

# **Ensuring Effective Communication in Public Services**

**under Title II of the Americans with Disabilities Act**

**Minnesota Department of Human Services  
Equal Opportunity and Access Division  
Office for Equity and Agency Development**

**Joann daSilva  
Eric Falk  
Priya Vanessa Outar**

**September 26, 2012**

# Learning Objectives

- Understand purpose and components of Title II
- Know your available auxiliary aids and services
- Understand your legal responsibilities
- Avoid possible violations
- Know your contacts and resources

# Outline

- Title II of the Americans with Disabilities Act
- Who Title II protects: qualified individuals
- Effective communication for qualified individuals
- Provision of auxiliary aids and services
- Public entities' legal obligations
- Treatment of companions
- Filing a complaint

# Introduction: Title II of the ADA

- Title I: Employment
- Title II: Public Services
- Title III: Public Accommodations
- Title IV: Telecommunications
- Title V: Miscellaneous

# **Introduction: Title II Application**

**Generally, Title II prohibits disability discrimination in state, county, and city government services.**

**Specifically Title II states:**

**“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”**

# **Introduction: Title II Application**

## **Public entity:**

**Any department or agency in a state, county, or city government**

## **Examples:**

- **Human services agencies**
- **Hospitals and nursing homes**
- **Managed health care organizations**
- **Grantee agencies**
- **Contractors and vendors of public entities**

# **Introduction:**

## **Legal Responsibilities under Title II**

- **Notify the public about the rights and protections for individuals with disabilities under the ADA**
- **Designate an ADA Coordinator and maintain a complaint procedure**
- **Ensure that the facilities are physically accessible**
- **Assist individuals with disabilities to apply for benefits**
- **Provide appropriate auxiliary aids and services to ensure effective communication with individuals with disabilities**
- **Reasonably modify policies, procedures, rules and practices to ensure accessibility for qualified individuals with disabilities**
- **Provide services, programs, and activities that are accessible to qualified individuals with disabilities**

# Qualified Individuals: Who Title II Protects

**Qualified individual with a disability – An individual with a disability must meet a public entity's essential eligibility requirements to receive services or benefits or participate in programs or activities with or without:**

- Reasonable modifications to policies, procedures, rules, or practices;
- Removal of architectural, communication, or transportation barriers; or
- Provision of auxiliary aids and services.



# Qualified Individuals: Definition

- 1) Individuals who have a **physical or mental impairment** that substantially limits one or more major life activities;
- 2) Individuals who have a **record of such an impairment**; or
- 3) Individuals who are **regarded as having such an impairment**.

# Qualified Individuals: Physical Impairments

- Physiological disorders
- Sensory loss
- Anatomical loss
- Cosmetic disfigurement

## **Examples:**

Blindness

Deafness

Speech disorders

Cleft palate

Diabetes

Epilepsy

Muscular Dystrophy

Quadriplegia

# Qualified Individuals: Mental Impairments

- Psychological disorders
- Intellectual disorders
- Learning disorders

## Examples:

Clinical depression

Generalized anxiety

Schizophrenia

Developmental delays

Autism

Dyslexia

## **Qualified Individuals: Substantially limited**

**Individuals who are substantially limited are restricted in the condition, manner, or duration of the performance of a major life activity in comparison to most people in the general population**

# Qualified Individuals: Major Life Activities

## Examples:

Breathing

Sleeping

Sensing

Caring for oneself

Ingesting

Thinking

Concentrating

Learning

Reading

Communicating

Speaking

Writing

Interacting with others

Sitting

Reaching

Manipulating

Standing

Walking

Bending

Lifting

## **Qualified Individuals: Record of such an impairment**

A person with a history of an impairment which substantially limited a major life activity

### **Examples**

Cancer in remission

Heart disease

Epilepsy with no recent seizures

Alcoholism

Drug addiction

## **Qualified Individuals: Regarded as having such an impairment**

### **Situation I:**

A person with an impairment that does NOT substantially limit a major life activity, but who is treated as if the impairment does substantially limit such an activity.

### **Situation II:**

A person with an impairment that *only* substantially limits major life activities due to the attitudes of others towards the impairment.

### **Situation III:**

A person who does not have any impairment, but is treated by a public entity as having one.

## **Communication generally: Equally effective communication**

**“A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public and companions with disabilities are as effective as communications with others.”**

(28 C.F.R. 35.160)



## **Communication generally: Affirmative duty**

A public entity has an obligation to communicate Title II's effective communication policy to applicants, clients, and members of the public.

This includes

1. Public notice;
2. Effective communication policy; and
3. Identifying communication issues and employees' responsibilities upon identification of issues.

A public entity's employees are responsible for identifying communication issues with clients and acting to discover any need for an auxiliary aid or service to ensure effective communication.

