

Legal Rights of Deaf Individuals to Effective Communication in a Mental Health Setting

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Mental health clinics, therapists and hospitals providing mental health services are required to provide equal access to their services, including providing auxiliary aids such as sign language interpreters for deaf patients, without charging the deaf patient for the service. There are two federal laws which require this service.

Facilities which receive any federal money, either directly or through a state agency, must comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec 794. Section 504 requires that federal financial recipients' programs be equally accessible to handicapped persons. The U.S. Department of Health and Human Services (HHS) regulations to Section 504 require provision of necessary auxiliary aids, such as sign language interpreters, to ensure equal access to these programs. The regulations specify that:

A recipient to which this subpart applies that agencies which employ fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

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For the purpose of this paragraph, auxiliary aids may include brailled or taped materials, interpreters, and other aids for persons with impaired hearing or vision.

45 C.F.R. sec 84.52(d)

Effective communication through sign language is critical during mental health counseling to ensure that deaf persons are able to benefit from and participate equally in the program. The Office for Civil Rights of HHS has recognized that sign language communication for deaf patients is required in counseling and mental health settings, and has in fact stated that such communication is difficult to achieve outside of special units for deaf patients.

[I]t is the opinion of Deaf Unit staff, corroborated by research conducted by experts in the field, that such units are the only way most deaf patients can receive an equal opportunity to participate in and benefit from services. This is due to lack of understanding by most people in the field of mental health of the unique communication and psychosocial problems of the deaf and misinterpretation of their use of gestures and nonstandard written English.

See National Association of the Deaf Legal Defense Fund v. Ohio Department of Mental Health Docket No. 05883054 at page 2, 3.

Where no special programs are available, it is clear that Section 504 requires sign language at every stage of the counseling program, to ensure that deaf individuals can achieve equal access to the program.

Since January 1992, mental health care providers have had obligations to ensure access to disabled persons, regardless of whether or not these centers receive federal financial assistance, and regardless of the size of the office. The Americans with Disabilities Act, P.L. 101-336, requires public accommodations, including therapists, psychiatrists, mental health hospitals and clinics, to provide auxiliary aids such as interpreters to ensure access for the deaf community to mental health services.

The requirement to provide auxiliary aids does not apply if the mental health provider can demonstrate that providing an interpreter would be an undue financial or administrative burden, or a fundamental alteration of the patient's words are being "interpreted" by a third person. In at least one important case, a federal court has ruled that a community mental health center must provide mental health counselors who have sign language ability and a knowledge of the psychosocial implications of deafness and the mental health needs of the deaf community, so that deaf clients could receive equal access to competent counseling services without going through an interpreter. Tugg v. Towey, 864 F. Supp 1201, 5 NDLR 311 (S.D. Fla. 1994).

For more information, visit www.nad.org/mentalhealth.

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