



# Sign Language Interpreting and Video Remote Interpreting in Medical Settings

ADA Audio Conference Series  
Presented by Shannon Moutinho  
Great Lakes ADA Center  
April 17, 2018

Great Lakes  Center  
A Member of the ADA National Network



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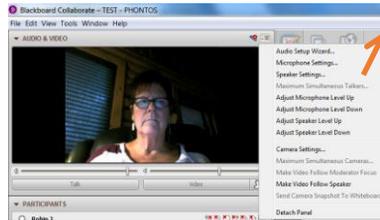
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## Sign Language Interpreter

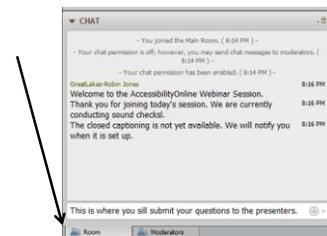
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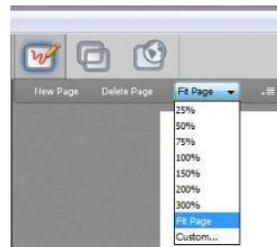
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# Agenda

- Orientation on Deafness
- Legal Requirements to Achieve Effective Communication
- Define Effective Communication, Auxiliary Aids
- Interpreter Qualifications
- Define and Discuss the Use of Sign Language Interpreters, Deaf Interpreters, Video Remote Interpreting, and Video Relay Service
- VRI vs “Live Interpreter”
- Case Law
- Insider Knowledge – What I wish every provider knew...



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## Deafness 101

**Mild** - some difficulties keeping up with conversations, especially in noisy surroundings.

**Moderate** - difficulty keeping up with conversations when not using a hearing aid.

**Severe** - will benefit from powerful hearing aids, but often they rely heavily on lip-reading even when they are using hearing aids. Some also use sign language.

**Profound** - rely mostly on sign language or other forms of non-vocalized communication such as cued speech or other communication modes.

**Late Deafened** – individuals who become Deaf after adulthood. Typically, these individuals do not use sign language but rely on other English based communication methods.

*Deaf and Hard of Hearing – NOT Hearing Impaired.*



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# The Lip-Reading Myth

## Myth:

Lip reading is an effective mode of communication for most if not all Deaf people.

## Fact:

Deaf people are no better at lip reading than hearing people. The average rate of accuracy for lip reading is 12.4% (Altieri, Pisoni & Townsend). Anything above 30% accuracy is an outlier. Lip reading anything at all depends heavily on the Deaf person's contextual knowledge of the subject, a one-on-one setting, communication with eye contact, a clean-shaven face, standard mouth shape and speech production, no accents, and an excruciating amount of patience. When that fails (because it often will) written communication as a back-up.



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# A Visually Oriented People

**Deaf Culture** - the set of social beliefs, behaviors, art, literary traditions, history, values, and shared institutions of communities that are influenced by deafness and which uses sign languages as the main means of communication.

**Straight Forward Communication** - cultural communication difference resulting from a legacy of miscommunication and confusion.

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# Issues to Consider

## Illiteracy

"I'm not so great with English..."

## Limited Peripheral Learning

Information that seems common place in the mainstream is not necessarily common place for a Deaf person.

## Family Networks

Among the signing Deaf community, family networks are often comprised of other community members who sign but not necessarily blood relations.

## DeafBlind, Deaf & Low Vision, Deaf Immigrants and Deaf Plus

It may be necessary to consider multiple factors of the individual and situation when thinking about effective accommodations.



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# Legal Responsibility to Ensure Effective Communication

- Americans with Disabilities Act – Titles II & III
- Affordable Care Act Section 1557
- Rehabilitation Act Section 504

Definition of Disability: The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with a person with a disability.



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# Effective Communication

## 1. When is communication effective?

When the patient *understands* the information.

## 2. How do you know that you have achieved effective communication?

Ask the patient to repeat back to you what they have understood.

Qualified Interpreter

Effective Communication Fact Sheet - <https://www.ada.gov/effective-comm.htm>



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# Americans with Disabilities Act – Titles II & III

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination of disabilities in employment, state and local government services, public accommodations (most private offices and businesses), transportation, and telecommunications.