## Communication generally: Affirmative duty example

Example:

An applicant submits an application that is incomprehensible. The worker calls the applicant and says, "I am having trouble understanding your answers. I can explain the questions to you so I can understand your answers to process your application."

The worker has an obligation to contact the applicant for clarification. The purpose is to discover any need for an auxiliary aid or service to better provide the requested information.

If the worker detects that a disability is interfering with the applicant's ability to ask for an auxiliary aid or service, then the worker must ask if the applicant needs an auxiliary aid or service.

# **Effective Communication: Who it covers**

**People who have disabilities that affect**

- **Hearing (deafness or hearing loss)**
- **Seeing (blindness or low vision)**
- **Speaking**

# **Effective Communication: Provision of Auxiliary Aids and Services**

**Generally, Title II requires that public entities provide auxiliary aids and services so that individuals with disabilities can:**

- receive services and benefits; and**
- participate in the programs and activities provided by the public entity in the same way as individuals without disabilities.**

# **Auxiliary Aids and Services: Definition**

**Devices or services that  
enable effective  
communication for people  
with disabilities**

# **Auxiliary Aids and Services: Determined by**

**The type of auxiliary aid or service necessary to ensure effective communication should be determined by:**

- **the method of communication used by the individual;**
- **the nature, length, and complexity of the communication; and**
- **the context of the communication.**

# **Auxiliary Aids and Services: What is effective?**

**In order to be “effective,” auxiliary aids and services must be provided:**

- in accessible formats;**
- in a timely manner;**
- in such a way as to protect the privacy of the individual; and**
- in such a way as to protect the independence of the individual.**

# Auxiliary Aids and Services: Primary Consideration

**In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities.**

(28 C.F.R. 35.160)

**Primary Consideration means the public entity will honor the choice of the individual.**

(ADA Technical Assistance Manual, II-7.110 Primary Consideration)



# Auxiliary Aids and Services: Assistants

**Qualified readers, writers, and interpreters must be able to convey communications effectively, accurately, and impartially, and use any necessary specialized vocabulary.**

- **For blindness and low vision: Read documents aloud and assist in completing forms.**
- **For the deaf and hard of hearing, speech disorders: Interpret sign language or transliterate speech.**

## **Auxiliary Aids and Services: Addressing blindness and low vision**

- Large print
- Video magnifier
- Audio recordings
- Braille
- Tactile display
- Optical Character Recognition (OCR)
- Screen reader

# **Auxiliary Aids and Services: Addressing deafness and hearing loss**

## **Text**

- Exchanging written notes
- Written materials
- Teletype, texting, instant messaging, emailing, Ubiduo
- Computer-Aided Real-Time (CART) transcription

## **Speech**

- Assistive listening devices and systems
- Telephone handset amplifiers and telephones compatible with hearing aids
- Captioning telephone
- Video captioning

## **Interpreting**

- Video Remote Interpreting (VRI)
- Video Relay Service (VRS)

# Auxiliary Aids and Services: Text to text

A device for users to type messages back and forth to each other in real time. The device is portable and is intended to fill the void when a sign language interpreter is not available and hard-of-hearing or deaf and hearing people need to communicate.

This is a picture of an UbiDuo text-to-text device.



# Auxiliary Aids and Services: Speech to speech

A telecommunications service in which a person with a speech disorder speaks to an oral transliterator, who is trained to understand varying enunciation and pronunciation.

The oral transliterator will then interpret for the person with the speech impairment and speak the dialogue to the other party.

# **Auxiliary Aids and Services: Video Relay Service (VRS)**

A telecommunications service that enables persons with hearing disabilities who use American Sign Language (ASL) to communicate with voice telephone users. Using a video connection, a VRS user signs to a communications assistant who then speaks that dialogue to the telephone user.

Source: <http://www.fcc.gov/guides/video-relay-services>

# Auxiliary Aids and Services: Video Remote Interpreting (VRI)

A sign language interpreting service using video conferencing technology.

## **Example:**

Two individuals in a meeting room need to communicate. One is deaf and one is not. Instead of a live sign language interpreter, the individuals may use VRI from a remote site. The deaf person signs to the interpreter. The interpreter then communicates what is being said to the deaf person, who watches the interpreter on the screen.

The deaf person can also sign to the interpreter on the screen and have the interpreter verbally repeat what the deaf person wants to communicate to the people in the meeting room.

## **Auxiliary Aids and Services Example: Choosing a type**

In a clinic, a nurse exchanges written notes with a deaf Medical Assistance client while giving the client a flu shot. Later, the clinic's doctor exchanges written notes with the same client while discussing symptoms and treatment for her diabetes.

Does either the exchange of written notes between the client and the nurse or the client and the doctor violate the effective communication requirement of Title II?



