

# ADA Q&A...Health Care Providers

By Deborah Leuchovius, PACER ADA Specialist

## Introduction

The Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. Both public and private hospitals and health care facilities must provide their services to people with disabilities in a nondiscriminatory manner. To do so, they may have to modify their policies and procedures, provide auxiliary aids and services for effective communication, remove barriers from existing facilities, and follow new ADA accessibility standards for new construction and alteration projects.

## Covered Health Care Providers

### Q. Which health care providers are covered under the ADA?

A. Private hospitals, nursing homes, psychiatric and psychological services, offices of private physicians, dentists and health clinics are among the health care providers covered by the Title III of the ADA. Title III applies to all private health care providers, regardless of size. It applies to providers of both physical and mental health care. If a professional office is located in a private home, the portion of the home used for public purposes is covered by the ADA.

Hospitals and other health care facilities that are operated by state or local governments are covered by Title II of the ADA.

Health care providers that offer training sessions, health education, or conferences to the general public must make these events accessible to individuals with disabilities.

### Q. Do hospitals with religious affiliations have to comply with the ADA?

A. Yes and No. Religious organizations or entities controlled by religious organizations are exempt from Title III of the ADA.

However, they are subject to the employment obligations of the ADA if the facility has 25 or more employees—15 or more employees as of July 26, 1994. Also, if a hospital with religious affiliations receives federal funding, it is obligated under Section 504 of the Rehabilitation Act to make its services accessible to persons with disabilities. In addition, even though hospitals run by religious organizations are exempt from the ADA, they may be subject to other federal, state or local laws prohibiting discrimination and requiring accessibility such as the Minnesota Human Rights Act.

## Policies and Procedures

Health care providers are required to modify policies and procedures when necessary to serve a person with a disability. The ADA, however, does not require providers to make changes that would fundamentally alter the nature of their service.

### Q. What kinds of modifications to policies or procedures might be required?

A. Modifying standard policies, practices or procedures can be an inexpensive but effective way to provide access to health care services. This may mean taking extra time to explain a procedure to a patient who is blind, providing assistance to help a patient with a mobility impairment through the cafeteria line, or arranging to meet a patient at an accessible entrance that is normally kept locked after hours.

### Q. Must hospitals allow service dogs in their buildings?

A. The ADA requires admission of service animals to hospitals and the offices of health care providers unless it would result in a fundamental alteration or jeopardize safe operation. The determination of a “direct threat” to health or safety must be based upon medical or other evidence—not on

stereotype or conjecture.

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## **Effective Communication / Auxiliary Aids & Services**

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Health care providers must find appropriate ways to communicate effectively with persons who have disabilities affecting their ability to communicate. Various “auxiliary aids and services” such as interpreters, written notes, readers, large print or braille text can be used depending on the circumstance and the individual.

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### **Q. Why are auxiliary aids and services so important in the medical setting?**

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A. Auxiliary aids and services are often needed to provide safe and effective medical treatment. Without these aids and services, medical staff run the risk of not understanding the patient’s symptoms, misdiagnosing the patient’s medical problem, and prescribing inappropriate treatment. Similarly, patients may not understand medical instructions or warnings that may have a serious impact on their health.

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### **Q. For whom must a health care provider offer effective communication?**

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A. A health care provider must ensure that its staff can communicate effectively with customers, clients and other individuals with speech, hearing or visual impairments. Such individuals may not always be “patients” of the health care provider. For example, if a parent is blind and is required to grant consent for her child’s surgery, the contents of the consent form must be communicated effectively to her.

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### **Q. Are there any limitations on the ADA’s auxiliary aids and services requirements?**

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A. Yes. The ADA does not require the provision of any auxiliary aid or service that would result in an undue burden or fundamentally alter the nature of the goods or services provided by a health care provider.

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### **Q. When would providing an auxiliary aid or service be an “undue burden”?**

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A. An undue burden is something that involves a significant difficulty or expense. Key factors include the cost of the aid or service and the overall financial resources of the health care provider. Undue burden will always be determined on a case by case basis. The ADA recognizes that what constitutes an undue burden for a small office in a rural setting is different than for a large metropolitan hospital.

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### **Q. How does a health care provider determine which auxiliary aid or service is best for a patient?**

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A. The health care provider can choose among various

alternatives—consulting with the person and carefully considering his or her expressed communication needs in order to achieve an effective result.

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### **Q. Can a patient be charged for part or all of the costs of receiving an auxiliary aid or service?**

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A. No. A health care provider cannot charge a patient for the costs of auxiliary aids and services, either directly or through the patient’s insurance carrier.

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### **Q. In what medical situations should a health care provider obtain a sign language interpreter?**

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A. If a patient or responsible family member usually communicates in sign language, an interpreter should be present in all situations in which the information exchanged is lengthy or complex (discussing a patient’s medical history, conducting psychotherapy, communicating before or after major medical procedures, and providing complex instructions regarding medication).

If the information to be communicated is simple and straightforward, such as prescribing an X-ray or a blood test, the physician may be able to communicate with the patient by using pen and paper.

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### **Q. Can a health care provider require family members and friends to interpret for deaf patients?**

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A. Generally, no. Family members often do not have sufficient sign language skills to effectively interpret in a medical setting, especially in high stress situations. The patient may also wish to keep some matters confidential from other family members.

