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## Focal Point

### *Effective Communication in Group Homes and Other Long-Term Care Facilities*

Communicating effectively with customers who have communication-based disabilities is a major obligation for businesses covered by Title III of the ADA. Businesses are required to provide “auxiliary aids and services” if needed to communicate with people with hearing, vision, and speech disabilities. These aids and services include things like sign language interpreters, assistive listening devices, written notes, large print or Braille materials, verbal descriptions, and physical guidance. This obligation not only applies to places like stores, restaurants, professional offices, and recreational facilities – it also applies to businesses that provide healthcare and long-term services to patients and residents.

The obligation to ensure effective communication is not limited to patients and residents in these types of facilities, but includes companions with whom the facility would typically communicate. For example, group home operators will often need to include parents, siblings, or other family members in assessments, care planning meetings, and other similar activities. If a parent or other companion has a hearing, vision, or speech disability and needs auxiliary aids or services to participate effectively in these activities, the agency has an obligation to provide them.

Businesses that operate places like group homes and long-term nursing facilities may face unique challenges in meeting the needs of patients or residents. Because of the long-term relationship between business and customer in these types of facilities, more proactive planning, assessment, and response may be needed to meet obligations. Additionally, the custodial nature of that relationship means that businesses may need to provide aids or services for patients or residents that in other contexts would be considered “personal” – that is, the responsibility of the individual with a disability.

For example, many types of businesses may need to provide the services of qualified sign language interpreters or the use of assistive listening devices in order to communicate with customers who are deaf or hard of hearing in certain situations, but most businesses would not have to supply batteries or manage repair services for individuals’ personal hearing aids. In group homes or other long-term care facilities, however, business operators may need to take on these responsibilities for patients and residents.

The U.S. Department of Justice (DOJ) has been active in this area of ADA enforcement. Two recent examples from the mid-Atlantic region are settlement agreements with [Good Neighbor Homes Inc. \(GNHI\)](https://www.ada.gov/gnhi_sa.html) ([https://www.ada.gov/gnhi\\_sa.html](https://www.ada.gov/gnhi_sa.html)) and [Brookside Rehabilitation and Nursing Center \(BRNC\)](https://www.ada.gov/brookside_rehab_sa.html) ([https://www.ada.gov/brookside\\_rehab\\_sa.html](https://www.ada.gov/brookside_rehab_sa.html)). In these cases, the businesses allegedly needed to provide sign language

interpreters in order to facilitate effective communication, and failed to do so.

Settlement agreements, which often provide sample policies and outline specific procedures, can be a valuable source of guidance. They are what we like to call “road maps” for ADA implementation. Laws and regulations will tell you what you need to do, but they don’t always tell you how, and settlement agreements are a good place to look for “how-to” information.

In this article, we focus on auxiliary aids and services for people who are deaf or hard of hearing since this is the focus of many settlement agreements that address effective communication, including the GNHI and BRNC agreements.

The best starting point for facilitating effective communication is the assessment of an individualized situation. People with the same disability may not need the same aid or service in the same situation, and not every individual with a disability needs the same aid or service in



every situation. For example, there are different types of sign language, communication systems, methods, or technologies used by people who are deaf or hard of hearing, so you have to find out about each individual’s usual mode of communication. Or, if you think written notes will be sufficient for

communication, you have to find out if the individual is fluent in written English, because English is a second language to some deaf people, and may not be effective for communicating in all situations.

Simple communication might only require written notes, pictograms, or gestures, but these aids will not be sufficient for complex communication. In the context of healthcare and long-term residential services, communication can be lengthy, complicated, and cover a wide variety of topics. Here is a list of situations, taken from the GNHI and BRNC agreements, which would require the use of a sign language interpreter for someone who communicates primarily in sign language:

- Admission tours for potential patients and companions
- Initial orientation discussions (services, rules, policies, etc.)
- Notices and explanations of legal, civil, and human rights
- Periodic assessments of patients
- Care and service planning meetings
- Interviews for incident investigations
- Execution of legal documents
- Discussion or explanation of medical and mental health issues, such as:
  - Obtaining medical history
  - Explanation of medical conditions, treatment options, tests, medications, etc.

