

DEPARTMENT OF DEVELOPMENTAL SERVICES

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March 7, 2023

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: REQUIREMENTS UNDER THE AMERICANS WITH DISABILITIES ACT
TO PROVIDE EFFECTIVE COMMUNICATION TO DEAF CONSUMERS

The purpose of this correspondence is to remind regional centers of their obligation to comply with the Americans with Disabilities Act (42 U.S. Code section 12101, et seq.) (the ADA) to make services accessible to consumers who are deaf by providing effective communication. The federal government's guidance about the requirements of the ADA may be found at www.ADA.gov.

Auxiliary Aids and Assistance

Regional centers are required to timely provide auxiliary aids and assistance to consumers who are deaf if necessary to afford consumers an equal opportunity to participate in and enjoy the benefits of services. In some circumstances, another person may be designated to represent or support the consumer; for example, the parent of a minor child, an adult's conservator, an authorized representative, or other individual chosen by the consumer. If the other individual representing or supporting the consumer has a communication disability, the regional center must also provide this individual with necessary auxiliary aids and assistance to facilitate effective communication with the consumer.

The appropriate auxiliary aid or assistance to provide depends upon the individual's communication preferences and needs and the circumstances, so long as the accommodation does not impose an undue financial and administrative burden on the regional center. The accommodations shall be in accessible formats and in a manner that protects the privacy and independence of the deaf consumer.

For deaf consumers or those supporting them, auxiliary aids and assistance may include but are not limited to:

- Qualified notetakers
- Oral interpreters
- Videophones
- Real-time captioning
- Printed script
- Text telephones (TTY)
- Sign language interpreters
- Cued-speech interpreters
- Deaf interpreters
- Written materials
- Video remote interpreting services
- Hearing-aid compatible telephones

When providing an interpreter, it is important that the interpreter be qualified. Under federal law, a qualified interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what all parties

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engaged in the communication are saying) and expressively (i.e., having the skill needed to convey information in the languages used in the conversation) using any necessary specialized vocabulary.

In determining the type of auxiliary aids or assistance to provide, regional centers must give primary consideration to the individual's accommodation request, unless the regional center can show that a different effective means of communication exists or that use of the requested means would not be required. Giving primary consideration to the individual's accommodation request does not mean the request must always be adopted. A different means of communication may also be provided where the requested accommodation would fundamentally alter the service, program, or activity, or result in undue financial and administrative burdens (defined as a significant difficulty or expense).

If a regional center denies a requested accommodation, they bear the burden of demonstrating that the requested accommodation would fundamentally alter the program or service or result in undue financial and administrative burdens. This determination must be made in writing by the Executive Director of the regional center or designee, after considering all available resources for funding the service, program, or activity, and stating the reasons for the determination. If a requested accommodation would result in an undue financial and administrative burden, the regional center must take any other action that would not result in such a burden but would still ensure, to the maximum extent possible, that the consumer receives effective communication and the benefits or services offered by the regional center.

Reliance on Family or Other Authorized Representative to Interpret

It is the responsibility of the regional center, and not the consumer, to ensure the required auxiliary aids and assistance are in place. For that reason, if a deaf consumer or the person assisting them needs an interpreter to communicate effectively, the regional center should not rely on the consumer's family or representative to act as the interpreter. Relying on family or other representatives to interpret is inappropriate because they may lack the impartiality and specialized vocabulary needed to interpret effectively and accurately. Exceptions are made in emergencies where no interpreter is available, or, when the deaf consumer specifically requests that the accompanying representative interpret or facilitate effective communication, the representative agrees, and such reliance is appropriate under the circumstances. Parents, guardians, and caregivers are not prohibited from facilitating effective communication if appropriate, but regional centers cannot solely require or rely on this.

Staff Training

Regional centers must train their staff regarding the ADA requirements for effective communication with people who are deaf. For more information, please see the U.S.

Regional Center Executive Directors
March 7, 2023
Page three

Department of Justice Civil Rights Division's guidance on effective communication, available at www.ada.gov/resources/effective-communication.

If you are a consumer or family member and have questions about this correspondence, please contact your regional center service coordinator. For questions from regional centers, please contact me at (916) 654-1569 or brian.winfield@dds.ca.gov.

Sincerely,

Original Signed by:

BRIAN WINFIELD
Chief Deputy Director

cc: Regional Center Administrators
Regional Center Directors of Consumer Services
Regional Center Community Services Directors
Association of Regional Center Agencies
State Council on Developmental Disabilities
Nancy Bargmann, Department of Developmental Services
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