

The ABCs of Effective Communication and Implementation of Policy

**Satellite Conference and Live Webcast
Monday, June 20, 2016
1:00 – 3:00 p.m. Central Time**

**Produced by the Alabama Department of Public Health
Video Communications and Distance Learning Division**

Faculty

**Graham L. Sisson, Jr.
Director, Governor's Office on
Disability (GOOD)
Assistant Attorney General
Consumer Relations Coordinator
Dept. of Rehabilitation Services
State ADA Coordinator**



ADA and Effective Communication

- All information provided is non-binding
- Ultra-reader's digest version
- A public entity is required to ensure that any entity with whom it contracts meets ADA requirements
- A public entity or private business has a duty to provide effective communication with members of the public who receive its services

ADA and Effective Communication

- Legal
- Effective Communication Requirement
- Effective Communication Policy
- Auxiliary Aids and Services
- Effective Communication Tool Kit
- Application of Policy and Tool Kit to Scenarios

Overview

- I will cover the high points of the ADA as applied to communications access for deaf or hearing impaired individuals, speech impairments, blind or visually impaired individuals, and those with cognitive or intellectual impairments
- Significantly, you can call me if you have any questions
 - My toll free ADA hotline is 1-800-205-9986 or 1-888-574-2257 (TTY)

Disability Specific Laws

- Americans With Disabilities Act (ADA)(1990)
- ADA Amendments Act (ADAAA) (2008)
- Rehabilitation Act of 1973 , Section 504
 - Recipients of federal funding

ADA Perspective

- The following presentation will show what ADA covers:
 - Government agencies, cities, counties
 - Doctor’s offices
 - Lawyer’s offices
 - Courthouses
 - Grocery stores
 - Other Private employers

ADA Perspective (Con’t)

- The ADA requires not just physical changes to buildings, but also changes in policies and communications access

ADA Overview

- Mainstreaming
- Equal Opportunity
- Access
- Civil Rights

Five Titles of the ADA

- Title I: Employment
- Title II : Public Entities
- Title III: Public Accommodations (private businesses)
- Title IV: Telecommunications
- Title V: Miscellaneous

Associative Discrimination

1. Prohibits discrimination against those who associate with PWD like family members, spouses, business partners, etc.
2. May apply to family members or associates who suffer because of the lack of communications access

Effective Communication

- The ADA imposes on entities covered by it a duty to provide effective communication
- The duty to provide effective communication extends to applicants for jobs or benefits, employees, hospital patients, etc.

Effective Communication

- Written notes may be sufficient if the person who is deaf or has a severe hearing loss knows standard English
- Do not assume that persons who use ASL understand English

Effective Communication

- The more complex communication becomes, the more likely an interpreter will be required
- It may be advisable to use an interpreter to ensure precise communication in situations where a miscommunication could lead to liability or damages

Effective Communication

- A clause in a binding agreement
- A job assignment that could impact the health or safety of others

Title II Regulations

- §35.160 General
- (a)(1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others

Title II Regulations

- (2) For purposes of this section, “companion” means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate

Title II Regulations

- (b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity

Title II Regulations

- (2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place

Title II Regulations

- In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities

Title II Regulations

- In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability

Title II Regulations

- (c)(1) A public entity shall not require an individual with a disability to bring another individual to interpret for him or her
- (2) A public entity shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except -

Title II Regulations

- (i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

Title II Regulations

- (ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances

Minor Child

- (3) A public entity shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available

Title III Regulations

- § 36.303 Auxiliary aids and services
- (a) General. A public accommodation shall take those steps that 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...

Title III Regulations

- ...aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense

Title III Regulations

- (b) Examples. The term "auxiliary aids and services" includes –
 - (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; ...

Title III Regulations

- ...assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and...

Title III Regulations

- ...captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

Title III Regulations

- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other...

