

How to Use Aids and Services in Medical Settings

Disability Rights California

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Aids and services in medical settings for persons with hearing disabilities

As a person who is deaf or hard of hearing, you have the right to understand and be understood in medical settings. You have the right to get aids and services that let you and your provider communicate so you can say what you need and understand your treatment options and medication.

Use this booklet to learn about laws that protect you, accommodations your provider has to make, and aids and services that can help you in medical settings.

This booklet also explains where to get more help if you need it.

Aids and Services in Medical Settings

If you are deaf or hard of hearing, you have the right to aids and services that help you communicate effectively with your medical provider.

Aids and services can help you explain your condition to your medical providers so you can get the medical treatment you need. Aids and services also let you understand your treatment options and medication instructions.

What is a medical setting?

- Medical settings include:
- Hospitals and clinics
- Health maintenance organizations (HMO)
- Nursing homes
- Health education classrooms
- Doctor, dentist and mental health services offices

Who has to pay for the aid or service?

The medical provider must pay for the aid or service. They cannot charge you or your insurance company.

Do I have to prove I am deaf or hard of hearing?

Not usually. But if your provider asks you for proof, send them a copy of your audiogram. You can get one from your Vocational Rehabilitation Counselor, audiologist, or school nurse.

What aids or services does the provider have to offer?

Effective Communication

If you are deaf or hard of hearing, your medical provider must communicate with you as effectively as they communicate with other patients. This means you are entitled to face-to-face communication and written correspondence, just like any other patient.

You are also entitled to use telephones, fax, e-mail, electronic systems and the Internet if necessary because of your disability.

If you need aids and services to communicate effectively, the medical provider must give them to you, including:

- qualified interpreters,
- transcription services,
- TDD, videotext displays, and captioning,
- assistive listening devices, like phone amplifiers or phones that work with hearing aids,
- note takers, and
- written materials.

Depending on the length and complexity of the communication, a hospital would have to provide a sign language interpreter or real time transcription to communicate with patients that have hearing disabilities. (Real time transcription is when speech is displayed on a screen.)

*For more information:
“Effective Communication”: 28 C.F.R. section 36.303
Appendix to 28 C.F.R. section 36.303
DOJ’s Title III Tech. Assist. Manual, section III-4.3200*

Reasonable Modifications

Your medical provider must make “reasonable modifications” to their policies, practices, and procedures if needed to provide equal treatment to people with hearing or other disabilities.

For example, a hospital waiting room would need to provide telephones that work with hearing aids.

How do I know which aids or services are effective for me?

Every person is different. For example, not everyone who is deaf or hard of hearing uses TTY/TDD machines. You probably know which aids or services will work best for you.

Does the provider have to give me *any* service or aid I ask for?

No. They do **not** have to provide an aid or service that is not necessary for effective communication or would:

- change the basic nature of their business (a fundamental alteration), or
- create an undue financial burden.

28 C.F.R. § 36.303(a)-(b)1

Can I get an interpreter?

Yes. If you need an interpreter to communicate effectively and to get the same care as other patients, ask for one.

Ask *in writing* 2 weeks before (if possible) your medical appointment. That way, the office will have time to make the arrangements. Keep a copy of your letter.

What should my letter say?

Your letter should say:

- You need a sign language interpreter.

- What kind of interpreter you need, like ASL, SEE, or ORAL, *and* if your interpreter needs to speak another language, like Spanish.
- If you prefer male or female.
- Name and phone number or web address for an interpreter service.

Should I hire my own interpreter?

No. Do **not** hire your own interpreter and ask to be reimbursed. Ask the provider to hire an interpreter for you.

Which laws protect me?

In California, there are state laws that protect your rights in a medical setting. There is also a federal law, called the American with Disabilities Act (ADA) that protects you.

What are the California laws?

The California Civil Code says businesses or organizations that are open to the general public must not discriminate against you because you are deaf or hard of hearing. The law also says you have the right to full use of the medical facilities.

Hospitals, clinics and medical offices are open to the public. This means you have the right to ask for support, like an interpreter or other aid that would give you access to the same services and privileges as other patients.

If they do not give you the services or aids you need, you can sue them.

You can also file a complaint with the Department of Fair Employment and Housing (DFEH). See page 10.

For more information on the state laws, read California Civil Code, Section 51 (called the Unruh Civil Rights Act) and Sections 54–55.2.

What is the ADA?

The Americans with Disabilities Act is a federal law. It also says that public places cannot discriminate against you because you are deaf or hard of hearing.

