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Americans with Disabilities Act (ADA) Requirements Concerning the Provision of Interpreters by Hospitals and Doctors

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Summary

The Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 *et seq.*, prohibits discrimination against individuals with disabilities by places of public accommodations. A common question is whether this prohibition requires medical doctors and hospitals to provide an interpreter when they have a patient with a hearing disability. This requirement varies depending upon the situation presented but situations may arise where there is an obligation to provide an interpreter. This report will be updated as appropriate. For more information on the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.

Statutory Language

Title III of the ADA, section 302, 42 U.S.C. §12182, provides generally that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” In addition, this section provides that discrimination includes “a failure to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modification would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.” The definition of public accommodation specifically includes the “professional office of a health care professional” and hospitals. 42 U.S.C. §12181(7)(F).

Regulatory Interpretation

The Department of Justice promulgated regulations to implement title III of the ADA on July 26, 1991 which contain a provision on auxiliary aids and services. “A public accommodation shall take those steps that 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, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e. significant difficulty or expense.” 28 C.F.R. §36.303. The term auxiliary aids is further defined to include “qualified interpreters, note takers, computer-aided transcription services, written materials...” *Id.*

The Department of Justice regulations stated that in determining whether an action is an undue burden various factors should be considered. These include the nature and cost of the action, the overall financial resources of the site, the geographic separateness and the administrative or fiscal relationship of the site or sites in question to a parent corporation, the overall financial resources of the parent corporation, and the type of operation or operations of any parent corporation or entity. 28 C.F.R. §36.104.

The Department of Justice’s analysis of its regulatory provisions when the regulations were proposed included as an example the situation where a note pad and written materials were insufficient to permit effective communication in a doctor’s office when the matter to be discussed was major surgery. Commentators objected to this statement as conveying the impression that note pads were sufficient except in the most extreme circumstances. In its discussion of the final regulations, the Department of Justice observed that such a limitation was not intended. “Other situations may also require the use of interpreters to ensure effective communication depending on the facts of the particular case. It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficient lengthy or complex to require an interpreter for effective communication.” 56 Fed. Reg. 35567 (July 26, 1991). In addition, the Department noticed that the use of a computer may be an intermediate step between an interpreter and a notepad. *Id.*

Analysis

The ADA purposely adopted a flexible standard regarding nondiscrimination requirements. This flexibility was seen as allowing the nondiscrimination requirements to apply in the fairest manner to the myriad circumstances presented by employers, public accommodations, and individuals with disabilities. However, this very flexibility means that precise requirements are not always readily enunciated. The answer, then, to the question of whether a doctor or hospital must provide an interpreter for a hearing impaired individual is dependent upon the particular circumstances although generally hospitals would appear to be required to provide for interpreting services in many situations.¹

¹ The Department of Justice, Disability Rights Section of the Civil Rights Division, has published a business brief entitled “Communicating with People who are Deaf or Hard of Hearing in Hospital Settings” which details when an interpreter may be required.

Exactly when a sign language interpreter may be required has been discussed in several judicial decisions although the majority of the claims regarding the failure of a doctor to provide a hearing impaired patient with an interpreter appear to have been resolved through either an informal or formal settlement process. The Department of Justice has obtained a number of settlement agreements with hospitals in recent years.²

Effective Communication. As the regulations indicate, there is no absolute requirement that an interpreter be provided in a particular situation. One key factual issue determining when there is such a requirement is whether other means may provide effective communication. In *Mayberry v. Van Valtier*, 843 F.Supp. 1160 (E.D. Mich. 1994), the court found that a deaf Medicare patient was entitled to a trial on her claim that her doctor violated the ADA. The doctor had communicated with the patient for a number of years by passing notes or using one of the patient's children as an interpreter and on one occasion had noted in the patient's file that her back pain was higher than she had originally thought and that this misunderstanding was "probably due to poor communications." The patient, Mrs. Mayberry, requested that the doctor provide an interpreter for a physical examination. The doctor complied but following the examination wrote a letter to the interpreter, with a copy to the patient stating that she would not be able to use the interpreter's services again and that "I really can't afford to take care of Mrs. Mayberry at all." The doctor characterized the letter as a protest against what was perceived as an unfair law. The court found that the allegations made were sufficient to reject a motion for summary judgment and ordered the case to proceed to trial. Subsequently, a judgment was rendered in favor of the doctor (Docket # 114 - May 22, 1995) but there is no record of a written opinion.