Title III Regulations

- ...effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions

Title III Regulations

- (c) **Effective communication**
 - (1) A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities

Title III Regulations

- (i) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate,

Title III Regulations

- (ii) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the

Title III Regulations

- ...communication is taking place. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public...

Title III Regulations

- ...accommodation, provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability

Title III Regulations

- (2) A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her
- (3) A public accommodation shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except –

Title III Regulations

- (i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
- (ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate...

Title III Regulations

- ...communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances

Title III Regulations

- (d) Telecommunications
 - (1) When a public accommodation uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective ...

Title III Regulations

- ...real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems

Title III Regulations

- (2) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls using the public accommodation’s equipment on more than an incidental convenience basis shall make available public telephones, TTYs, or other telecommunications

Title III Regulations

- ...products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment

Title III Regulations

- (3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations
- (4) A public accommodation shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls

Title III Regulations

- (5) This part does not require a public accommodation to use a TTY for receiving or making telephone calls incident to its operations

Title III Regulations

- (e) Closed caption decoders
 - Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing

Title III Regulations

- (f) Video remote interpreting (VRI) services
 - A public accommodation that chooses to provide qualified interpreters via VRI service shall ensure that it provides –

Title III Regulations

- (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

Title III Regulations

- (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
- (3) A clear, audible transmission of voices; and

Title III Regulations

- (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI

Title III Regulations

- (g) Alternatives
 - If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant

Title III Regulations

- ...difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, ...

Title III Regulations

- ...privileges, advantages, or accommodations offered by the public accommodation

Title III Regulations

- (4) A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available

Effective Communication Policy

- Purpose
- Prohibition of exclusion
- Definition of auxiliary aids and services
- Definition of qualified interpreter
- When to contact interpreter
- Prohibition of surcharges

Effective Communication Policy

- Procedures for requesting auxiliary aids and services
- Alternative formats
- Records keeping (Record Form)
- Staff training

Auxiliary Aids and Services

Definition includes:

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices;

Auxiliary Aids and Services

- ...assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally...

Auxiliary Aids and Services

- ...effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

Auxiliary Aids and Services

- **(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making**

Auxiliary Aids and Services

- **...materials available to individuals who are blind or have low vision;**
- **(3) Acquisition or modification of equipment or devices; and**
- **(4) Other similar services and actions**
 - **Examples**
 - **Demonstration**

VRI

- **(d) Video remote interpreting (VRI) services. A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides -**
- **(1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that...**

VRI

- **...delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;**

VRI

- **(2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;**
- **(3) A clear, audible transmission of voices; and**

VRI

- **(4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI**

Communications Access

- Where necessary to facilitate effective communication, a covered entity under the ADA such as an employer, a government agency or a private business may be required to provide the following:
 - Braille documents
 - Large print documents

Communications Access

- Reader
- Interpreter
- Assistive listening system
- Closed captioning
- Real time captioning

Qualified Interpreter

- Does not necessarily mean a certified interpreter, but one who is able to convey information in a given situation
- Usually it is not a family member since confidentiality may be an issue

Qualified Interpreter

- Would probably need a very specialized interpreter to handle courtroom and legal jargon or medical explanations involving complex procedures or processes
- Normally, however, proof of certification (license) is only evidence that one is qualified

No Interpreter on Demand

- There is a shortage of interpreters
- Must allow for reasonable lead time to locate interpreter, especially in rural areas
- However, covered entities should have a process in place for securing qualified interpreters

No Interpreter on Demand

- Employer or other entity may be required to anticipate the need for an interpreter where training or other event is targeted toward people with disabilities



Interpreter Access for the Job

- Application process
- Interview
- Discussion of job benefits
- Employee training
- Other conditions or terms of employment
- The provision of interpreters can be a form of reasonable accommodation

Interpreters

- In order to ensure effective communication with a deaf patient during an office visit, a doctor arranges for the services of a sign language interpreter
 - The cost of the interpreter's services must be absorbed by the doctor

