

Deaf and Hard of Hearing Access Program (DHHAP) – Technical Assistance Center
DHHAP Information and Technical Assistance Series

Category: Americans with Disabilities Act (ADA)
Obligations of Physicians and Other Health Care Providers
Under the Americans with Disabilities Act (ADA)

(Source: NAD Legal Center)

Title III of the Americans with Disabilities Act, 42 U.S.C. 12182, 12183 (ADA) provides people with disabilities with the rights to equal access to public accommodations. For deaf and hard of hearing people, Title III and its regulation will be of tremendous help in removing communication barriers.

Title III covers a wide range of places of public accommodation, including private health care providers, such as doctors' offices, private mental health services, dental offices, and other private health care providers. All of these public accommodations are required to provide auxiliary aids and services to ensure effective communication with deaf and hard of hearing people.

The U.S. Department of Justice regulation to Title III of the ADA, 28 C.F.R Part 36, and the Analysis thereto, 56 Fed. Reg. 35544 – 35691 (July 26, 1991), explain in detail the requirements of this title. Public accommodations are required to provide auxiliary aids when such are necessary to enable a person with disabilities to benefit from their services:

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

A comprehensive list of auxiliary aids and services required by the ADA is set forth in this regulation, and includes, for deaf and hard of hearing individuals, "qualified interpreters. 28 C.F.R. 36.303(b)(1).

The Department of Health and Human Services, Office for Civil Rights (OCR), has determined that effective communication must be provided at "critical points" during provision of health care services. OCR has defined "critical points" to include those points during which critical medical information is communicated, when explaining medical procedures, and when an informed consent is required for treatment. U.S. Department of Health and Human Services, Office for Civil Rights, Region III, Letter of Findings, Ref. No. 03913037 (December 12, 1992), at 5.

The Analysis to the ADA Title III regulation clarifies that use of family members or friends to interpret may not meet the requirements of the law:

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. 56 Fed. Reg. at 35553.

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.

The Department of Justice does not permit a public accommodation to charge a person with a disability for the cost of the auxiliary aid provided. The Title m regulation states:

A public accommodation may not impose a surcharge on a particular individual with a disability ... to cover the costs of measures, such as the provision of auxiliary aids ... that are required to provide that individual... with the nondiscriminatory treatment required by the Act or this part. 28 C.F.R. 36.301(c).

Physicians should note that there are tax credits available for expenses incurred in the course of accommodating patients with disabilities. The Access Credit, created by Revenue Reconciliation Act of 1990, provides a tax credit of one half of the cost of interpreters and similar measures that exceed \$250.00. This credit, available only to businesses which have either thirty or fewer full time employees or gross receipts of under one million dollars annually, will greatly reduce the cost of such accommodations for most physicians.

Many physicians wonder why the exchange of written notes will not suffice with a deaf patient. The Department of Health and Human Services recognizes that there is a distinction between English and American Sign Language, and that written communications or interpreters not skilled in American Sign Language (ASL), will not suffice as effective communication for deaf persons who utilize ASL:

...American Language (ASL) [is] a manually communicated language distinct from English and whose idioms and concepts are not directly translatable into English. It uses different sentence structure, grammar and syntax than English, and is as much a foreign language to English speaking persons as is French or German. Conversely, English is equally foreign to most deaf persons who rely on ASL for communication. It is a common misconception that “sign language” is merely a pantomime of the English language and is therefore easily understandable in print if not auditorily. ASL sentences do not follow English sequential patterns. As a result, direct translation of English, as with written notes, into ASL will not necessarily convey the intended message. Similarly, much of English idiomatic speech would be lost on the ASL user whose frame of reference for idiom is significantly different from the hearing person.

U.S. Department of Health and Human Services, Office for Civil Rights, Region III, Letter of Findings, Ref. No. 939130037 (December 12, 1991) at 4.