Any medical facility that is open to the general public **MUST** follow the ADA. It does not matter how small the medical office is. Even if the office is in a private home, the part of the home used by the public must follow the ADA.

For more information, read Title III, 28 CFR sections 36.207 and 36.204. Or contact Disability Rights California and ask for:

ADA – A Comprehensive Overview, Publication # 5097.01

What does the ADA require of medical providers?

The ADA says the medical provider **MUST**:

- Give you equal and full use of its goods, services, facilities, and privileges;
- Not use contractors or employees who discriminate against you because you are deaf or hard of hearing; and
- Make reasonable efforts to get you the aids and services you need to use their services.

What if my provider says they are exempt?

They are probably wrong. The only exceptions to following the law would be if the service or aid:

- is very difficult or expensive (called “undue burden”), or
- changes the nature of their business or services.

But, your provider still has to give you some other aid or service that lets you fully use their services. If your provider refuses, California law says you can sue them for violating the ADA.

28 C.F.R. § 36.303 (f)

Do the laws cover my family, too?

Sometimes. If the services are open to other families, the provider must offer aids or services to your family members, too.

For example, prenatal classes are for mothers AND fathers. So, fathers who need aids or services could also get them. Or if a parent is deaf or hard of hearing, they can get aids or services to help them understand their child's care.

What if my provider asks me to use a notepad instead of giving me an interpreter?

If your visit is for something simple, like making an appointment or getting billing or insurance information, a notepad and pen may be appropriate.

But, when a visit is more complicated, like an exam or talking about test results, treatment options, confidential or personal situations, the provider **MUST** give you the aids and services you need to communicate effectively.

C.F.R. § 36.303 (4)(c)

What if I don't read English?

If you do not read English well, written methods like a note pad are not considered *effective communication*.

What if the provider asks me to use a relative or friend to interpret?

It is usually better to use a professional who understands medical terminology. You may have problems of accuracy, objectivity or confidentiality if you use a friend or relative to interpret for you.

28 C.F.R. § 36.104.

What if my provider says they only have to give me aids or services in the examining room?

They are mistaken. Providers have to give you other aids and services too. For example:

- Pharmacies, labs, and radiological offices must have a visual paging system to let you know when your prescription is ready or when to go for a blood test or x-ray.
- Providers that let patients make outgoing telephone calls on a regular basis must also have TTY/TDD systems so people who are deaf or hard of hearing can use the phone, too.
- Hospitals with TVs for their patients must provide (upon request) TVs with captioning systems. If the TVs were made before 1993, a separate decoding device can be attached.

28 C.F.R. § 36.303 (d)(1)(2)(e)

Do residential facilities have to offer closed captioning on their TVs?

Yes. If other patients watch TV, the facility must also make closed-captioned programs available. If the TVs don't have built-in decoder ability, the facility can connect a separate decoder.

*28 C.F.R. § 36.303(e).
47 U.S.C.A. §§ 303(u), 330(b).*

Are there laws about TTY/TDDs in newer or remodeled facilities?

Yes. Federal and state law say that new buildings (built or remodeled after 1992) with pay phones, must also have at least one public TTY/TDD pay phone next to a hospital waiting room, recovery room, or emergency room. If the facility has 4 or more pay phones and one of them is inside the building, then the TTY/TDD phone must be inside the building, too.

Newer buildings (built or remodeled after 1992) must also have flashing visual alarm systems, visual doorbells and other notification devices, volume control telephones, and assistive listening systems in meeting rooms and waiting rooms.

Do older buildings have to make changes, too?

Sometimes. If the medical facility can make the changes fairly easily and without too much expense, it must also do things like install flashing alarm systems and permanent signage.

28 C.F.R. § 36.304(a) and (b).

Can the provider get a tax break for offering aids and services?

Yes. Medical facilities may be able to get tax credits or deductions from the IRS. The “Disabled Access Tax Credit” and the “Tax Deduction to Remove Architectural and Transportation Barriers to People with Disabilities and Elderly Individuals” allow tax deductions for the costs of complying with the ADA.

What about health education, classes or videotapes?

If your health care provider offers education, classes or videotapes, the ADA says the provider must make that information available to you, too.

In general, any class, support group or other activity that is open to the public, must be open to participants who are deaf or hard of hearing. The provider can use interpreters, real-time transcribers, captioning or other assistive listening systems. Ask for the aid or service that works best for you.

*56 Fed. Reg. at 35565.
28 C.F.R. §§ 36.201 and 36.202.
28 C.F.R. § 36.303(b)(1).*

Who can help me if I can't get what I need?