- Obtaining informed consent for treatments or surgeries
- Providing pre- and post-surgery instructions
- Mental health services
- Information about blood or organ donations
- Discussing powers of attorney, living wills, and/or complex billing and insurance matters
- Educational presentations
- Discharge planning and discharge instructions
- Religious services and spiritual counseling

Many of the complaints that are filed against healthcare and long-term care facilities stem from the failure to provide a sign language interpreter in one or more of these situations. Some businesses, realizing that interpreter services may be needed, have even denied admission to potential patients and residents. As the settlement agreements demonstrate, businesses are much better off if they put policies and procedures in place to provide interpreters and other auxiliary aids or services when needed. Here are examples:

- **Communication assessment form:** This form can be used to assess communication needs for any resident or companion who has a hearing, vision, or speech disability. Because an auxiliary aid or service might be needed during the very first on-site interaction, the form should be used at the first point of contact. The form should include information about the requested aids or services and the

situations in which they are needed. The form should be in the resident's file so that every involved staff member knows about the need.

- **Consultation and on-going assessment:** Patients and residents must be consulted about their needs and the aids and services that work for them. After the initial assessment has been completed, providers should periodically assess the effectiveness of the aids and services. An individual's needs can change over time, and new situations may arise, so you want to be sure you continue to meet the resident's needs.
- **Auxiliary aid and service log:** Keep a log of all requests for auxiliary aids and services. The log should contain the following: name of the resident or companion who made the request; time and date the request was made; time and date the request was made for; name(s) of staff who conducted the communication assessment; name of staff who requested the aid or service on behalf of a resident or companion; the auxiliary aid or service provided; times and dates the auxiliary aid or service was provided; if applicable, the reason a requested aid or service was not provided.
- **ADA administrators:** Appoint a staff member to be the lead ADA administrator, and additional staff as back-up. The settlement agreements mandate 24/7 coverage so that there is always an ADA administrator available when

needs or problems arise. These staff members will be responsible for training other staff on policies and procedures (including the use of forms, logs, or other record-keeping requirements), maintaining auxiliary aids and distributing them when needed, and generally ensuring the organization meets ADA requirements.

- **Grievance procedures:** There should be a process for patients, residents, and their companions to register complaints. The ADA administrator should set up a process for receiving complaints and resolving issues in a timely fashion. Having such a procedure can spare a business from federal complaints and lawsuits. If a dissatisfied person has an opportunity to make an internal complaint, it can often lead to productive interactions, better understanding, and effective resolutions. Even if mutually satisfactory solutions cannot be found, making good faith efforts will place the business in a better light if more formal complaints or lawsuits do arise.
- **Obtaining interpreters:** The settlement agreements specify that GNHI and BRNC should have contracts or agreements with at least five interpreter services. This is to ensure that an interpreter can be provided 24/7 and with very little advance notice. It is also to ensure that different types of interpreters will be available, especially those who have special skills for working with people with multiple disabilities. Clear internal procedures for obtaining

interpreter services should be established so that there is no confusion among staff about the process. All requests should be documented, including verbal requests.

- **Non-scheduled interpreter requests:** Sometimes you will get a request for an interpreter with less than two hours advance notice. In these situations, the settlement agreements give two options. First, you can provide an in-person interpreter within two hours of the initial request. (You can see why it would be important to have contracts with multiple providers.) Second, you could provide services through video remote interpreting (VRI), a type of interpreting service that uses an internet connection and videoconferencing technology to enable an interpreter to work from a remote location. However, keep in mind that VRI is not always appropriate in every situation, and certain standards of quality must be met if it is used, including:
  - Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth connection that delivers high-quality video images (no lagging, freezing, blurry or grainy images, etc.) and clear, audible transmission of voices;
  - An image large enough to display the interpreter's face, arms, hands, and fingers, and

- the face, arms, hands, and fingers of the person using the interpreter services, regardless of his or her body position;
- Adequate staff training to ensure quick set-up and proper operation of the equipment.
  - **Scheduled interpreter requests:** A request for an interpreter that is made with at least two hours advance notice is considered a scheduled request, and the business should provide an in-person interpreter at the time of the appointment. If the interpreter fails to show, immediately request another interpreter and consider providing VRI (if possible) to fill the gap. The settlement agreements counsel businesses to demonstrate that they have made reasonable efforts to obtain an interpreter, including making repeated attempts via phone, email, or text.
  - **Document everything:** In addition to the communication assessment form, auxiliary aid and service log, and correspondence with interpreter services, all other actions and communications that are related to your effective communication obligation should be documented. If you have put good procedures in place and they are being effectively implemented, then your documentation will reflect well on your business. You always want to be

prepared to show that you've done everything you can to fulfill ADA requirements.

