

# Effective Communication in Medical Settings: Your Rights Under the Law

BY ANDREW WEBB

When seeking medical care, people who have hearing loss often encounter unique challenges and barriers. But if you have a hearing disability, the law can help ensure you receive care comparable to those with other disabilities, and that your hospital or doctor's office takes the necessary steps to effectively communicate with you. Following is a brief overview of your rights when seeking medical services and some options for you to pursue legal relief if you experience health care discrimination.

The Americans with Disabilities Act (ADA) helps ensure that people with disabilities have meaningful access to medical services. In the context of health care, Title II of the ADA applies to public hospitals, clinics and health care services operated by state and local governments, whereas Title III applies to privately-owned and administered hospitals and other health care providers. Additionally, Section 504 of the Rehabilitation Act prohibits disability discrimination by any institution or program receiving federal financial assistance. These laws apply to all types of health care providers, regardless of their size or specialty area.

Providers have a legal obligation to ensure effective communication for people with hearing loss. This includes furnishing auxiliary aids and services you might need to communicate and understand information shared with you. Your provider must tailor accommodations to your unique communication needs, giving special consideration to your preferences. However, the provider need not give you the specific aids you request if they are unduly difficult or expensive, and can furnish you with different aids as long as they allow you effective communication.

If you require Communication Access Realtime Translation (CART) or a similar service which translates speech to text, or if you communicate using sign language, there are situations in which it is imperative that your doctors provide those services. This is true for complex communications, such as discussions of medical history, diagnoses, procedures, treatment decisions or planning for in-home care. But for simpler interactions involving minimal conversations, such as for routine lab tests or regular injections, a provider may be within

its rights to communicate by other means, including through written notes.

Suppose that, in advance of an upcoming appointment, you ask your doctor's office to provide CART. Your doctor's office then has a legal responsibility to furnish either CART or some other auxiliary aid that will enable you to effectively communicate. In no case can a provider require you to locate and bring the aid with you, nor to cover the costs or fees for the aid yourself. These duties extend to companions with disabilities and for whom effective communication is essential for the person receiving care. For example, if you are a parent who has hearing loss taking your minor child to a medical appointment, the doctor's office must provide accommodations necessary for you to communicate effectively and give meaningful input regarding your child's care.

Sometimes providers utilize aids and services that are inadequate for effective communication. For example, for persons with hearing loss who do not use American Sign Language (ASL) proficiently, an interpreter will not ensure accurate communication. For persons who do use ASL, video remote interpreting (VRI) may still be insufficient if a patient has difficulty understanding the interpreter on screen due to a visual disability, because reception or image quality is poor or where the provider's staff are not properly trained to operate the system.

Should a medical provider violate your rights and you are unable to reach a satisfactory resolution on your own, you have a few options to pursue a formal complaint:

- You can file a lawsuit in federal court.
- You can file a complaint with the United States Department of Health and Human Services, Office of Civil Rights (OCR). You can file via OCR's online portal, or via their other filing options as described on their website: <https://www.hhs.gov/civil-rights/filing-a-complaint/index.html>. You should not need an attorney's assistance to file a complaint. OCR does not award monetary damages, but it does investigate allegations of discrimination and can help ensure that the provider improves its policies and practices to prevent future discriminatory conduct.

- You can also file a complaint with the Disability Rights Section of the United States Department of Justice (DOJ). The online complaint portal and other filing options are available on the DOJ website: [ada.gov/filing\\_complaint.htm](http://ada.gov/filing_complaint.htm).
- There may be other administrative complaint options specific to the state in which you reside. Your state may have its own human rights statute prohibiting discrimination based on disability, as well as agencies that investigate and even conduct hearings when you file a complaint under your state's anti-discrimination law. Also, you may be able to file complaints with your state's public health department or with its licensing authority for medical professionals. **HL**

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## News and Notes

### HLAA Communication Access in Health Care Program Projects:

Participated in the Disability Equity Collaborative documentation work group meeting, January 2022

Met with the American Association of Medical Colleges (AAMC) telehealth equity competencies team, February 2022

Submitted report on telehealth experiences of patients with hearing loss to AAMC. (Thank you to all the contributors to the recent Call to Action who shared stories about their experiences with telehealth!)

Met with the Patient Provider Communication Forum, March 2022

Questions and comments about the work of HLAA's Communication Access in Health Care program should be sent to [healthcareaccess@hearingloss.org](mailto:healthcareaccess@hearingloss.org).

## Tips for Communication Access After an Accident

BY WYNNE WHYMAN

"She keeps turning her head." Those were the first words I remember hearing after a pickup truck crashed into me while I was riding my bicycle. Prior to the ambulance arrival, a medically-trained bystander was performing a spinal injury assessment.

Having progressive hearing loss since preschool, once again, I was on my own. My first thought was, "I can't bluff." I responded that I was instinctively turning my head to lipread because of my hearing loss.

The most concerning injury was a type VI tibial plateau fracture requiring surgery.

Health care professionals are caring and knowledgeable, but often do not understand hearing loss. Even with hearing loss noted in my chart, no one inquired whether they were speaking clearly or described how their specialty managed hearing loss needs.

During my hospital stay, I was proactive. I wore my hearing aids 24/7, declined most pain medications to stay alert and initiated questions. (For example, "For the proposed antibiotic, are there hearing loss side effects?" "For surgery, when will I remove my hearing aids?")

However, during surgery, the anesthesiologist's speech was totally unintelligible. Also, I wonder if there was a communication misunderstanding resulting in an early discharge decision.

Since I was tense about communication, I was hyper-attentive to all sounds and became mentally and physically exhausted. I tried not to worry that I might not walk normally again, internalized my emotions and became numb. How was my communication burden intertwined in the trauma and healing?

Happily, good news. Last year, I walked a total of 920+ miles. That's what comes with good medical care, following medical advice, my ongoing strengthening and conditioning work and maintaining my efforts toward achieving accurate communication with my health care providers.

*Wynne Whyman volunteers with the HLAA Get in the Hearing Loop program committee and chairs the Let's Loop Colorado project. She holds two master's degrees and is a learning architect, developing executive leadership and other courses that focus on organizational and learner needs.*

