



Legal and Policy Considerations for Effective Communication for People with Disabilities in the Era of COVID-19

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The Need for Effective Communication

- CDC prevalence data: 26% (1 in 4) adults in the United States have some type of disability:
<https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.
- Effective communication is essential for all patients, including persons with disabilities.
- Joint Commission found communication failures were involved in **over 70 percent** of patient safety events that result in death, permanent harm, or severe temporary harm:
<https://www.ncbi.nlm.nih.gov/books/NBK43663/>.



Federal Civil Rights Protections for People with Communication Disabilities

- Section 504 of the Rehabilitation Act
- Americans with Disabilities Act
- Section 1557 of the Affordable Care Act



Basic Legal Principles in COVID-19 and Generally

- **Civil Rights laws remain in effect during COVID-19**
- Health providers must:
 - Ensure **effective communication** and provide **appropriate auxiliary aids and services**, including interpreters and information in alternate formats to afford an equal opportunity to benefit from the service;
 - Provide **reasonable modifications** to policies, practices and procedures, such as a visitation policy, when necessary to avoid disability discrimination.
- Auxiliary aids and services must be **free** and provided in a **timely manner** and protect the privacy and independence of the individual with a disability.
- The defense of fundamental alteration to the nature of the program and direct threat to the health or safety of others may apply to both obligations. The defense of undue burdens also may apply to the obligation to provide auxiliary aids and services.



Qualified Interpreters

- A qualified interpreter must be able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- Health providers may not rely on an adult companion as an interpreter, except in an emergency or when the individual with a disability requests it, the companion agrees, and it's appropriate in the circumstances.
- A qualified interpreter is necessary where the information is complex or important or the exchange is lengthy.



Best Practices for Preparation During COVID-19

- Post notices in prominent places and important patient materials about the availability of communication assistance for individuals with disabilities and limited English proficient persons.
- Be sure that arrangements are in place to secure assistance, contacts are current, equipment works, and staff are trained on procedures.
- Know the procedures for contacting a qualified interpreter before a patient with a communication disability arrives.
- If in-person interpretation is unavailable or inappropriate, know how to access alternatives, such as telephonic or video remote interpreting.



Best Practices for Implementation During COVID-19

- If a patient appears to be experiencing difficulty communicating, consult with the individual or their companion to assess the person's specific limitations and needs, and preference for type of assistance.
- Be prepared to provide communication assistance to companions with a disability, as well as patients.
- Be alert to whether an individual with a developmental disability may need a support person to help explain information or manage his or her health condition, and provide such support, if necessary.
- Document the individual's communication needs in the medical record and elsewhere, e.g., wrist band, on bed.
- Re-assess the effectiveness of communication as necessary.



Resources on COVID-19 and Effective Communication

- HHS/OCR COVID-19 webpage on Civil Rights:
<https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html>
- HHS/OCR COVID-19 webpage on HIPAA:
<https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>
- HHS/OCR General Bulletin on Civil Rights and HIPAA during COVID-19: <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>
- HHS/OCR General Information on Effective Communication
<https://www.hhs.gov/civil-rights/for-individuals/special-topics/hospitals-effective-communication/index.html>.



Resources Cont.

- HHS OCR Emergency Responder Effective Communication Toolkit:
<https://www.hhs.gov/sites/default/files/lang-access-and-effective-comm-checklist-for-emergency-responders.pdf>
- Illustrative HHS OCR Agreements in Effective Communication Cases:
<https://www.hhs.gov/sites/default/files/christus-vra.pdf>;
<https://www.hhs.gov/sites/default/files/MMI-vra.pdf>.
- HHS OCR HIPAA guidance on use of interpreters:
<https://www.hhs.gov/hipaa/for-professionals/faq/760/must-a-covered-provider-obtain-individual-authorization-to-disclose-to-an-interpreter/index.html>; <https://www.hhs.gov/hipaa/for-professionals/faq/500/is-a-relay-service-a-business-associate-of-a-doctor/index.html>



Resources Cont.

- HHS OCR guidance on meaningful communication with persons who have limited English proficiency during COVID-19: <https://www.hhs.gov/sites/default/files/lep-bulletin-5-15-2020-english.pdf>
- Department of Justice General Information on Effective Communication Obligations and Rights:
<https://www.ada.gov/effective-comm.pdf>
<https://www.ada.gov/effective-comm.htm>
- CDC COVID-19 ASL videos for consumers:
<https://www.youtube.com/playlist?list=PLvrp9iOILTQatwnqm61jqFrsfUB4RKh6J>