# Auxiliary Aids and Services: Choosing a type

Answer: Yes

- Although it was appropriate for the nurse to exchange written notes with the client for a simple procedure such as administering a flu shot, it was **NOT** appropriate for the clinic doctor to exchange written notes with the client.
- Service providers must find practical solutions for communicating effectively based on the context, complexity, and abilities of the client.
- Discussing symptoms and treatment of diabetes is a complex topic and should be discussed using a more appropriate auxiliary aid, such as a sign language interpreter.

(28 C.F.R. § 35.160 (b)(2), Title II Communications)

## **Auxiliary Aids and Services Example:**

### **Costs of auxiliary aids and services**

**A staff member at a county agency offered to provide a Food Support client an available Video Relay Interpreting service for a cost between \$150 and \$170 per hour.**

**Did the staff member violate the effective communication requirement in any way?**

# **Auxiliary Aids and Services Example: Costs of auxiliary aids and services**

**Answer: Yes.**

- **A public entity may not charge individuals with disabilities or groups of individuals with disabilities to cover the costs of auxiliary aids and services, even when clients don't show up for appointments.**
- **Video Relay Interpreting and other services are provided at no additional cost and a staff member cannot decline to provide an auxiliary aid or service that is available.**

(ADA Title II Technical Assistance Manual II-3.5400 Surcharges)

## **Legal Obligations: Primary consideration definition and exceptions**

Primary Consideration means the public entity must honor the choice of the individual with the disability unless the public entity can demonstrate:

- that the use of the means chosen would result in a fundamental alteration in the nature of the service, program, or activity; or
- that the chosen means would result in an undue financial or administrative burden.

If this is the case, then the public entity must find, to the extent possible, another equally effective means of communication that allows the individual with a disability to receive the benefits or services provided by the entity.

Example: an undue burden would be any format requiring significant difficulty or expense based on the public entity's overall resources.

## **Legal Obligations Example: Primary consideration to a blind individual**

- A person asks to complete an application. The agency gives him a print copy. The person is blind and cannot read the application. He requests it on audiotape.
- At this point, the agency should give primary consideration to the choice of the individual and honor his request for audiotape.
- Unless the public entity can demonstrate that the request for audiotape would result in an undue burden or a fundamental alteration of the program, it must provide the audiotape.

## **Legal Obligations Example: Primary consideration to a deaf individual**

- A deaf applicant requests a sign language interpreter to translate her ASL answers into written English in order to fill out an application.
- The agency provides a printed copy of the application because the printed form has been accessible in the past for other deaf applicants.
- However, ASL is the applicant's primary language and written English is her second language. Because she is more proficient in ASL than written English, the printed form is not an equally effective auxiliary aid.
- The agency should give primary consideration to the choice of the applicant and honor her request for a sign language interpreter.

# **Legal Obligations: Telecommunications requirements**

- **The effective communication section of Title II has specific requirements for public entities that interact with clients by telephone.**
- **A public entity that communicates by telephone with applicants and beneficiaries must use equally effective telecommunications systems to communicate with individuals who are deaf, hard of hearing, or have speech disorders.**

## **Legal Obligations: Telecommunications Requirements**

- **A public entity must respond to telephone calls through a telecommunications relay service in the same way that it responds to other calls.**
- **If a public entity uses an automated answering system for receiving and directing incoming telephone calls, that system must provide effective, real-time communication with individuals using auxiliary aids and services.**
- **TTYs and relay services can leave messages. Employees of the public entity must check the messages and return the call as they would with voicemail.**



# Companions: Definition

- “Companion” refers to a family member, friend, or associate of an individual with a disability seeking access to a service, benefit, program, or activity of a public entity.
- Public entities must communicate effectively with companions with disabilities, as appropriate.

# **Companions:**

## **Companions with disabilities**

- The controlling principle is that if the companion is someone with whom the public entity normally would or should communicate, then the public entity must provide appropriate auxiliary aids and services to the companion to ensure effective communication with that companion.
- The obligation to provide auxiliary aids and services extends to companions who are individuals with disabilities, whether or not the individual accompanied also is an individual with a disability.

# **Companions: Interpreting by Companions**

**Why entities cannot require individuals to provide their own interpreters:**

- **Having a friend or family member interpret may violate the individual's right to confidentiality;**
- **A friend or family member may have an interest in the transaction that is different from that of the individual with a disability; and**
- **The obligation of the entity to provide "impartial" interpreting services requires that, upon request, the public entity provide an interpreter who does not have a personal relationship to the individual with a disability.**

# Companions: Interpreting by Companions

- Friends or relatives of the individual **CAN** provide interpreting services.
- However, entities **CANNOT** require individuals with disabilities to provide their own interpreter because it is the responsibility of the public entity to provide a qualified interpreter.

