



Americans with Disabilities Act Title II & Title III Revised Regulations Fact Sheet Series

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#2 - Effective Communication



The Department of Justice (DOJ) has issued revised Americans with Disabilities Act (ADA) Title II and Title III regulations which took effect March 15, 2011. These regulations affect the obligations of Title II public entities and Title III private businesses (a.k.a. places of public accommodation), to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities (§35.104, §35.160, §36.104, §36.303). This includes an obligation to provide effective communication to companions who are

individuals with disabilities. The term “companion” means a family member, friend, or associate with whom the public entity or private business would typically communicate.

Providing Auxiliary Aids and Services

Examples of common auxiliary aids and services include qualified sign language interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices and 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 effective telecommunications devices; videotext displays; qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; and accessible electronic and information technology.

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, complexity of the communication involved; and the context in which the communication is taking place. A private business 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 private business, provided that the method chosen results in effective communication. However, public entities must give primary consideration to the request of the individuals with disabilities.

- 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.
- A public entity or private business is financially responsible for the cost of the auxiliary aid or service provided unless it can demonstrate that it would be an undue financial burden in light of the overall financial resources of the entire entity, including any parent corporation if applicable. It cannot impose a surcharge on an individual with a disability to cover the costs of the auxiliary aid or service provided. Even if it is determined that a particular auxiliary aid or service is an undue financial burden, the entity must still provide effective communication utilizing a different auxiliary aid or service.

Sign Language Interpreters

Public entities and private businesses cannot require an individual with a disability to bring another individual to interpret for him or her. A public entity or private business shall not rely on an adult accompanying an individual to interpret or facilitate communication, except:

- In an emergency involving imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
- When 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 assistance is appropriate under the circumstances.

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.

Telecommunications

When a public entity or private business 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 real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and relay services, including Internet-based relay systems. A public entity or private business shall respond to telephone calls from a relay service in the same manner that it responds to other telephone calls. A public entity or private business may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

A public entity or private business that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls using their equipment on more than an incidental convenience basis shall make available accessible public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment.

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