

## **EQUITABLE ETIQUETTE: A REMINDER THAT EFFECTIVE COMMUNICATION IS REQUIRED BY THE AMERICANS WITH DISABILITIES ACT FOR HEALTHCARE PROVIDERS**

*April 19, 2023*

On Friday, April 14, 2023, The United States Attorney's Office for the Eastern District of Virginia announced that it sent a [Dear Colleagues Letter](#) to remind healthcare providers of effective communication requirements mandated by the Americans with Disabilities Act ("ADA"). Title II and Title III of the ADA, 42 U.S.C. §§ 12131-34 & 12181-89, prohibit discrimination on the basis of disability for a broad range of covered areas. Since enactment of the ADA, Congress has recognized that discrimination against individuals with disabilities continues to persist in healthcare services, an area that often involves high stakes communication critical to the wellbeing of an individual. Pursuant to the ADA, healthcare providers must ensure that communication with individuals with disabilities is as *effective* as communication with people without disabilities. Healthcare providers may not decline to provide treatment to an individual due to their communication disabilities and are required to take affirmative steps in providing reasonable accommodations including auxiliary aids and services (e.g., sign language interpreters, means of making visually delivered materials available to those with vision impairment, and speech-to-speech transliterators). Covered entities are required to provide reasonable accommodations to individuals with communication disabilities unless doing so would result in "[undue burden](#)" to the provider requiring significant difficulty or expense. Although an undue burden exemption exists, obtaining such an exemption is subject to strict scrutiny and is not easily granted.

The effective communication requirements under the ADA apply to a variety of healthcare providers which provide in-person medical services, telehealth appointments, electronic kiosks, and websites including:

- Hospitals
- Nursing Facilities
- Urgent Care Providers
- Physicians
- Dentists
- Optometrists
- Durable Medical Equipment Retailers
- Infirmaries located at institutions of Higher Learning and Correctional Facilities
- Local Mental Health Agencies

In its press release, the U.S. Attorney's Office conveyed the Department of Justice's ("DOJ's") commitment to protecting the rights of individuals with communication disabilities and noted that the DOJ has [investigated and enforced](#) the ADA against many healthcare providers for failing to comply with the ADA's effective communication requirements. In light of the pervasive nature of the matter, the U.S. Attorney's office is actively taking steps to ensure that healthcare providers are complying with the ADA by increasing awareness of equitable access for individuals with communication disabilities.

## ADDITIONAL RESOURCES AND INFORMATIONAL MEETING DETAILS

In its letter to healthcare providers, the U.S. Attorney's Office provided multiple DOJ publications and settlement agreements detailing the intricacies of the effective communication requirements of the ADA and a roadmap to ensure compliance:

- [ADA Requirements: Effective Communication](#)
- [ADA Business BRIEF: Communicating with People Who Are Deaf or Hard of Hearing in Hospital Settings](#)
- [Guidance on Web Accessibility and the ADA](#)
- [Goochland Powhatan Community Services – Settlement Agreement](#)
- [Brookside Rehabilitation & Nursing Center – Settlement Agreement](#)
- [Spotsylvania Regional Medical Center – Settlement Agreement](#)
- [Rite Aid Corporation – Settlement Agreement](#)
- [Lincare, Inc. – Settlement Agreement](#)

For guidance on best practices and further understanding of the requirements for effective communication under the ADA, the U.S. Attorney's Office is inviting healthcare professionals and the general public to attend a virtual [informational meeting](#) held on June 6, 2023, at 1:00 p.m. (EDT).

If you have any questions or need assistance regarding the effective communication requirements under the ADA, please contact a member of Hancock Daniel's [Compliance](#) team.

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