- Title II: State and local government services (i.e. state and county health care facilities)
- Title III: Private businesses and nonprofit organizations that serve the public

ADA requires public entities (state and local governments) and private entities (businesses and nonprofit organizations that serve the public) to provide auxiliary aids and services to make sure that individuals with speech, hearing and vision disabilities can understand what is said or written and can communicate effectively. The goal is to ensure that communication with people with disabilities is as effective as communication with people without disabilities. Effective communication rules also apply to companions (such as family members or friends) who have disabilities.



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# Affordable Care Act (ACA) Section 1557

- Section 1557 is the civil rights provision of the Affordable Care Act of 2010.
- Consistent with existing requirements, Section 1557 requires covered entities to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communication with others. Section 1557 also requires covered entities to provide appropriate **auxiliary aids and services**, such as alternative formats and sign language interpreters, where necessary for effective communication.
- Primary Consideration - means that the public entity are encouraged honor the choice of the individual with a disability, with certain exceptions. The individual with a disability is in the best position to determine what type of aid or service will be effective.



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# Rehabilitation Act Section 504

Section 504 of the Rehabilitation Act of 1973 (Section 504) forbids public and private entities that receive financial assistance from any federal department or agency (Medicaid) from excluding qualified individuals with disabilities or denying them an equal opportunity to receive program benefits and services.



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# Exceptions/Limitations

## ADA

### Fundamental Alteration

### Undue Burden

- Gerena v. Forgari - In a 2008 New Jersey, a physician refused to provide an ASL interpreter claiming undue burden since the interpreter's fees were higher than the physician's hourly rate. Undue Burden was not found and the physician paid a \$400,000 jury verdict in addition to \$200,000 in punitive damages to the patient.

### Silva v. Baptist Hospital

- 11th Circuit Court: "...deaf patients are [not] entitled to an onsite interpreter every time they ask for it. If effective communication within the circumstance is achievable with something less than an on-site interpreter, then the hospital is well within its ADA and Rehab Act rights to rely on other alternatives. We stress again that the hospital ultimately gets to decide, after consulting with the patient, what auxiliary aid to provide. But whatever communication aide the hospital chooses to offer, the hospital must ensure effective communication with the patient."



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# Surcharges

The Rehab Act, ADA and ACA all prohibit the providers from requiring a patient to assume any of part of the cost of providing auxiliary aids and services used as accommodations toward achieving effective communication. 28 CFR 36.301



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# What kind of interpreter do you need?

**Sign Language Interpreter** – interpreting between a spoken language and a signed language

**Certified Deaf Interpreter** – a Deaf sign language expert or native language model who works as a team with a hearing sign language interpreter in situations involving Deaf immigrants, non-standard ASL users, Deaf individuals with developmental disabilities, etc.

**DeafBlind Interpreter** – interpreter working with a client who is Deaf and Blind/low vision and therefore accesses sign language differently than sighted Deaf people. This can range from simply controlling for environmental distractions to tactile interpreting.

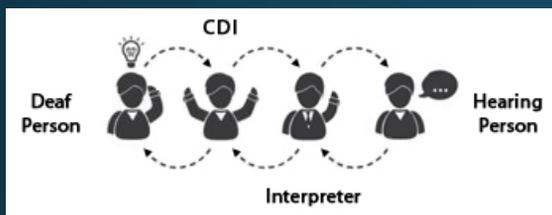
**Cued Speech** - Cued Speech is a visual communication system that uses eight hand shapes in four different placements near the face in combination with the mouth movements of speech to make the sounds of spoken language visually accessible.

**Oral Interpreter** - An oral interpreter is usually a hearing person. He or she will proceed at a normal rate of speed and enunciation and will generally be a few words behind a speaker in the smooth repetition of statements. A skilled oral interpreter will sometimes rephrase or add a word or phrase to give higher visibility on the lips for added comprehension. Natural body language and gestures give added flavor.



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## Certified Deaf Interpreter (CDI)



**Certified Deaf Interpreter** – a Deaf sign language expert or native language model who works as a team with a hearing sign language interpreter in situations involving Deaf immigrants, non-standard ASL users, Deaf individuals with developmental disabilities, etc.



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# DeafBlind Interpreting



Video on Pro-Tactile communication for DeafBlind people:

<https://www.youtube.com/watch?v=9GrK3P15TYU>

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# Interpreter Qualifications

A “qualified” interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to that person) using any necessary specialized vocabulary.

The ADA purposefully leaves “qualified” vague so that states and regions can decide what best serves their needs. Also the needs of each individual and situation is unique and credentialed does not always mean qualified.

