

Obligations to deaf patients extend beyond direct delivery of care

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Last month's column discussed what the law requires when assisting families with low English proficiency (<http://www.aappublications.org/news/2016/05/18/Law051816>). This month's column answers pediatricians' questions regarding the legal requirements when caring for a deaf patient or a patient whose parent is deaf.

Q: Is the term “deaf” appropriate?

A: Generally “deaf” refers to individuals who cannot hear due to an audiological condition. “Deaf” with an uppercase D applies to deaf people who share a common culture and language, American Sign Language. “Hard-of-hearing” typically is used for individuals with mild-to-moderate hearing loss. “Hearing-impaired” is an outdated term that is considered pejorative. There are nuances to these definitions, which are beyond the scope of this discussion (see National Association of the Deaf, <http://bit.ly/1XwEJWm>).

Q: How do I meet the needs of my families with a deaf patient or caregiver?

A: The Americans with Disabilities Act (ADA) and the Rehabilitation Act require *all* health care providers to provide *equal access* and an *equal opportunity* to participate and benefit from health care services.

Q: How do I provide equal access and equal opportunity?

A: You have a duty to provide appropriate auxiliary aids and services to assist the deaf and hard-of-hearing to communicate as effectively as other families. The range of auxiliary aids and services is broad and patient-specific. It includes qualified interpreters, note-takers and a spectrum of assistive devices. There is no one-size-fits-all solution. Not all deaf people use sign language and of those who do, not all use American Sign Language. Discuss what works best with the family.

Q: Does my obligation to provide equal access extend beyond direct delivery of patient care?

A: You also must provide equal access for anything you offer to the public such as health education sessions or parenting classes.

Q: Are written notes acceptable for communication?

A: In general, no. Handwritten notes result in truncated communication. However, for a brief and simple matter, they might be acceptable.

Q: Can I rely on my patient or family's ability to lip-read?

A: Usually not. Lip-reading has limitations and can result in less effective communication. It should not be used as a substitute for a qualified interpreter for the appropriate patient. Again, discuss the best form of communication with the family.

Q: Can family members be used as sign language interpreters?

A: Generally, no. Using a family member as an interpreter raises concerns about confidentiality, accuracy of interpretation of medical concepts and the withholding of information.

Q: Interpreters and auxiliary aids are expensive. Can I pass these costs onto the patient? What if my cost exceeds the payment I receive?

A: You may not bill the patient. In some states, Medicaid will provide reimbursement. Some private insurers also may provide payment. The ADA permits restriction of services when they constitute an *undue burden*. This has been interpreted as meaning an undue burden to the practice, not the individual encounter. Thus, the provision of services or aids would have to impact the physician's total bottom line significantly to constitute an undue burden.

Q: Are there any resources to offset the cost?

A: Community resources may be available to help with interpreters or aids. Talk to your tax adviser about possible credits.

Q: A deaf parent and I are at an impasse regarding the adequacy of the services I provide. Must I agree to the demands?

A: The decision of what services or aids are supplied is up to the physician as long as equal access and opportunity are provided. Of course, the family's opinion is very important. Refusal to accept a new patient or the termination of an existing relationship because you are asked to provide services or aids would be considered discrimination.

The U.S. Department of Justice sponsors a mediation program at no cost to either party that seeks to resolve ADA complaints in an informal manner (http://www.ada.gov/mediation_docs/mediation-q-a.htm).

Q: Are there any penalties associated with failure to comply?

A: Many disputes are resolved by agreement between the physician and the family. Courts can order compliance under the ADA. Money damages can be awarded under the Rehabilitation Act. In a recent case, a physician lost a \$400,000 verdict for repeatedly refusing to provide a sign language interpreter for multiple visits.

Q: What else should I know?

A: Document your use of an interpreter or aids. State or local law may impose greater requirements than federal law, so be familiar with the laws in your community. If you are having difficulty finding an interpreter, the Registry of Interpreters for the Deaf has resources that may be helpful (<http://rid.org>).

The National Association of the Deaf has a wealth of information available on the provision of equal access and equal opportunity (<http://bit.ly/1XwEjWm>).

Dr. Bondi is a member of the AAP Committee on Medical Liability and Risk Management.