While settlement agreements can provide practical guidance and help improve understanding of the Department of Justice's expectations, it is also important to remember that you need to establish procedures that work in your own business and community.

## **Zoom in on Training**

***[ADAcon 2021: Early Bird Registration Ends Soon!](http://www.adainfo.org/Content/ADAcon)***

***[www.adainfo.org/Content/ADAcon](http://www.adainfo.org/Content/ADAcon)***

September 21 – 23, 2021

Baltimore, Maryland

Join us for our annual conference, to be held this year at the Renaissance Baltimore Harborplace Hotel in the exciting Inner Harbor, featuring expert speakers presenting sessions on the ADA and disability issues such as employment, housing, transportation, structural access, law enforcement and corrections, service animals, emergency management and disaster recovery, and more! **Register by July 31 and save \$50!**

## *ADA National Network Online Learning*

The ADA National Network's [online learning programs](http://www.accessibilityonline.org/training) ([www.accessibilityonline.org/training](http://www.accessibilityonline.org/training)) offer live webinars and archived sessions on a broad range of topics, including architectural design, accessible technology, arts and recreation, ADA legal developments, and much more. Upcoming sessions:



- **August 17, 2021:** [Accessible Autonomous Vehicles](https://www.accessibilityonline.org/ADA-audio/session/?id=110940) (<https://www.accessibilityonline.org/ADA-audio/session/?id=110940>)
- **September 22, 2021:** [COVID and ADA Litigation](https://www.accessibilityonline.org/ada-legal/session/?id=110949) (<https://www.accessibilityonline.org/ada-legal/session/?id=110949>)

Visit our [Trainings](http://www.adainfo.org/trainings) ([www.adainfo.org/trainings](http://www.adainfo.org/trainings)) pages for more information on upcoming training programs!

## **Close-Ups: What's New**

### *NCD Urges Focus on Access and Equity in Health Care*

The National Council on Disability (NCD), the independent federal agency which serves to inform the development and implementation of public policies that affect people with disabilities, is stepping up efforts to address inequity and ableism in the nation's health care systems.

NCD has recently issued a number of reports and letters that represent a call to action for Congress and federal agencies; medical schools and other health care education programs, as well as accreditation organizations; hospitals, medical practices, and other health care systems, both public and private; and people with disabilities and their allies. While NCD has addressed disparities in health care access and outcomes for people with disabilities for many years, the COVID-19 pandemic has thrown harsh light on inequities and spurred heightened efforts to address them. Areas of focus include improving:

- Physical access to facilities and medical diagnostic equipment.
- Training and education for doctors and other health care providers.
- Policies that deprioritize, limit, or exclude people with disabilities from treatment options and opportunities to participate in research.



Earlier this year, NCD released a report, [Enforceable Accessible Medical Equipment Standards: A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities](https://ncd.gov/publications/2021/enforceable-accessible-medical-equipment-standards) (<https://ncd.gov/publications/2021/enforceable-accessible-medical-equipment-standards>), which outlined findings related to the use of accessible medical diagnostic equipment (MDE) such as weight scales, exam tables and chairs, and mammography equipment. The U.S. Access Board issued voluntary standards for such equipment in 2017, but the Department of Veterans Affairs (VA) is the only federal agency to require compliance with the standards for new MDE purchased for use in its health care systems.

Although the Departments of Justice (DOJ) and Health and Human Services (HHS) have engaged in technical assistance and enforcement activities aimed at increasing the availability and

use of accessible MDE in other settings, these efforts have not resulted in widespread improvements. NCD believes that adopting the Access Board's standards through formal federal rulemaking is necessary to drive broader, meaningful change. The report's recommendations include:

- The VA should share their policies and practices on accessible MDE with other federal agencies.
- DOJ should revise its Title II and III ADA regulations to require covered health care providers to acquire equipment that complies with the MDE Standards.
- The Office for Civil Rights at HHS should issue a regulation requiring covered health care providers to acquire equipment that complies with the MDE Standards.
- The Department of Education should develop training requirements that include the use of accessible MDE and disability competency training for federally funded medical residency programs.

