets may provide effective communication in situations for which there is little call for interactive communication, such as providing billing and insurance information.

However, communication through the exchange of written notes is inherently truncated; information that would otherwise be spoken may not be written. Moreover, written communication can be slow and cumbersome. If a health care provider is communicating less or providing less information in writing than they would provide when speaking to a patient, this is an indication that writing to communicate is not effective in that context. Understanding written material may also depend on the reading level or literacy skills of the individual.

Failure to achieve effective communication with a patient can additionally result in a violation of the requirement of obtaining informed consent for treatment. Informed consent is an ongoing communication process involving the practitioner and the patient, requiring the patient to be instructed regarding the proposed treatment options, demonstrate an understanding of the options, and either consent to or refuse a specific treatment option. Miscommunication and a lack of informed consent can lead to inadequate patient care and damaging claims for practitioners.

For more complicated and interactive communications, such as a patient's discussion of symptoms with medical personnel, the practitioner's presentation of diagnosis and treatment options to patients

or family members, it may be necessary to provide a qualified sign language interpreter or other interpreters.

One final consideration: Health care providers who offer training sessions, health education or conferences to the general public must make these events accessible to deaf and hard-of-hearing individuals when requested. Qualified interpreters or services may be necessary to ensure equal access and opportunity to participate for deaf and hard-of-hearing attendees.

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*Editor's Note:* Have a billing question? Submit it via email to Sam at [sam@hjrossnetwork.com](mailto:sam@hjrossnetwork.com). Your question may be the subject of a future column. Note that submission of a question is acknowledgment that it may be referenced (anonymously) in his column.

OCTOBER 2021