Interpreters

- A community civic association arranges to provide interpreting services for a deaf individual wishing to attend a business seminar sponsored by the organization in rented space at a local motel
 - The interpreting service requires the organization to provide payment in full prior to the seminar

Interpreters

- Due to a business emergency, the individual is unable to attend
- The organization may not charge the deaf individual for the cost of the unused interpreting services

Surcharge

- Cannot charge person who is deaf for the cost of the interpreter or any other method used to provide effective communication
- Some entities may pass a proportional share of the cost of interpreters along to all customers or patrons

Training Contracts

- What happens if an employer contracts with a 3rd party to provide training for employees?
- Who is responsible for ensuring effective communication (interpreter) with a deaf employee?

Training Contracts

- Employer cannot contract away ADA responsibilities
- Employer should include language in the training contract that trainer agrees to comply with applicable state and federal laws (including the ADA)

Deaf and Hard of Hearing

- What if a deaf individual comes by to pick up an application for employment? Would an interpreter be required?
- What if part of the application process is oral responses to in-depth questions? Would that make a difference?

Primary Consideration Doctrine

- Public entities should give primary consideration to the accommodation chosen by a person with a disability
- This does not mean that the entity cannot consider other alternatives if the accommodation selected by the PWD imposes an undue hardship or fundamentally alters or changes the nature of the program

Personal Services and Devices

- A public accommodation or entity is not required to provide individuals with disabilities with personal or individually prescribed devices
- This provision applies to all aspects of the title III rule and limits the obligations of public accommodations in areas such as the provision of auxiliary aids and services, alternatives to barrier removal, and examinations and courses

Personal Services and Devices

- The phrase "services of a personal nature" is not to be interpreted as referring to minor assistance provided to individuals with disabilities
- If a public accommodation such as a hospital or nursing home customarily provides its clients with what might otherwise be considered services of a personal nature, it must provide the same services for individuals with disabilities

Interpreters

- Sign Language etiquette
- How to secure an interpreter
- Alabama Board of Interpreters and Transliterators
– Alabama Licensure Law



Interpreters

- Demonstration of Interpreting
- Making auditory visual



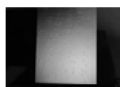
Visually Impaired

- Demonstration of:
 - CCTVs
 - Canes
 - Braille
 - Large Print
 - Screen Readers (including portable ones)
 - Talking pill bottles
 - Etiquette
 - IOS Devices
 - Money Identifiers
 - Others

Visually Impaired



CCTV



Braille Document



Canes



Braille Equipment



Large Print



JAWS



Talking Pill Bottles

Deaf and Hard of Hearing

- Demonstration of
 - VRI
 - Text Telephones
 - Video phones
 - Ubi - Duo
 - Assistive Listening Devices
 - Closed Captioning

Deaf and Hard of Hearing

- Real time captioning / CART
- Deaf / Blind - SSP (Support Service Provider)
- Others
- Etiquette

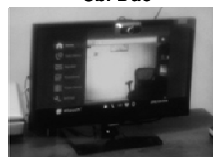
Deaf and Hard of Hearing



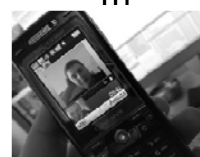
Ubi-Duo



TTY



Video Phone



Face Time – Skype Phone Apps

Cognitive / Intellectual Disabilities

- **Demonstration of**
 - Pictorial (pictogram) explanations
 - Simpler wording
 - People First Language
 - Others
 - Etiquette

Speech-Language Impairments

- **Demonstration of Speech Generating Devices (Low to High Tech)**
- **Augmentative Communication Apps on iPhone / iPad**
- **Methods of Access for AAC**
- **AAC Etiquette – Things to Consider**

Tool Kit

- **Legal Requirements for Effective Communication**
 - Title II and III Regulations
- **Legal Guidance**
 - Effective Communication for Students
 - DOJ Effective Communication Overview