Credential requirements differ state by state. Find your state’s requirements here: <https://www.rid.org/advocacy-overview/state-information-and-advocacy/>



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# Video Relay Service (VRS)

**Video relay service (VRS)** is live interpretation on a phone call. The hearing caller dials the d/Deaf person's video phone number. This number is registered with FCC as a video phone and will be automatically routed to an interpreter (relay service). The interpreter will complete the connection to the video phone and proceed to simultaneously interpret the call. This service is public and automatic; it does not require the entity to prearrange service with a service provider.



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# Video Remote Interpreting (VRI)

**Video remote interpreting (VRI)** is interpretation between two or more people in the same room with the assistance of an interpreter on a video phone who is in a remote location. VRI is not an interpreted phone call.

In the absence of an on-site interpreter, the opportunity to utilize video communication technology to obtain interpretation services improves care for patients who are Deaf and hard-of-hearing.

This service must be prearranged with a VRI service provider, set up within the entity and staff trained on how to use it.



# Why VRI?

## Challenges to procuring on-site interpreters:

- On-site sign language interpreters must be pre-arranged and take staff time to confirm.
- Takes 2 to 7 business days in advance to secure an onsite interpreter.
- In some instances, agency pays travel time, late notice fees, cancellation fees, evening and weekend differentials, etc.
- Interpreter Shortage – especially in rural areas.
- Sometimes no interpreter available at which further delays occur.



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# Getting Set-Up

- Screen
  - Computer/Laptop
  - Television
  - Videophone
  - Tablet or iPad
  - Mobile device – *not* a smart phone
- Webcam
- Microphone/Speakers
- High Speed Internet Access



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# Requirements for Effective VRI

If VRI is used as an accommodation, *all* of the following specific performance standards must be met:

- real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the face, arms, hands, and fingers of the person using sign language, regardless of his or her body position;
- a clear, audible transmission of voices; and
- adequate staff training to ensure quick set-up and proper operation.



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# Cost of Service

## Onsite Interpreting

- Requires 2-Hour Minimum Charges
- On occasion, requires payment of travel time
- Requires 48-Hour Advance Notice of Cancellations

## Video Remote Interpreting

- Simple rate structure (per minute, some hourly)
- No travel/24 hour cancellation
- Available on short notice

On-Site Interpreting	VRI Interpreting
20 Minutes	20 Minutes
\$55/hr with two hour minimum	\$2.50 per minute (example)
Total Cost: \$110	Total Cost: \$50
45 Minutes	45 Minutes
\$55/hr with two hour minimum	\$2.50 per minute (example)
Total Cost: \$110	Total Cost: \$112.50



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# VRI - Pros & Cons

## Pros

- Potentially quicker wait in emergency response situation.
- Entities in areas with limited access to qualified onsite interpreters have alternative options to provide effective communication.
- Reduces propensity for non-compliance with the ADA, ACA, and the Rehab Act's requirement to achieve effective communication.
- VRI can offer interpreting services during night and weekend hours when on-site interpreters may be harder to secure.
- Increased anonymity for Deaf patients – interpreter from outside the local community.
- Billed per minute which can be more economical depending on need.



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# VRI - Pros & Cons

## Cons

- The video picture quality is rarely optimal.
- Staff training on how to use the equipment and service is regularly lacking.
- Lack of positioning versatility.
- Screens used are unreasonably small.
- Deaf patient wants familiar interpreters.
- Inconsistent interpreters.
- Does not serve DeafBlind/Low Vision patients.
- Potentially long wait for an available interpreter.
- Cannot have VRI equipment near a MRI machine.
- Interpreter cannot manage full situation and communication of all people in the room.
- Less than optimal visual conditions for the interpreter to see the patient (lighting).
- Less control of credentialing requirements for interpreters.
- Billed per minute which can quickly out price an onsite interpreter's hourly rate.
- Equipment can break.



