

# Treating Hearing-impaired People

*A look at the use of sign interpreters in dentistry*

**P**erhaps the most frequent call to the ADA's Division of Legal Affairs—and the one that generates the most surprised response from dentists and their staff members hearing the answer to their question—pertains to the use of sign language interpreters in dentistry. Typically, the dentist has been told by a deaf patient, or often an interpreter working on a prospective patient's behalf, that the dentist must retain and pay for the interpreter's services. The dentist wonders if that could possibly be true, especially since the cost of the interpreter's service usually will outstrip the dentist's profit margin (or even result in a net loss) for the care in question. The answer usually is yes, the dentist must retain and pay for an interpreter's services, if an interpreter is needed to achieve equally "effective communication" with the person.

Since the implementation of the Americans With Disabilities Act, or the Act,<sup>1-3</sup> all dental offices have had obligations under federal law to

people with hearing impairments. For starters, under the Act, a professional office of a health care provider, such as a dental office, is a place of public accommodation and is prohibited from unlawful discrimination by reason of disability. Assuming for this article that a person with a hearing impairment has a disability for purposes of the Act, a dental office thus cannot discriminate against such a person because of his or her condition. Worthy of note is that this applies to all people who may seek care from the office, not just existing patients of record. (Even before the passage of the Act, the federal Rehabilitation Act applied to health care providers who accepted federal funds, such as Medicaid. In addition, state and local laws may impose even higher obligations than those under federal law.)

In addition to prohibiting discrimination against people with hearing impairments, the Act requires that places of public accommodation, including dental offices, supply "auxiliary aids and services," such as interpreters, unless doing so would cause an undue burden. Like all health care providers, dentists have a legal duty to provide effective communication, using auxiliary aids

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and services as necessary to ensure that communication with people who have a hearing loss is as effective as communication with others.<sup>4</sup>

The careful reader will note that the law does not impose a one-size-fits-all solution for dealing with people who have hearing impairments. For example, the law does not require that a dentist retain a sign language interpreter for all such patients, or for all of their visits. Rather, the law asks the dentist to make an individualized determination of a particular patient's communication needs and the complexity of the communication in question. Not all patients with hearing impairments are alike: some rely on interpreters; others prefer to read lips; still others may be quite comfortable exchanging notes, perhaps by typing back and forth on a computer. Likewise, different procedures vary in complexity: some, like a prophylaxis, are simple and easy to explain; others, like periodontic or endodontic procedures, may be more complex and suggest a more likely need for an interpreter.

The United States Department of Justice, which enforces this portion of the Act, views it as the dentist's job to make a case-by-case examination of whether an interpreter is needed. This may vary, depending not only on the patient's needs, abilities and preferences, but also on the procedure involved. It is based on the current situation with the patient at hand, not on how the dentist may communicate with other deaf patients, or how the dentist communicated with the patient in question before the Act was implemented. As stated

by the National Association of the Deaf Law Center, "[a]n interpreter should be present in all situations in which the information exchanged is sufficiently lengthy or complex to require an interpreter for effective communication."<sup>5</sup>

If an interpreter is necessary to achieve the legal requirement of equally "effective communication," the dentist must retain and pay for the interpreter's services. This does not mean that the dentist must use an interpreter of the patient's choice; while the patient's preferences may be very useful in

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assessing what auxiliary aid or service is appropriate, any interpreter who can satisfy the dentist's obligation to achieve effective communication will do. (That having been said, the law generally is interpreted as auguring against using family members as interpreters, for reasons including potential conflicts and confidentiality.) It does mean, however, that the dentist must bear the cost. Indeed, the law and accompanying regulations contemplate that places of public accommodation should anticipate their yearly need for interpreters, and should spread this expense over the cost of doing business. Stated differently, rather than allowing the cost of an inter-

preter's services to be charged to the patient who needed communications assistance, the law mandates that the cost be borne by the dentist and/or, in effect, shared by all patients in the practice through higher fees.

There is a cost defense that, theoretically at least, could allow a dentist not to provide interpreter services when needed for effective communication. A dentist could argue that paying for an interpreter would constitute an "undue burden." However, this generally is understood to require a showing of an undue burden relative not to the patient or procedure in question, but rather to the practice's overall financial ability to pay, based on a number of factors such as its size and financial resources. (And the health care provider still must furnish an alternative auxiliary aid or services that would not result in an undue burden.) For dental offices that do not want to reveal their financial picture in a lawsuit regarding a refusal to pay for interpreter services, the prudent approach is to pay for the interpreter and take advantage of tax credits provided by the Act. While a dentist must rely on the advice of his or her tax advisers in this regard, most dental offices will be allowed a tax credit of 50 percent of the cost of interpreter services from \$250 to \$10,250 expended in a given year.

In summary, a dentist usually must pay for interpreter services as needed to achieve effective communication when providing services to people with hearing impairments. For more information about this area of the law, including the available tax credit, readers may wish to call the U.S.



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Department of Justice, or visit its Americans With Disabilities Act Web site at “<http://www.usdoj.gov/crt/ada/adahom1.htm>”.

Finally, it is important to note that achieving effective communication is important not only for anti-discrimination

law purposes, but also as a matter of good risk manage-

ment. Consider, for example, that lip reading can readily lead to miscommunication, and the effectiveness of exchanging notes will depend on a number of factors, including the patient’s reading level and familiarity with dentistry, and the complexity of the procedure. An interpreter can enhance a dentist’s ability to fully and accurately understand patients’ dental complaints, secure informed consent, ensure safe and effective treatment, and promote patients’ understanding and compliance. From this perspective, an interpreter helps both dentists and the patients they serve. ■

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This article is informational only and does not constitute legal advice. Dentists must consult with their private attorneys for such advice.

Interested readers may wish to contact the National Association of the Deaf Law Center at 1-301-587-7730 to receive a copy of “ADA Questions and Answers for Health Care Providers.”

1. 42 U.S.C. ss12181-12189.
2. U.S. Department of Justice Regulations, 28 C.F.R. Part 36.
3. U.S. Department of Justice Interpretive Guidance, 56 Fed. Reg. 35544 et. seq.
4. C.F.R. ss36.303(c).
5. National Association of the Deaf Law Center. ADA questions and answers for health care providers. Silver Spring, Md.: National Association of the Deaf Law Center.