Tool Kit

- Emergency Situations (Texas)
- NCD Guidance on Emergency Situations
- **Model Effective Communication Policy**

Tool Kit

- **Auxiliary Aids and Services**
 - Deaf and Hard of Hearing
 - Blind and Visually Impaired
 - Cognitive Impairments
 - Deaf / Blind Impairments
 - Speech Impairments
 - Universal Travel Book
- **Resources / Vendors**
- **Acronyms**

Scenario # 1

- **Wayne World, an elderly man who uses a wheelchair and is deaf, loves to listen to the Flim Flam Dream Band**
 - Their local concert is always held at the Psycho Center, which was built in 1967, some parts of which were renovated after 1992

Scenario # 1

- Additionally, Wayne requests an interpreter
- He is told that he will have to pay an additional fee on his ticket to cover the cost of the interpreter
- What would you do? Has there been a violation of the ADA?
- Same scenario, but Wayne goes to a movie theater to see a picture that has no closed captioning

Scenario # 2

- Beavis Zoom uses a wheelchair for mobility and is profoundly deaf
- He goes to a doctor's office to get treatment for heart problems
- He only communicates through ASL
- He shows up at Dr. I.B. Stingy and demands an interpreter
- Stingy refuses...Can he do this? If no, why? If yes, why? If not, what should be done?

Scenario #3

- I AM ABLE applies for a receptionist job with Duey, Cheatam, and Howe, attorneys at law, LLC
- He walks in their offices for an interview
- Able uses ASL to communicate. He has an interview scheduled with the managing partner, I.B. Great

Scenario #3

- Mr. Great sees that Mr. ABLE is deaf, but insists on using written notes to communicate
- Able requests an opportunity to reschedule when an interpreter can be present and Mr. Great refuses
- Has Mr. Great done anything illegal? If so, what? What do you advise Mr. ABLE to do?

Scenario #4

- Mrs. O.B. Dent Daughter scheduled an appointment for her elderly mother to visit the doctor
- Her mother is deaf and requests an interpreter which the doctor refuses to provide, citing expense
- The mother is going to have a physical done

Scenario #4

- Has there been an ADA violation; if so what should be done?
- Would there be a difference if the doctor accepted only Medicaid clients?

Scenario #5

- Ms. Komun I. Cate works at Humongus Company that has 1000 employees
- She is deaf
- Humongus has monthly meetings which all employees are required to attend

Scenario #5

- During several of these meetings enrollment in the company's pension was discussed
- Cate attended all these meetings, but no interpreter was provided (assume that Cate asked for an interpreter but was told the written forms would be sufficient)

Scenario #5

- She knew the company had a retirement plan, but thought enrollment was automatic
- 25 years later she retires, thinking she has 25 years in the system
- She retires and later discovers that she has no benefits since she did not fill out the proper forms
- Has the company violated the ADA?

Give Us Your Feedback!

- Any Questions?
- The End!



Participants & Contributors

- Sonia Cleckler, MS, CCC/SLP
Children's Rehabilitation Service
- Karen Baggett, MCD, CCC/SLP,
Children's Rehabilitation Service
- Wendy Darling, Licensed Interpreter,
Interpreter Coordinator at Alabama
Department of Rehabilitation
Services (ADRS)

Participants & Contributors

- Daniel Lute, Deaf Technology Specialist,
ADRS
- Jason Martin, Blind Technology Specialist,
TVI, ADRS
- George Neal, Consumer Advocate at
Department of Mental Health, Cognitive and
Intellectual Disabilities
- Graham Sisson, Executive Director, GOOD
- Karl Wade, Consumer Advocate, Visually
Impaired
- Marlene Word, Executive Assistant, GOOD

**Governor's Office
on Disability**

ADA Hotline: 800-205-9986

GOOD Toll Free: 888-879-3582

www.good.Alabama.gov