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# VRI – Not the Magic Solution

## Feedback from the Deaf Community

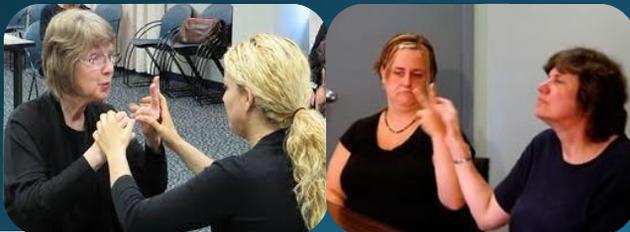
1. The video quality is regularly pixelated, freezes, jerky, blurry, trailing, etc.
2. The limitations of VRI make it ineffective as an accommodation.
3. Staff do not know how to use the equipment or do not know where to find the equipment/where it is stored.
4. The VRI equipment is sometimes broken and no one knows until the patient has already arrived.
5. Medical providers are not transparent about using it when they say, "An interpreter will be provided."
6. There is often still a wait involved.



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# Specialized Interpreting

Due to the nature of interpreting needed for individuals who are Deaf and blind or have low vision or other needs, VRI would most likely not be an effective accommodation for these patients.



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## USA vs. Doctors Hospital at Renaissance, Ltd.

- Deaf parents of a 4 month old receiving cancer treatments were repeatedly denied effective communication through an on-site interpreter. Hospital tried to use VRI but the machine often did not work and/or the staff could not find the equipment.
- Settlement agreement:  
[https://www.ada.gov/dhr\\_sa.html](https://www.ada.gov/dhr_sa.html)



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## Sutherland, et al v. Besthesda 2017

- Sandra Sutherland, 70, is hospitalized for two weeks after a heart attack.
- The hospital insisted on using VRI during her stay and never provided her with an on site interpreter.
- The VRI regularly malfunctioned to the point of being ineffective as an accommodation.
- During her stay, Ms. Sutherland under went a catheterization procedure before which the doctor, without an interpreter or VRI resorted to gesturing his communication.
- Ms. Sutherland ended up with a complicated after the procedure and ended up in the ICU where a nurse provided written information about medication.



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## Silva v Baptist Hospital of Miami 2017

- Patients visited two hospitals under the same parent company on multiple occasions and were repeatedly denied the requests for on-site interpreters. The hospital chose to rely on a problematic VRI set-up and family or friends when that failed.
- The 11th circuit disagreed saying there is no rule that a covered entity under the ADA or rehab act must be the direct service provider. in fact the ADA addresses itself to those who own, lease, or operate a place of public accommodation.



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## VRI – A Cinderella Story

1. Sutter Health Systems in Fremont wanted to start using VRI.
2. A prominent Deaf community member got wind.
3. Deaf person sent a video around social media touting that Sutter was going to force all Deaf people to use VRI from now on.
4. The Deaf community responded accordingly with complaints, etc.
5. Sutter arranged a community forum, solicited the Deaf community for feedback and concerns with using VRI.
6. The result – Sutter established a community based, Deaf-led Deaf culture and VRI training program that hospital departments must complete before gaining access to the use of VRI.
7. Maintains a policy that on-site interpreters must remain a respected accommodation option for Deaf patients.



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# VRI Best Practices

1. Be transparent with your patients in its utilization.
2. Use it as a stopgap for communication needs until an onsite interpreter can arrive.
3. Be strategic in its use.
4. Train your people before they are allowed access.
5. Require semi-frequent refresher trainings.
6. Designate an employee to test the equipment every so often – especially before its services will be needed for an appointment.
7. Supplement communication with visual aids.



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# Insider Knowledge – what I wish every provider knew...

- **Visual resources** – If you have biology posters, pictures, can pull up a video on your computer to *show* a Deaf person what is going on instead of *tell* – use them! “A picture is worth a thousand words.”
- **Literacy** – Consider the fact that some of your Deaf patients English literacy levels are low or near illiterate. How will you tailor care to best serve these patients?
- **Etiquette with interpreter** – Avoid “tell her, tell him, let them know” etc. Do not gamble with “Don’t interpret that...” Do not hand patient paperwork to the interpreter.
- **Clients as resources** – Your patient know best how they communicate the most effectively – ask them!
- **Pediatric inclusion and language modeling** – pediatric patients may not be able to be able to consent but they should be included in their care from as young an age as possible. Depending on the family this may also be an opportunity for Deaf children to have access to another language model.



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# Review

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- Legal Requirements to Achieve Effective Communication
- Define Effective Communication, Auxiliary Aids
- Interpreter Qualifications
- Define and Discuss the Use of Sign Language Interpreters, Deaf Interpreters, Video Remote Interpreting, and Video Relay Service
- VRI vs “Live Interpreter”
- Examples of VRI in use
- Insider Knowledge



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# Questions?

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