## **Companions: Interpreting by Companions**

**Public entities cannot require adults accompanying an individual to interpret, EXCEPT:**

- **When there is an emergency involving an imminent threat to the safety or welfare of the individual with a disability and no other interpreter is available; or**
- **When an individual with a disability specifically requests the accompanying adult to interpret, that person agrees, and relying on that person is appropriate under the circumstances.**

# **Companions: Children as interpreters**

**A public entity shall not rely on a minor child to interpret or facilitate communication, except when:**

- there is an emergency involving an imminent threat to the safety or welfare of an individual with a disability; and**
- there is no interpreter available.**

# Complaints:

## Filing a Disability Complaint

- **Who can file:** Any individual who believes he or a specific class of individuals has been subjected to discrimination on the basis of disability may file a complaint. Authorized representatives may also file on behalf of others.
- **Written Complaint:** Most agencies want a written complaint, but must accept requests to submit complaints in alternative ways if the complainant needs an alternative.
- **Timeline for filing:** Timelines for filing complaints vary depending on the agency involved.
- **Where to file:** Complaints are accepted on the federal, state, and county government levels.

## **Complaints: Filing a Complaint with the County**

- **Check your civil rights plan for your complaint handling procedure and know your county civil rights contact person.**
- **You must complete the complaint notification form and send it to DHS within 90 days of the date each complaint is filed at the county. This informs DHS in writing of service delivery discrimination complaints filed in the county.**



# Complaints: Filing a complaint with the state

Civil Rights Coordinator

**Minnesota Department of Human Services**

Equal Opportunity and Access

P.O. Box 55164

St. Paul, MN 55164-0997

(651) 431-3040 (voice)

(651) 431-7444 (fax)

(800) 627-3529 (MN Relay)

(877) 627-3848 (Speech-to-Speech Relay)

**Minnesota Department of Human Rights**

Freeman Building

625 Robert Street North

St. Paul, MN 55155

(651) 539-1100 (voice)

(800) 657-3704 (toll free)

(651) 296-1283 (TTY)

(651) 296-9042 (fax)

## **Complaints: Filing a complaint with a federal agency**

### **U.S. Department of Health and Human Services Office for Civil Rights**

Region V  
233 N. Michigan Avenue  
Suite 240  
Chicago, IL 60601  
(312) 886-2359 (voice)  
(312) 353-5693 (TTY)

### **U.S. Department of Agriculture**

Director  
Office of Civil Rights  
1400 Independence Avenue SW  
Washington, D.C. 20250-9410  
(800) 795-3272 (voice)  
(202) 720-6382 (TDD)

## **Resources: Local Contacts**

**Your county ADA Coordinator (check your Civil Rights Plan)**

**Eric Falk, ADA Coordinator (DHS)**

(651) 431-3039 (Voice)

(866) 786-3945 (TTY)

[eric.falk@state.mn.us](mailto:eric.falk@state.mn.us)

**Joann daSilva, Civil Rights Coordinator (DHS)**

(651) 431-3034 (Voice)

(866) 786-3945 (TTY)

[joann.dasilva@state.mn.us](mailto:joann.dasilva@state.mn.us)

# Resources: Federal Contacts

## **Medical Assistance Program (Medicaid)**

### **U.S. Department of Health and Human Services**

#### **Office for Civil Rights**

Region V

233 N. Michigan Avenue

Suite 240

Chicago, IL 60601

(312) 886-2359 (Voice)

(312) 353-5693 (TTY)

## **Food Support Program (SNAP)**

Regional Director

Civil Rights/EEO

### **USDA Food & Nutrition Service**

Midwest Regional Office

77 West Jackson Blvd.

FL 20

Chicago, IL 60604-3591

(312) 353-3353 (Voice)

# Resources and Acknowledgements

## **U.S. Department of Justice:**

(800) 814-0301 (Voice)

(800) 514-0383 (TTY)

[www.ada.gov](http://www.ada.gov)

**State and Local Government Tool Kit:** [www.ada.gov/pcatoolkit/toolkitmain.htm](http://www.ada.gov/pcatoolkit/toolkitmain.htm)

## **Network of ADA Centers (DBTACs):**

(800) 949-4232 (Voice/TTY)

## **ADA Minnesota:**

(651) 603-2015 (Voice)

[www.adaminnesota.org](http://www.adaminnesota.org)

## **Great Lakes ADA Center**

(312) 413-1407 (Voice/TTY)

(800) 949-4232 (Voice/TTY)

(312) 413-1856 (Fax)

[www.adagreatlakes.org](http://www.adagreatlakes.org)

## **U.S. Access Board:**

(800) 872-2253 (Voice)

(800) 993-2822 (TTY)

[www.access-board.gov](http://www.access-board.gov)

# Questions?