What if my provider won't give me the aid or service I need?

If you were denied an aid or service you asked for, send your provider a letter. See the sample letter on page 12.

In your letter,

- Explain your needs.
- Say what service or aid you want them to provide.
- Explain that the law says they **MUST** provide aids and interpreter services so you can use their services.

What if my provider still refuses to make an accommodation?

You can file a complaint with:

- U.S. Department of Justice
- California Department of Fair Employment and Housing, or
- Small Claims, Superior, or Federal Court.

Deadline to file your complaint:

- 180 days after the discrimination
- 1 year after the discrimination
- 2 years after the discrimination

How do I file a complaint with the Department of Justice?

Send a letter to:

U.S. Department of Justice
Civil Rights Division, Disability Rights - NYAVE
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Your letter should include:

- Your full name, address, and phone number, and the name of the person discriminated against;
- A summary of the discrimination (what happened, when, the names of the people who discriminated, and copies – not originals – of any documents that support your case);

- Your suggestion for solving the problem;
- Names of other agencies or courts where you filed or will file a complaint; and
- Provider's name, address and phone number, services provided, and name of owner or manager

What happens after I send my letter?

The Disability Rights Section at DOJ will investigate your complaint and let you know if they think there should be a lawsuit.

If DOJ believes there is discrimination, or your complaint seems important to the general public, they may try to negotiate a settlement.

Or DOJ may take the case to U.S. District Court. If they do this, they will represent the people of the United States. They will not be your attorney or represent you personally.

What if I need help to file a complaint?

Call or fax your questions to DOJ:

TDD & Voice: (202) 307-0663

Fax: (202) 307-1198

ADA Hotline

TDD: (800) 514-0383

Voice: (800) 514-0301

Monday-Friday: 9:30 – 5:30 (EST)

Tuesday: 12:30-5:30 (EST)

Or call Disability Rights California

Voice: (800) 776-5746 Voice,

TTY: (800) 576-9269

How do I file a complaint with the Department of Fair Employment and Housing (DFEH)?

Follow these steps:

1. Call DFEH:

TDD/TTY: (800) 700-2320 (*California*)

Voice : (800) 884-1684

DFEH staff will ask you what happened and set up an interview to talk with you. If you need an aid or service at your interview, like an interpreter, ask DFEH to provide one.

2. DFEH will investigate your case. If they do not find a violation of the law, DFEH will close the case. If they see a violation, they will make an appointment with your medical provider and DFEH try to resolve the problem without going to court. If they cannot, they may sue the provider.
3. If DFEH sues the provider, the case may take place at a public hearing at the Fair Employment and Housing Commission (FEHC). Or the case may go to civil court.
4. The FEHC can ask the court or hearing officer to make the provider:
 - Pay a fine, back pay, losses or damages for emotional distress
 - Provide training, change their policies or affirmative relief
 - Pay attorney's fees and other costs and fines

How do I file a case with Small Claims, Superior, or Federal Court?

To learn about filing a case in Small Claims Court, contact Disability Rights California and ask for:

Disability Rights California Publication # 5206.01 - How to Sue a Private Business for Discrimination in Small Claims Court

Filing a case in Superior or Federal Court can be expensive and complicated. Think about asking a lawyer to help you. Disability Rights California can give you a list of lawyers.

Sample Letter

If you already tried to get your provider to give you the aid or service you need, you can use this letter to ask again. If you do not get an answer, read pages 10-12 of this booklet for more help.

[Provider's Name]

[Provider's Address]

[Date]

RE: Request for Accommodation

Dear [Provider's Name]:

On [date], I sent you a letter explaining that I am deaf and asked you for an ASL interpreter to help me at my appointment on [date].

On [date], [name] of your office told me you would not provide an interpreter. S/he said I should [... go to another medical provider ... bring my own interpreter... or whatever happened].

The law requires your office, as a place of public accommodation, to provide aids and interpreters to patients who are deaf or hard of hearing. The law also gives me the right to file a complaint or sue you for denying these services. But, I would like to try to solve this problem with you first. Please answer this letter within 14 days.

If you have questions about your legal responsibilities to provide interpreters to patients like me, please read the federal and state laws (ADA, Unruh Civil Rights Act, and California Civil Code, sections 54-55) that protect the rights of people with disabilities, including my right to effective communication.

If I do not receive your answer, I will assume you do not want to resolve this issue.

Sincerely,

<Your Name>