

**Your Right to a Qualified Sign Language Interpreter
During the Receipt of Medical Services
Rights Information**

Effective Communication

Approximately 600,000 Virginians are deaf or hard of hearing and have difficulty communicating with hearing persons. When the need arises for medical services—whether it be a trip to the doctor’s office or an emergency admission to the hospital—the anxiety, fear, humiliation, and distress ordinarily accompanying these situations is even more severe for someone who is deaf or hard of hearing.

Sometimes, medical service providers fail or refuse to provide qualified sign language interpreters to their patients who are deaf or hard of hearing and need an interpreter to communicate. When this happens, the medical service providers illegally discriminate against these patients. Congress sought to end this type of discrimination by passing the Americans with Disabilities Act (ADA). In fact, Congress specifically recognized health care as one of the critical areas in which individuals with disabilities are routinely the victims of discrimination.

Under the ADA, the medical service provider has a duty to help patients who are deaf or hard of hearing:

- ask questions about their medication and treatment;
- gain information about their condition, especially so that patients can give informed consent to any medical procedure or treatment;
- participate in their own medical care and treatment;
- benefit from services equally with hearing patients;
- ensure their right to privacy—especially since the details of diagnoses, conditions, or treatments may be intimate and embarrassing.

The medical service provider fulfills these duties by making available and covering the costs of a qualified sign language interpreter.

Qualified Sign Language Interpreter

The use of a qualified sign language interpreter ensures adequate and accurate translation and confidentiality. In Virginia, qualified interpreters may not disclose the contents of any communication or transaction in which they serve as an interpreter.

The Virginia Code sets out criteria that a sign language interpreter must meet in order to be qualified. In order to be qualified, an interpreter must have:

- certification from a national organization whose certification process has been recognized by the Virginia Department for the Deaf and Hard of Hearing; or
- a current screening level awarded by the Virginia Quality Assurance Screening Program of the Virginia Department for the Deaf and Hard of Hearing; or
- a screening level or recognized evaluation from any other state when (i) the credentials meet the minimum requirements of Virginia Quality Assurance Screening and (ii) the credentials are valid in the state issued.

An interpreter is not a qualified sign language interpreter if the interpreter:

- possesses only a familiarity or basic knowledge of sign language or finger spelling; or
- appears fluent in sign language but lacks the ability to process spoken communication into proper signs or to observe someone else signing and to change that person's signed or finger spelled communication into spoken words.

Rights and Responsibilities — What You Need to Know and Do If You are Deaf or Hard of Hearing

- You have the right to a qualified sign language interpreter, provided free of charge, when dealing with all medical service personnel. This includes nurses, physicians, social workers, technicians, admitting personnel, and therapists, among others.
- You should make the medical service provider fully aware of your need as early as possible. The best time to do this is at the time of admission to the hospital, when making an appointment, or when entering an ambulance. However, if you are unable to make your need known, such as if you are unconscious, the medical service provider must take steps to ascertain your need.
- You should not have to inform each and every attendant. The medical service provider should take steps to ensure that all subsequent personnel are aware of your needs. You have by law, a right to privacy. The medical service provider has a duty to preserve the confidentiality of information learned or discovered during the course of treatment. A breach of this duty is a breach of your right to privacy. This duty extends to the provider's employees, contractors, agents, and representatives. When a medical service provider uses an unqualified sign language interpreter or defers to your family or friends who may be present, the provider is breaching his duty and infringing on your right to privacy.

- You have the right to prompt medical care. Any delay on the provider’s part to contact or schedule an interpreter should not result in a delay of your receipt of medical services or treatment.
- The provider should have an interpreter present whenever you need to communicate with a member of his/her staff including when your health care provider is:
 - ❖ determining your medical history;
 - ❖ asking you questions about your ailment or injury;
 - ❖ informing you of your rights or seeking your informed consent or permission for treatment;
 - ❖ explaining a living will or power of attorney (or their availability);
 - ❖ diagnosing your ailment or injury and making a prognosis for your recovery;
 - ❖ explaining procedures, tests, treatment, treatment options, or surgery;
 - ❖ explaining prescribed medication, including dosage as well as how and when the medication is to be taken and any possible side effects;
 - ❖ explaining follow-up treatment, therapy, test results, or recovery;
 - ❖ giving discharge instructions;
 - ❖ providing a psychiatric evaluation, group and individual therapy, counseling or other therapeutic activities, including grief counseling and crisis intervention;
 - ❖ explaining any billing or insurance issues that may arise;
 - ❖ conducting classes concerning birthing, nutrition, CPR, weight management, etc;
 - ❖ giving informational presentations for patients or the public; and
 - ❖ taking a blood donation or apheresis.

The Law

The Americans with Disabilities Act (42 U.S.C. §12101 et. seq.) was signed into law in 1990. The Act, commonly known as the ADA, provides that “no 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.” (42 U.S.C. §12182(a)). Specifically included in the definition of “public accommodation” are professional offices of health care providers and hospitals. (42 U.S.C. §12181(7)(F)) Thus, health care providers and hospitals may not discriminate against persons with disabilities, including persons who are deaf or hard of hearing.

Medical service providers discriminate against patients who are deaf or hard of hearing when they fail 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....” (42 U.S.C. §12182(b)(2)(A)(ii-iii))

Specifically included in the definition of “auxiliary aids and services” are “qualified sign language interpreters.” (28 C.F.R. §36.303(a) and c)

Thus, when health care providers fail or refuse to provide persons who are deaf or hard of hearing with qualified sign language interpreters, they are denying them services by failing to provide “auxiliary aids and services.”

Hospitals which are owned or operated by the government have the same obligation to provide you with “auxiliary aids and services” including qualified sign language interpreters.

The ADA specifically requires “public entities” such as government hospitals to ensure that persons with disabilities have the same opportunity to benefit from its programs and services as persons without disabilities. (42 U.S.C. §12132) Therefore, the government hospital must provide you with a qualified sign language interpreter if you need one.

This means that no medical service provider, whether private or public, can deny you full access to medical services because you are deaf or hard of hearing and need an interpreter. Moreover, the provider must ensure your access by providing and paying for a qualified sign language interpreter.

Resources

For a registry of qualified sign language interpreters:

Virginia Department for the Deaf and Hard of Hearing (VDDHH)
1602 Rolling Hills Drive, Suite 203, Richmond, VA 23229-5012
(800) 552-7917 www.vddhh.org

For general information on interpreting the ADA:

United States Department of Justice
950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001
(800) 514-0301 (Voice), (800) 514-0383 (TTY)
www.usdoj.gov/crt/ada/adahom1.htm

disABILITY LAW CENTER OF VIRGINIA



Protection & Advocacy for Virginians with Disabilities

Contact disAbility Law Center of Virginia

1512 Willow Lawn Drive, Suite 100
Richmond, Virginia 23230

Call: 800-552-3962 or 804-225-2042

Fax: 804-662-7057

Email: info@dLCV.org

Web: www.dLCV.org

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