Physicians should also recognize that even if a deaf patient receives effective medical treatment, the doctor may still violate the ADA if the doctor did not "effectively communicate" with that patient. In *Aikins v. St. Helena Hospital*, 843 F.Supp. 1329 (N.D. Cal. 1994), the court found that adequate medical treatment does not defeat claims of failure to provide effective communication under the ADA and Rehabilitation Act of 1973.³ Elaine Aikins, a hearing impaired individual and the California Association of the Deaf (CAD) alleged that St. Helena Hospital and Dr. James Lies failed to communicate effectively with Mrs. Aikins during her now deceased husband's medical treatment. The late Mr. Aikins was transported to St. Helena Hospital where Dr. Lies was responsible for his medical care. Mrs. Aikins requested an interpreter to facilitate communication with Dr. Lies. Instead of an interpreter the hospital provided Mrs. Aikins with an ineffective finger speller. Allegedly Mrs. Aikins was unable to effectively communicate with Dr. Lies or other hospital staff until her daughter became available to interpret. Mrs. Aikins and the CAD alleged that Dr. Lies and St. Helena Hospital violated both the ADA and the Rehabilitation Act. Dr. Lies maintained that the Rehabilitation Act was inapplicable and St. Helena asserted that it complied with both the ADA and Rehabilitation Act. The court noted that adequate medical treatment is not a defense to a claim that a defendant failed to provide effective communication under the Rehabilitation Act of 1973.

² See e.g., [<http://www.usdoj.gov/crt/ada/devin.htm>], [<http://www.usdoj.gov/crt/ada/davishos.htm>], [<http://www.usdoj.gov/crt/ada/stluke.htm>], and [<http://www.usdoj.gov/crt/ada/shillhos.htm>]

³ The Rehabilitation Act of 1973 prohibits entities receiving federal funds from discriminating against individuals on the basis of a disability. 29 U.S.C. § 794(a).

Citing *Aikins v. St. Helena Hospital*, the court in *Naiman v. New York University*, 1997 WL 249970 (S.D.N.Y.), 1997 U.S. Dist. 6 A.D. Cases 1345 (10 NDLR 39), found that a physician's effectiveness in providing medical treatment to a hearing impaired patient does not negate an ineffective communication claim under the ADA. Mr. Alec Naiman, who is hearing impaired, was admitted on several occasions to New York University Medical Center, operated by New York University. On each occasion Mr. Naiman requested an interpreter. On one occasion the Center provided Mr. Naiman with a person minimally capable of communicating sign language. While on other visits Mr. Naiman alleged that the Center did not either provide an interpreter in a timely manner or did not provide an interpreter at all. Mr. Naiman contended that he needs an interpreter to participate in his medical care and is uncertain on his visits to the Center whether he will be able to effectively communicate with doctors and staff. New York University argued that Mr. Naiman failed to state a claim under the ADA because he received adequate medical care from the Medical Center. The court ruled in favor of the plaintiff, holding that a claim under ADA alleging ineffective communication relates to the patients exclusion from participation in their treatment and the treatment itself.

In *Majocha v. Turner*, 166 F.Supp.2d 316 (W.D. Pa. 2001), the district court denied a motion for summary judgment in a case involving the lack of an interpreter for the father of a fifteen month old boy with chronic ear infections. The defendant doctors argued that they had offered to use note taking to communicate. The district court observed that an individual with a disability cannot insist on a particular auxiliary aid if the aid offered ensures effective communication. However, the court, relying on lay and expert testimony concerning the lack of effectiveness of note taking in this case, found that there was a genuine dispute regarding whether the note taking was an acceptable auxiliary aid.