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### **Q. What does the ADA require regarding telephone accessibility for patients and visitors who use TDDs (Telecommunication Devices for the Deaf)?**

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A. A TDD (also called TTY) must be made available where a voice telephone is made available for outgoing calls on more than an incidental convenience basis. This includes areas such as inpatient rooms and emergency department or recovery room waiting areas. Outpatient medical and health care facilities will probably be able to rely on relay systems for making and receiving calls from patients or clients with hearing or speech impairments.

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### **Q. Does the ADA require access to closed captioned devices for individuals staying in health care facilities on a temporary or permanent basis?**

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A. Yes. Where hospital and nursing home patients are able to watch television, the ability to access closed captioned programs must be offered to those who are deaf and hard of hearing. This can be done by buying a decoder, which

is connected to a standard television, or by purchasing a television with a built-in decoder chip. If health care providers offer information to clients and patients in the form of videotapes, films or slide shows, captioning can also be used to make this information accessible to viewers who are deaf or hard of hearing.

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### **Existing Facilities / Barrier Removal**

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#### **Q. When must private medical facilities eliminate architectural and communication barriers that are structural in nature from existing facilities?**

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A. When the removal of those barriers is “readily achievable,” meaning easy to accomplish, without much difficulty or expense. Like “undue burden,” “readily achievable” is determined on a case by case basis in light of the resources available to an individual provider.

#### **Q. How does one remove “communication barriers that are structural in nature”?**

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A. For instance, install permanent signs, flashing alarm systems, visual doorbells and other notification devices, volume control telephones, assistive listening systems, and raised character and braille elevator controls.

#### **Q. Must publicly funded health care providers meet special ADA requirements to make their existing buildings accessible?**

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A. Yes. Title II of the ADA requires public health care providers to make all of their health care programs and services available to people with disabilities. However, they may do so in a variety of ways. If portions of their existing facility are inaccessible they can relocate programs or services to accessible facilities, remove the architectural barriers that keep people with disabilities from using services, or find a different way to provide the services. The ADA also requires public providers to provide integrated access to their programs. They must make integrating people with disabilities into their regular programs a priority when they choose the best means to achieve program access.

For example, if a public hospital offers monthly child birth classes on an upper floor of an older building without an elevator, the hospital has a number of options in how it may make this program accessible. It could install an elevator, schedule the class in a ground floor classroom in the future, or relocate the class to a ground floor room, when individuals who use wheelchairs register for the class. Offering one-on-one or at-home instruction to a couple who could not access child birth classes held in an inaccessible location is an option, but would be a less desirable one because the couple would not receive the services in an integrated setting.

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### **New Construction and Alterations**

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#### **Q. What do newly constructed or altered medical facilities have to do to make their facilities accessible?**

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A. The ADA requires health care providers to follow specific accessibility standards when constructing new facilities and when making alterations that could affect access to or use of the facility by persons with disabilities.

In addition, whenever an alteration is made to a primary function area, Title III requires that the path of travel from the entrance to the altered area must be made accessible. The overall cost for providing this accessible path of travel need not exceed 20% of the original alteration costs. However, the facility is obligated up to the 20% limit. The path of travel requirement covers sidewalks, lobbies and corridors; ramps, stairs, lifts, and elevators; and the restrooms, telephones and drinking fountains servicing the altered area.

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### **Transportation**

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#### **Q. What does the ADA require regarding transportation services such as a hospital van used to pick up elderly patients from outlying areas?**

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A. The ADA does not require a van to be retrofitted with a lift. However, the hospital must provide equivalent transportation services for people with disabilities who are unable to use the hospital’s van. If a new van is purchased, and if it seats more than 16 people, it should be accessible to individuals with disabilities unless equivalent transportation services are provided.

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### **Tax Credits**

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#### **Q. Is there any money available to assist with ADA compliance costs?**

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A. Tax credits are available to businesses, including health care providers. The amount credited may be up to \$5,000 per tax year. Eligible access expenditures include the costs of removing architectural and transportation barriers, and providing auxiliary aids and services.

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### **Employment**

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#### **Q. Do health care providers have any responsibilities under the ADA to employees and job applicants with disabilities?**

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A. Yes. All public health care providers, and private health care providers of 15 or more employees, are covered by ADA provision affecting employment. Contact the Equal Employment Opportunity Commission (EEOC) for further information.

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## Complaints

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### **Q. What if I feel my health care provider is not in compliance with the ADA?**

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A. If you cannot work out your access concerns with a health care provider satisfactorily, you may use various means of dispute resolution including arbitration, mediation, or negotiation. You also have the right to file an independent lawsuit in federal court, and to file a formal complaint with the Department of Justice.

## Bibliography / References

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Several helpful publications on the ADA and health care topics were consulted in preparing this article, including publications by the Better Business Bureau Foundation,

SHHH Hospital Program, National Center for Law and Deafness at Gallaudet University, National Rehabilitation Hospital's ADA Health Care Facility Access Project, Barrier Free Environments, American Foundation for the Blind, and Ultratec, Inc.:

*Access Equals Opportunity: Your Guide to the Americans with Disabilities Act: Medical Offices*, 1992, Council of Better Business Bureaus' Foundation;

*ADA Title III Guide for Hospitals; Effective Communication for People with Hearing Loss*, prepared by the SHHH Hospital Program;

*ADA Questions and Answers for Health Care Providers*, National Center for Law and Deafness, Gallaudet University.