

## Social Workers and Accommodations for Deaf and Hard of Hearing Clients

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### Introduction

Social workers have legal and ethical obligations to address the needs of diverse clients through non-discrimination standards and culturally competent practice. This includes appropriately addressing the needs of clients with disabilities, such as those who are deaf or hard of hearing. The mental health needs among this population are at least as high as the hearing population; however, the barriers to requesting and accessing care may be much greater (Steinberg, 1998; Muller, 2006).

Many social workers are unaware of their responsibilities to accommodate deaf and hard of hearing clients and have not planned in advance how they would respond to a request for treatment by a deaf or hard of hearing person or how to communicate with necessary family members. Some questions that may be posed when addressing a request for services from a deaf person are:

- How can a social worker who does not use sign language best meet the needs of deaf or hard of hearing clients or the deaf family members of clients?
- What if the cost to hire an interpreter is too high?
- How does a private practitioner appropriately document that providing an interpreter would be an undue financial or administrative burden, or a fundamental alteration of the treatment process when words are being “interpreted” by a third person?
- How does confidentiality play into this?

### Social Work Ethics and Practice Standards

The NASW Code of Ethics prohibits social workers from discriminating on the basis of mental or physical disability in four separate provisions (NASW, 2008).

National social work practice standards published by NASW may be applied to questions about service provision for hard of hearing clients. The *NASW Standards for Cultural Competence in Social Work Practice* (NASW, 2001, Standard 9. Language Diversity) state, “Social workers shall seek to provide or advocate for the provision of information, referrals, and services in the language appropriate to the client, which may include use of interpreters.”

Standard 9 further specifies:

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Social agencies and social workers have a responsibility to use language interpreters when necessary, and to make certain that interpreters do not breach confidentiality, create barriers to clients when revealing personal information that is critical to their situation, are properly trained and oriented to the ethics of interpreting in a helping situation, and have fundamental knowledge of specialized terms and concepts specific to the agency's programs or activities.

The *NASW and ASWB Standards for the Use of Technology and Social Work Practice* (NASW, 2005) require social workers to be knowledgeable and proficient in the use of technologies that will enhance or facilitate treatment. Available technologies to assist the deaf and hard of hearing are increasing rapidly and include computer-aided realtime translation (CART), TTY services, "texting" devices, and other supplemental aids.

### **Americans with Disabilities Act Requirements**

Health care providers are required under federal and state law to provide deaf and hard of hearing people with equal access to professional services, including family members when needed to assist with the patient's care. As licensed mental health providers, social workers and agencies employing them would meet the definition as public entities that must meet non-discrimination laws such as the Americans with Disabilities Act (ADA).

Title III of the ADA requires public accommodations (including private practice offices) to provide equal access to their programs and services (42 U.S.C. §§ 12181-12183). This requirement extends to providing "appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities" (28 C.F.R. § 36.303(c)). The auxiliary aids and services include: "[q]ualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons, videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments." (28 C.F.R. § 36.303(b)(1)). Deaf and hard of hearing people are not to be charged for such accommodations (28 C.F.R. § 36.301(c); *also see* Midwest Center on Law and the Deaf (MCLD)).

The implementing regulations for the ADA state,

- (a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.
- (b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.
- (2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities (28 C.F.R. § 35.160).

Persons who are deaf or hard of hearing may have more than one means of communication; however, the nature of mental health treatment is such that it relies heavily on verbal interaction which may be readily

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misinterpreted if there is not a good fit between the needs of the client and accommodations provided by the practitioner. To better ensure that a client – social worker interaction is most beneficial to the client, the social worker should carefully consider granting the client’s preferred mode of communication if possible.

In *Gregory v. Administrative Office of the Courts of the State of New Jersey* (2001), the federal trial court required a state court to provide computer aided realtime translation (CART) as the means of accommodating deaf and hard of hearing litigants.