NCD also sent a [letter regarding disability competency training of medical professionals](https://ncd.gov/publications/2021/ncd-letter-acgme-regarding-disability-competency-training-medical-professionals) (<https://ncd.gov/publications/2021/ncd-letter-acgme-regarding-disability-competency-training-medical-professionals>) to the Accreditation Council on Graduate Medical Education (ACGME), urging the organization to require its accredited programs to implement disability cultural competency training to address the “void” in medical education

that results in graduates “with little or no skills, knowledge, comfort, confidence, or awareness” in how to treat people with disabilities. NCD recommends [Core Competencies on Disability for Health Care Education](https://nisonger.osu.edu/education-training/ohio-disability-health-program/corecompetenciesondisability/) (<https://nisonger.osu.edu/education-training/ohio-disability-health-program/corecompetenciesondisability/>) as a basis for such training.

Visit [NCD’s information on health care](https://ncd.gov/policy/health-care) (<https://ncd.gov/policy/health-care>) to learn more about their findings and recommendations to improve equity in health services for people with disabilities.

### **[ADA National Network Celebrates 30 Years!](https://adata.org/ada-national-network-celebrates-30-years)**

(<https://adata.org/ada-national-network-celebrates-30-years>)

Many of you know that last year marked the 30<sup>th</sup> anniversary of the ADA, but did you know that this year marks the 30<sup>th</sup> anniversary of the ADA National Network? That’s right, within the year following the signing of the ADA, the ADANN was implemented to provide education and guidance on the law to the public. Thirty years later, we’re still going strong, conducting a wide variety of training programs, developing educational materials, and answering your questions on the ADA! Learn more about [ADANN](https://adata.org/ada-national-network-celebrates-30-years) (<https://adata.org/ada-national-network-celebrates-30-years>) services, research, and our special 30<sup>th</sup> anniversary webinar series!

## Spotlight: Cool Websites

### *Resources for Health and Wellness*

#### [Partnering for Better Chronic Pain Management and Safer Opioid Use: A Knowledge Hub for People with Disability and Their Providers](https://www.air.org/centers/knowledgehub/knowledge-hub-home)

(<https://www.air.org/centers/knowledgehub/knowledge-hub-home>)

This resource from the American Institutes for Research (AIR) is designed to help people with disabilities and their providers work together to manage chronic pain. Evidence-informed resources include actionable tips and tools for people and providers to:

- Share knowledge and experiences to create person-centered pain management plans.
- Weigh the benefits and risks of opioids and work together for safer opioid use.
- Accurately identify opioid use disorder if it occurs.
- Access and coordinate opioid use disorder treatment that considers the needs of people with disabilities.

#### [University of Pittsburgh Model Center on Spinal Cord Injury](http://www.upmc-sci.pitt.edu/) (<http://www.upmc-sci.pitt.edu/>)

This project conducts [research](http://www.upmc-sci.pitt.edu/research) (<http://www.upmc-sci.pitt.edu/research>) and offers a wealth of information on

spinal cord injury (SCI), such as [consumer guides](http://www.upmc-sci.pitt.edu/living-sci) (<http://www.upmc-sci.pitt.edu/living-sci>) and web-based training, including [wheelchair maintenance training](http://www.upmc-sci.pitt.edu/maintenance) (<http://www.upmc-sci.pitt.edu/maintenance>) and [transfer training](http://www.upmc-sci.pitt.edu/transfers) (<http://www.upmc-sci.pitt.edu/transfers>) for wheelchair users.

## **About this Publication**

*ADA in Focus* is published three times yearly by the Mid-Atlantic ADA Center. It is also available by request in large print, Braille, and computer disk. To obtain copies in other formats, please contact us.

*ADA in Focus* is intended for use by individuals, state and local governments, businesses, legal entities, and others interested in developments in the Americans with Disabilities Act. This publication is intended solely as an informal guidance and should not be construed as legally binding. *ADA in Focus* does not serve as determination of the legal rights or responsibilities under the ADA for any individual, business, or entity.

TransCen, Inc. is a Rockville, Maryland based non-profit 501(c)3 organization dedicated to improving educational and employment outcomes for people with disabilities. TransCen administers the Mid-Atlantic ADA Center, providing information, guidance, and training on the American with Disabilities Act to DE, DC, MD, PA, VA, and WV.

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