



HAWAI'I CIVIL RIGHTS COMMISSION

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Outreach/ Public Education project

Health care providers' obligation to provide sign language interpretation to patients
who are deaf, hard of hearing and deaf-blind to ensure effective communication

Press Packet

May 7, 2014

FACTS

Statistics of people who are deaf and hard of hearing in the State of Hawai'i in 2013:

	Range	Population in Hawai'i	Estimates
Functionally Deaf (hearing loss before age 18)	2 to 4 out of every 1,000 people	1,404,054 people in 2013	2809 to 5617 functionally deaf people
Severe Hearing Loss (Deaf and hard of hearing)	9 to 22 out of every 1,000 people		12,637 to 30,890 Deaf and hard of hearing people

Sources: U.S. Census Bureau State QuickFacts, 2010 estimate of the population for Hawai'i: <http://quickfacts.census.gov/qfd/states/15000.html> and Gallaudet Research Institute, Summary of Estimates for the Size of the Deaf Population in the USA: https://www.gallaudet.edu/gallaudet_research_institute/demographics.html

How to define a person with a hearing disability?

Under the ADA, the term “people with disabilities” includes people who have a hearing disability. However, the population among people with hearing disabilities is diverse from a sociological perspective. There is a variation of people considering themselves deaf, hard of hearing, deaf-blind or late deafened. Among them, there are people who share a language, the American Sign Language (ASL) or local sign language, and a culture, as members of the Deaf community. Some of them distinguish the lowercase “deaf” to refer to the audiological hearing loss from the uppercase “Deaf” to refer to their involvement in the Deaf community from a linguistic and cultural perspective. People with hearing disabilities among those four main groups who share their preference for sign language tend to request sign language interpretation in the health care services. They could require interpretation in, among others, American Sign Language, voice-supported sign language, local sign language (such as Hawaiian Sign Language or pidgin sign language), as well as tactile sign language (for people who are deaf-blind). Please avoid using the terms “hearing-impaired”, “deaf-mute” or “deaf and dumb”, and use the terms “deaf, hard of hearing and deaf-blind people”.

Source: For more information, consult the webpage of the National Association of the Deaf on "The Difference between Deaf and Hard of Hearing", <http://www.nad.org/issues/american-sign-language/community-and-culture-faq>

Consequences of refusal of health care providers to provide sign language interpretation:

- Delay in health care: refusal or postponement of the appointment prevents deaf patients to be consulted and cured within similar periods of time as other patients
- Misunderstandings and missed information among deaf patients about their health issues
- Limited informed consent due to the lack of information before making a decision
- Sometimes family members know more than the deaf patient about his/her health issue
- Lack of trust of deaf patients in health care services and limited health prevention effectiveness
- Hearing children of deaf patients are used as “interpreters” causing ineffective communication
- Relatives or friends are used as “interpreters” causing a lack of impartiality and of effectiveness of the communication

LEGAL PROVISIONS

Federal Law: As the focus of the press conference is based on the obligation of private health care providers to provide sign language interpreters, legal provisions mentioned below come from the Title III of the Americans with Disabilities Act, as well as Regulations and Guidance thereof. However the obligation similarly bears on the public health care providers under Section 504 of the Rehabilitation Act and the Title II of the Americans with Disabilities Act.

Under the Americans with Disabilities Act (ADA), discrimination by public accommodations against persons with disabilities is prohibited:

“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 by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C.A. §12182 (a)

Private health care providers are considered as public accommodations:

“The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce: (...) professional office of a health care provider, hospital, or other service establishment.” 42 U.S.C.A. §12181 (7) (F)

Not providing an appropriate auxiliary aid or service for the person with a disability constitutes a discriminatory practice:

“Discrimination includes (...) a failure to take such steps as 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 entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.” 42 U.S.C.A. §12182 (b)(2)(A)(iii)

Qualified sign language interpreters are auxiliary aids and services for individuals who are deaf, hard of hearing and deaf-blind who use sign language:

“The term “auxiliary aids and services” includes (...) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.” 42 U.S.C.A. § 12103 (1) (A)

The health care provider has the obligation to provide sign language interpreters when it ensures the effective communication with the patients who are deaf, hard of hearing and deaf-blind:

“A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.” 28 C.F.R. § 36.303 (c)

The health care provider cannot provide the auxiliary aids and services at the costs of the patient:

“A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, (...) that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.” 28 C.F.R. § 36.3019 (c)

State Law:

Under Hawaii Revised Rules, the chapter 489 on discrimination in public accommodation prohibits discrimination against individuals in public accommodations in Hawaii:

“Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited.” H.R.S. § 489-3

Private health care providers are part of the places of public accommodation:

““Place of public accommodation” means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. By way of example, but not of limitation, place of public accommodation includes facilities of the following types: (...) A professional office of a health care provider, as defined in section 323D-2, or other similar service establishment.” H.R.S. §489-2 al.4 (10)

ADDITIONAL RESOURCES

- U.S. Department of Justice ADA Business Brief on Communicating with People who are Deaf and Hard of Hearing in Hospital Settings: <http://www.ada.gov/hospcombr.htm>
- National Association of the Deaf Questions and Answers for Health Care Providers: <http://www.nad.org/issues/health-care/providers/questions-and-answers>
- National Association of the Deaf Additional Information on Hospitals and Other Health Care Facilities: <http://www.nad.org/issues/health-care/providers/hospitals>
- U.S. Department of Justice, Final Regulations implementing the Americans with Disabilities Act Title II and Title III on Effective Communication: <http://www.ada.gov/effective-comm.htm>
- U.S. Equal Employment Opportunity Commission, Facts about Disability-Related Tax Provisions: <http://www.eeoc.gov/facts/fs-disab.html>

CONTACT INFORMATION:

If you want additional information, contact

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