

MDS Alert

Clip and Save: Reevaluate Your Facility's Adherence to ADA Requirements for Deafness

Knowing a facility's responsibility in ensuring accessible communication can save everyone headaches - and Ftags and even litigation, as well.

While many staff members at nursing facilities have worked with residents who have trouble hearing or communicating, the industry's move toward individualized patient-centered care places renewed responsibilities on facilities. With many RAI Manual updates adjusting language for assessment to be more inclusive of different communication preferences and needs, now is a good time to evaluate how your facility and team members accommodate residents.

History: The Americans with Disabilities Act (ADA) was first implemented in 1990 and continues to outline rights for people with disabilities and institutions' responsibilities in accommodating their needs. The ADA has particular requirements for medical institutions - including nursing facilities - and puts the costs of those accommodations on the facilities instead of the residents or patients requiring access.

Accessible Communication is Crucial to Providing Care

People who are deaf or face other barriers to communication need to be fully involved in their care and provide fully informed consent.

The ADA specifies the following requirements for medical providers, including nursing facilities:

"The **Department of Health and Human Services, Office for Civil Rights** (OCR) has determined that effective communication must be provided at 'critical points' during hospitalization. OCR has defined 'critical points' as follows:

"These would include those points during which critical medical information is communicated, such as at admission, when explaining medical procedures, when an informed consent is required for treatment and at discharge ...

"Moreover, HHS has repeatedly stated that the deaf patient's assessment of his or her communication needs must be given great deference:

"In most circumstances, we believe that the hearing-impaired person is in the best position to determine what means of communication is necessary to insure an equal opportunity to benefit from health care services. Therefore, the patient's judgment regarding what means of communication is necessary to insure [sic] effective communication must be accorded great weight."

Version 1.16 of the RAI Manual, along with the current Long-Term Care Survey Process guidelines both emphasize facilities' responsibility to ensure accommodation for communication during admission assessments and when planning care.

Plus, it's important to remember that providing individualized care means accommodating individuals' needs, which can vary greatly in hearing loss and communication.

"... Individuals who are deaf vary greatly with respect to their hearing levels, communication styles, and languages. As a result, it is often a struggle for deaf individuals to find a health care provider with whom they can effectively communicate," says the **National Association of the Deaf** in an official "Position Statement On Health Care Access For Deaf Patients."

"Some individuals may require interpreters who are fluent in American Sign Language, a language with grammar and syntax that is different from the English language. Others may require interpreters who use Signed English, a form of signing which uses the same word order as does English. Still others who do not know any sign language may require oral interpreters, who take special care to articulate words for deaf or hard of hearing individual, or cued speech interpreters, who give visual cues to assist in lip reading (also called speech reading)," the National Association of the Deaf says on its website for its resource guide for healthcare practitioners.

Preserve Residents' Autonomy and Privacy

While involving family members in care decisions is important both to understand the context and history of a resident's current medical condition and goals, facilities should be extremely wary of relying on family members to provide interpretation for deaf residents.

The ADA says:

"The Department of Justice specifically cautions against the use of family members or friends as interpreters:

"In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret 'effectively, accurately, and impartially.'"

Further: "The problems that may arise with having a family member or friend interpreting in a medical setting are considerable. There may be necessary information that the family member fails to communicate, in a misguided effort to shield the deaf patient. There may be questions the deaf person will not ask in the presence of the family member or friend. The family member or friend may be too emotionally upset by the medical situation to interpret correctly. Finally, the family member or friend will seldom meet the qualification requirements of the law."

Don't Forget Emergency Preparedness

While you're evaluating your communication methods and protocols, make sure you have a plan for emergencies and disasters. One crucial part of accommodating disabilities during emergencies is making sure everyone involved understands plans beforehand. It may be impossible or even dangerous to get an interpreter to your facility in the midst of an emergency, so taking the time to make sure anyone who needs accommodations is well-versed in the emergency or disaster plan could be crucial for health and safety.

Litigation Possible

In the past few years, a few cases have cropped up where deaf residents or prospective residents prompted intensive undercover investigation and/or litigation against facilities they accused of discrimination. The accused facilities failed to provide American Sign Language (ASL) interpreters or other reasonable accommodation for residents or prospective residents who were deaf or hard of hearing.

Beware: With the specific inclusion of ASL interpreters in most MDS item assessment guidance in the RAI Manual, facilities have extra regulatory and care delivery incentives to make sure you're accommodating residents as fully as possible.