

A Resource Guide to Working with the Hearing-impaired

This article is for informational purposes only and does not constitute legal advice. Podiatrists seeking legal advice should consult with an attorney duly licensed to practice in their jurisdiction.



Under the Americans with Disabilities Act (ADA), healthcare providers, including podiatrists, are considered “public accommodations,” and as such podiatric offices must ensure effective communication between themselves and their patients. To achieve this, podiatrists must offer auxiliary aids and services to patients and their companions who are deaf or hearing impaired, free of charge. A doctor is excused from providing such aids and services when doing so would cause an undue burden, which is a high standard to meet, or would fundamentally alter the nature of the podiatric medical services normally offered.

ADA rules require that healthcare providers do not discriminate against patients and must ensure “effective communication” between themselves and their patients. To avoid discriminating against patients and to ensure effective communication, healthcare providers must offer and pay for auxiliary aids and services to patients and their companions when either of them is deaf or has a hearing impairment. If healthcare providers do not offer and pay for auxiliary aids and services, then the US Department of Justice can enforce ADA rules through fines and injunctive relief. For instance, courts can impose up to \$55,000 in fines for first-time violations and up to \$110,000 for subsequent violations. Patients cannot obtain punitive damages but may seek an injunction against doctors for ADA violations. To obtain injunctive relief, patients must first show a “real and immediate threat of repeated injury.” Stated differently, patients can bring a civil action when it is likely

they will visit their doctor’s office again. However, patients can seek and obtain compensatory damages when they demonstrate intentional discrimination on the part of their doctor.

Section 504 of the Rehabilitation Act of 1973 is another statute that imposes liability on doctors who receive Medicare and Medicaid reimbursements when they discriminate against hearing-impaired individuals. Podiatrists also should be aware of any state law prohibiting discrimination against the deaf and hearing-impaired.

Podiatrists Must Offer Auxiliary Aids and Services to Patients and Their Companions When Either of Them is Hearing-impaired

To ensure effective communication with a patient, podiatrists must offer and pay for auxiliary aids and services not only to hearing-impaired patients but also to certain companions of patients. Companions entitled to such aids and services can be the patient’s next of kin; anyone who is legally authorized to make healthcare decisions for the patient; a person designated by the patient to assist in providing information regarding the patient’s medical history, needs, or symptoms; or a person authorized to help the patient act on information or instructions provided by medical personnel. Several specific examples of companions include: a parent, spouse, adult child of an elder patient, or legal guardian of a patient. By not offering a patient’s companion auxiliary services, a podiatrist will be violating ADA, and both the patient and the companion can file a claim against the doctor.

In one case, a deaf father of a 15-month-old child filed a claim against an ear, nose, and throat practice for not offering effective auxiliary tools and aid. In this case, while there was a genuine dis-

pute over which type of auxiliary service to offer, it was understood that the deaf father must be offered some form of auxiliary service. The ear, nose, and throat practice settled with the patient and promised, among other things, to pay for an interpreter for the father, implement new policies on how to communicate effectively with the hearing-impaired, and advertise this policy in their office. In the above case, auxiliary aids or services were required to be offered to a deaf parent of a hearing child, but the rule is much broader in that companions can be other individuals besides parents of minor children.

Types of Auxiliary Aids and Services and What to Consider When Determining Which Best Meet the Needs of the Patient

There are various types of auxiliary aids and services, and which to use depends on the facts and circumstances of each situation. Unfortunately, there is no one-size-fits-all type, but podiatrists should consult with their patients and companions to determine which to use. One form of aid or service is a qualified interpreter, but others include note-takers, written materials, transcription services, assistive listening devices and systems for deaf persons, TTDs and TTYs, and video interpretive services.

Podiatrists should consult with their patient to determine which auxiliary service would best fit the patient’s needs. During consultation podiatrists should consider the degree of hearing loss, whether the individual can speak but cannot hear, and the patient’s skill level. When deciding which aid or service to use, podiatrists also should keep in mind that the goal is to ensure effective communication between the doctor and the patient. For example, in a Maryland case filed in May 2008, a deaf patient of a hospital alleged that the hospital’s use of a video interpretive service was ineffective because the patient could not see the television monitor from his hospital bed.

The Department of Justice, the enforcer of ADA laws, advises a qualified interpreter may be required when:

- Discussing a patient’s symptoms and medical condition, medications, and medical history
- Explaining and describing medical conditions, tests, treatment options, medications, surgery, and other procedures
- Obtaining informed consent for treatment
- Communicating with a patient during treatment
- Providing instructions for medications, post-treatment activities, and follow-up treatment
- Discussing complex billing or insurance matters.

Special Rules When Using a Qualified Interpreter

An interpreter does not need to be licensed or certified to be considered qualified. However, the interpreter must be impartial and understand the relevant vocabulary used in the communication. Family members or friends are rarely considered qualified interpreters. The rationale for this rule is that using a family member or friend will likely inhibit communications of sensitive and confidential matters. In very limited instances, family members or friends can be used. These very limited instances include emergency situations involving a threat to public welfare or when the patient agrees to use a family member or friend. In the latter situation, the podiatrist still must offer auxiliary services or aids free of charge to the patient. Also, a child of a patient may never serve as a qualified interpreter.

Podiatric offices and facilities must pay for the cost of interpreters to be used by both the patient and his or her companion. Patients and their insurance companies may never be charged for the interpreter services. Tax relief may be available for compliance with the ADA, such as a credit up to 50 percent of cumulative, eligible access expenditures made within the taxable year that exceed \$250 but do not exceed \$10,250. Physicians should consult their accountants or tax attorney for more information.

Concluding Comments

In rare occasions a podiatrist would not have to provide auxiliary services and aids, such as when the service would either present an undue burden or fundamentally alter the nature of the services normally provided. According to the American Medical Association, an undue burden is a significant expense or difficulty to the operation of the facility. Factors courts use to determine whether providing an interpreter would present an undue burden include the practice or facility’s operating income and eligibility for tax credits, and whether it has sources of outside funding or a parent company. However, the “undue burden” standard is difficult to meet, and the healthcare provider has the responsibility to prove such undue burden. Podiatrists still have a duty to furnish an alternative auxiliary aid or services that do not result in a fundamental alteration or undue burden. ■

For More Information Visit:

- U.S. Department of Justice at www.ada.gov
- The National Association for the Deaf at www.nad.org

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