

## The Continuing Problem of Providing Communications Access to Deaf Patients

In the 27 years since President George H. W. Bush signed the Americans with Disabilities Act, health care providers have struggled with the obligation to provide sign language interpreting and other auxiliary aids and services to ensure that patients who are deaf can effectively communicate about their medical condition, treatment, and prognosis. The shortage of qualified interpreters, difficulties in implementing effective policies and procedures, and aggressive enforcement by governmental agencies and private attorneys have all combined to create significant risks for health care providers. Making matters worse, the Affordable Care Act has imposed even more stringent requirements on health care providers.

Last month, the US Department of Justice entered into a voluntary resolution agreement with Connecticut's John Dempsey Hospital to settle allegations that the Hospital in January 2014 failed to provide a deaf patient receiving emergency medical care with sign language interpreting services. This agreement demonstrates some important points health care providers need to keep in mind to ensure full compliance and minimize risk.

First, the government clearly views section 1557 of the Affordable Care Act as providing yet another source of enforcement authority in this area. The agreement makes clear that DOJ is proceeding not just under the ADA, but also under section 1557. The significance of this is that section 1557 makes it clear that health care providers have to give primary consideration to the patient's choice of auxiliary aid or service. Prior to the Affordable Care Act, only public health care providers had to give primary consideration to the patient's choice; private providers did not have to give primary consideration to the patient's choice, as long as the provider's choice provided effective communication.

Second, compliance problems can spread to related entities. In this case, although the patient came into the John Dempsey Hospital ED, the investigation spread to all University of Connecticut health care facilities because Dempsey was a member of the University's health care network.

Third, having qualified interpreters on staff is not a magic bullet. The agreement makes it clear that Dempsey had qualified sign language interpreters on staff. What is important is quick identification of the need for interpreting services, an effective policy, a coordinator who can quarterback the process, and robust training.

Fourth, the situations where sign language interpreting services may well be necessary are numerous. The agreement provides a non-exhaustive list that includes:

- Discussing a patient's medical condition, symptoms and history.
- Reviewing, explaining, or obtaining informed consents, health care proxies and DNR orders.
- During labor and delivery.
- Explaining medications being prescribed.
- Discussing discharge planning.
- Providing mental health services and spiritual counseling.
- Dealing with complex billing and insurance issues.

Fifth, video remote interpreting (VRI) service is a reasonable substitute in many situations for live sign language interpreting services, assuming there is an adequate high-speed internet connection. But, there are circumstances when VRI is contraindicated, including:

- Patient has limited ability to see the video screen.
- Patient has limited ability to move head, hands, or arms.
- Patient has visual limitations, cognitive or consciousness issues, or pain issues.

In conclusion, health care providers need to be diligent in this area to avoid pitfalls and navigate the compliance minefields.

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