“In at least one important case, a federal court has ruled that a [state-funded] community mental health center must provide mental health counselors who have sign language ability and a knowledge of the psychosocial implications of deafness and the mental health needs of the deaf community, so that deaf clients could receive equal access to competent counseling services without going through an interpreter” (National Association of the Deaf Law and Advocacy Center, discussing *Tugg v. Towey* (1994)). The court determined that using an interpreter would alter the nature of the service provided and that the state had not established that it would suffer undue hardship in order to provide therapists with sign language ability and knowledge of deaf culture (160 A.L.R. Fed. 637). In this case the cost of providing a signing counselor was less than the cost of providing a non-signing counselor and an interpreter and the mental health center had a prior history of employing signing counselors.

### **Limitations on Accommodations**

28 C.F.R. Section 35.164 limits the extent of a public entity’s obligation to provide an auxiliary aid, stating that the entity (such as a health care practice) is not required to take an action if “it can demonstrate [the action] would result in a fundamental alteration in the nature of a device, program or activity or [create] an undue financial and administrative burden.” The courts have interpreted this provision in a number of cases and generally the burden is on the health care provider to supply evidence of the undue financial and administrative burden that would prevent it from providing a requested accommodation. Many cases addressing accommodations for deaf or hard of hearing individuals involved situations where no evidence of the financial and administrative burden was offered. This suggests that the prudent health care practitioner who cannot meet the financial burden of the requested accommodation bears the responsibility for documenting the financial and administrative costs and conducting a cost-benefit analysis relative to the costs of operating the practice as a whole.

### **Analysis and Conclusions**

Social workers have ethical and legal obligations not to discriminate against clients based on disabilities; however, some practitioners will possess greater competence and skills specific to a particular treatment population. Social workers who provide services to deaf and hard of hearing clients have an obligation to be informed about deaf culture and to communicate effectively, which may include using American Sign Language (ASL) or an ASL interpreter or other aids as requested. It is generally not considered best practice for a social worker to rely on a client’s family member or personal friend to interpret for them. Social workers who are not culturally competent to serve deaf or hard of hearing clients may need to have a ready referral for clinicians who would be appropriate.

Social workers who find it prohibitively expensive or an overwhelming administrative burden to provide a necessary auxiliary aid to communicate with a client or family member who is deaf will need to document sufficiently the efforts made to provide adequate accommodations and the costs of providing the aids and

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the expenses of the overall practice as a basis for making a decision not to provide the specific accommodation requested by that client. Organizations employing social workers should anticipate that providing auxiliary aids is likely to be viewed by enforcement agencies or courts as a cost of doing business, absent a persuasive accounting that it would be an undue burden or hardship.

Social workers who use interpreters or other professionals as part of the treatment or consultation should have the interpreter sign a confidentiality agreement such as a HIPAA “Business Associate” Agreement.

Social workers with ASL skills and knowledge of deaf culture have an important set of services to offer to the community and should consider reaching out to inform other health practitioners of their availability, as access to services for deaf and hard of hearing clients may be severely limited. Social workers without this expertise should have sufficient training and knowledge to offer accommodations to facilitate communication and make appropriate referrals as needed. As knowledge of ADA requirements and the needs of deaf clients expands, social workers should develop business plans that incorporate business expenses related to ADA accommodations and develop a resource list to professionally meet the varied needs of future clients.

### **Resources**

The federal government provides numerous resources and publications to assist with ADA compliance. A brief overview, questions and answers and contact information for government assistance is available online at: <http://www.ada.gov/q&aeng02.htm>

There are many professionals such as interpreters and captionists who provide valuable resources to ensure that deaf and hard of hearing persons gain equally effective communication access to mental health treatment. Social workers should seek services only from professionals who are qualified, as defined in the federal regulations. This would be “an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary” (28 C.F.R. § 36.104). Two professional organizations certify and advance the qualifications of interpreters for the deaf:

- Registry of Interpreters for the Deaf (RID)
- National Association of the Deaf (NAD)

A useful set of Questions and Answers specific to ADA accommodations for deaf and hard of hearing patients in the health care setting is available online from the National Association of the Deaf at <http://www.nad.org/issues/health-care/providers/questions-and-answers>, as well as a statement on Culturally Affirmative and Linguistically Accessible Services at <http://www.nad.org/issues/health-care/mental-health-services/position-statement-supplement>.

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