**FACTS ABOUT
DISABILITY-RELATED TAX PROVISIONS**
(by US Equal Employment Opportunity Commission)

The Internal Revenue Code has three disability-related provisions of particular interest to businesses as well as people with disabilities.

DISABLED ACCESS TAX CREDIT
(Title 26, Internal Revenue Code, Section 44)

This new tax credit is available to “eligible small businesses” in the amount of 50 percent of “eligible access expenditures” that exceed \$250 but do not exceed \$10,250 for a taxable year. A business may take the credit each year that it makes an eligible access expenditure.

Eligible small businesses are those businesses with either:

- ?? \$1million or less in gross receipts for the preceding tax year; or
- ?? 30 or fewer full-time employees during the preceding tax year

Eligible access expenditures are amounts paid or incurred by an eligible small business for the purpose of enabling the business to comply with the applicable requirements of the Americans with Disabilities Act (ADA). These include amounts paid or incurred to:

- ?? remove architectural, communication, physical, or transportation barriers that prevent a business from being accessible to, or usable by, individuals with disabilities;
- ?? provide qualified readers, taped texts, and other effective methods of making materials accessible to people with visual impairments;
- ?? provide qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;
- ?? acquire or modify equipment or devices for individuals with disabilities; or
- ?? provide other similar services, modifications, materials or equipment.

Expenditures that are not necessary to accomplish the above purposes are not eligible. Expenses in connection with new construction are not eligible. “Disability” has the same meaning as it does in the ADA. To be eligible for the tax credit, barrier removals or the provision of services, modifications, materials or equipment must meet technical standards of the ADA Accessibility Guidelines were applicable. These standards are incorporated in Department of Justice regulations implementing Title III of the ADA (28 CFR Part 36; 56 CFR 35544, July 26, 1991).

Example: Company A purchases equipment to meet its reasonable accommodation obligation under the ADA for \$8,000. The amount by which \$8,000 exceeds \$250 is \$7,750. Fifty percent of \$7,750 is \$3,875. Company A may take a tax credit in the amount of \$3,875 on its next tax return.

Example: Company B removes a physical barrier in accordance with its reasonable accommodation obligation under the ADA. The barrier removal meets the ADA Accessibility Guidelines. The company spends \$12,000 on this modification. The amount by which \$12,000 exceeds \$250 but not \$10,250 is \$10,000. Fifty percent of \$10,000 is \$5,000. Company B is eligible for a \$5,000 tax credit on its next tax return.

**TAX DEDUCTION TO REMOVE
ARCHITECTURAL AND TRANSPORTATION
BARRIERS TO PEOPLE WITH DISABILITIES
AND ELDERLY INDIVIDUALS**

(Title 26, Internal Revenue Code, section 190)

The IRS allows a deduction up to \$15,000 per year for “qualified architectural and transportation barrier removal expenses” Expenditures to make a facility or public transportation vehicle owned or leased on connection with a trade or business more accessible to, and usable by, individuals who are handicapped or elderly are eligible for the deduction. The definition of a “handicapped individual” is similar to the ADA definition of an “individual with a disability.” To be eligible for this deduction, modifications must meet the requirements of standards established by IRS regulations implementing section 190.

TARGETED JOBS TAX CREDIT

(Title 26, Internal Revenue Code, section 51)

Employers are eligible to receive a tax credit up to 40 percent of the first \$6,000 of first-year wages of a new employee with a disability who is referred by state or local vocational rehabilitation agencies, a State Commission on the Blind, or the U.S. Department of Veterans Affairs, and certified by a State Employment Service. There is no credit after the first year of employment. For an employer to qualify for the credit, a worker must have been employed for at least 90 days or have completed at least 120 hours of work for the employer. The tax Extension Act of 1991, Public law 102-227, extended this tax credit through June 30, 1992.

IRS Publication No. 907, providing information on these provisions, may be obtained by calling 1-800-829-2676. For further information, contact the Internal Revenue Service, Office of the Chief Counsel, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, (202) 566-3292 (voice only).