Undue Burden. The regulations also provide that an interpreter is not required if the doctor can demonstrate that doing so would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden. This issue was discussed in *Bravin v. Mount Sinai Medical Center*, 186 F.R.D. 293 (S.D. N.Y. 1999),⁴ where the plaintiff sued the hospital for failure to provide a sign language interpreter for a Lamaze class conducted at the hospital. The court there found that the hospital had alluded to an undue hardship but did not address the issue explicitly and therefore awarded summary judgment to the plaintiff.

The Senate report on the ADA noted that "technological advances can be expected to further enhance options for making meaningful and effective opportunities available to individuals with disabilities. Such advances may enable covered entities to provide auxiliary aids and services which today might be considered to impose undue burdens on such entities."⁵ Recently, videoconferencing technology, combined with high-speed internet connections, has been used to provided around-the-clock interpreting services for

⁴ The court granted a motion for reconsideration regarding a finding of intentional discrimination because of deliberate indifference in *Bravin v. Mount Sinai Medical Center*, 58 F.Supp. 2d 269 (S.D. N.Y. 1999).

⁵ S. Rep. No. 101-116, 101st Cong., 1st Sess. (1989), reprinted in 1 Legislative History of P.L. 101-336, The Americans with Disabilities Act, Prepared for the House Committee on Education and Labor, Serial No. 102-A, pp. 162-163 (Dec. 1990).

businesses.⁶ This may render successful undue burden arguments increasingly difficult. However, the use of video conferencing technology must result in effective communication.⁷

Deliberate Indifference. Several ADA cases have held that to establish a claim for damages under the ADA, a plaintiff must show that a defendant is guilty of intentionally discriminating. This finding can be inferred when a defendant acts with deliberate indifference to the likelihood that a violation of the ADA will occur. Several cases have argued that defendant hospitals have shown deliberate indifference when a requested sign language interpreter has failed to appear. In *Freydel v. New York Hospital*, 2000 U.S. App. LEXIS 31862 (2d Cir. 2000), the court of appeals found that the hospital had a policy on interpreter services and had attempted to secure an interpreter for a 78 year old deaf woman who communicated in Russian sign language. The second circuit held that proving that staff members failed to respond to repeated requests for a Russian sign language interpreter “cannot by itself suffice to maintain a claim of deliberate indifference.” Similarly, in *Constance v. State University of New York Health Science Center*, 166 F.Supp.2d 663 (N.D. N.Y. 2001), denied the plaintiffs’ motion for damages finding that the hospital responded quickly to a request for an interpreter. Although the failure to follow up on the request may have been negligent, the court found it did not amount to deliberate indifference. In *Alvarez v. New York City Health & Hospitals Corporation*, 2002 U.S. Dist. LEXIS 12986 (S.D.N.Y. 2002), the district court reached a similar conclusion, finding that the plaintiff did not make the required showing of deliberate indifference since the hospital has a policy of providing interpreters and provided an interpreter within a day of the request.

Standing. One of the threshold issues a plaintiff must overcome before the merits of a case can be examined is whether the plaintiff has standing to bring the action. Several decisions have found that a plaintiff who alleges discrimination under the ADA due to lack of a sign language interpreter does not have standing because there is not a real and immediate threat of harm.⁸ However, in the recent case of *Gillespie v. Dimensions Health Corporation*, 369 F.Supp.2d 636 (D.Md. 2005), the district court found standing for plaintiffs who alleged that “the existing and on-going policy and practice itself violates their rights under the ADA.” In addition, the plaintiffs argued that they have sought, and would likely continue to seek, medical care from the hospital and thus established a threat of future ADA violations that gives standing to pursue injunctive relief.

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⁶ See, e.g., [<http://www.deaf-talk.com/>]

⁷ See e.g., *Gillespie v. Dimensions Health Corporation*, 369 F.Supp.2d 636 (D.Md. 2005), where the Plaintiffs alleged that the video conferencing device was “wholly ineffective, either because the staff was inadequately trained and unable to operate the VRI device, because Plaintiffs were unable to understand the video interpreter due to the poor quality of the video transmission, or both.”

⁸ See e.g. *Proctor v. Prince Georg’s Hosp. Ctr.*, 32 F.Supp.2d 820 (D.Md. 1998).