DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

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August 30, 2016

Dear Executive Director:

The U.S. Department of Health and Human Services, Office for Civil Rights (OCR) and the Health Resources and Services Administration (HRSA) write this letter to increase awareness of an important issue affecting the provision of medical services to deaf and hard of hearing individuals – the provision of auxiliary aids and services to ensure effective communication.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and Section 1557 of the Patient Protection and Affordable Care Act (Section 1557). These Federal laws require hospitals, health care providers, HRSA-funded health centers and other Federally Qualified Health Centers (FQHC), clinics, medical practices and other entities to provide services to persons with disabilities in a non-discriminatory manner. This includes providing appropriate auxiliary aids and services to deaf and hard of hearing patients and their family members when necessary to ensure effective communication with service providers.

For over 50 years, HRSA-funded health centers have provided high quality preventive and primary health care to patients regardless of their ability to pay. Approximately 1 in 14 people in the U.S. relies on a HRSA-funded health center for medical care.

Over 1,300 of these health centers operate approximately 9,000 service delivery sites in every U.S. state, D.C., Puerto Rico, the U.S. Virgin Islands and the Pacific Basin; these health centers employ more than 170,000 staff who provide care for nearly 23 million patients. For millions of Americans, including some of the most vulnerable individuals and families, health centers are the essential medical home where they find services that promote health, diagnose and treat disease and disability, and help them cope with environmental challenges that put them at risk.

OCR and HRSA entered into a collaborative partnership to improve equal access to health care for deaf and hard of hearing individuals. As part of our partnership, we are issuing this technical assistance letter to assist HRSA-funded health centers and health care providers to understand their obligations to provide auxiliary aids and services to deaf and hard of hearing patients and their family members.

Effective communication is critical in health care settings. Failure to ensure effective communication in such settings may lead to a misunderstanding of a patient's symptoms and thus to an inappropriate diagnosis and delayed or improper medical treatment. It may also result in miscommunication concerning important medical instructions and warnings or medication information.

Section 504, the ADA and Section 1557 require hospitals, health care providers, FQHCs, clinics, medical practices and other entities to provide auxiliary aids and services when needed to communicate effectively with people who have communication disabilities such as hearing

and speech deficits. Auxiliary aids and services may include: qualified interpreters, computer-aided transcription services (also called CART), assistive listening devices, captioning, note-takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders, telecommunications devices for deaf persons (TDDs), videotext displays and other effective methods of making oral information and communication accessible.

The services or aids that must be provided to ensure effective communication will depend upon the abilities of the person who is deaf or hard of hearing, the primary method used by the person to communicate and the complexity and nature of the communications that are required. For complicated and interactive communications, a qualified sign language interpreter may be required for effective communication. Situations where a sign language interpreter may be required include, but are not limited to, discussing a patient's symptoms and medical condition, medications, and medical history; explaining and describing medical conditions, tests, treatment options, medications, surgery and other procedures; providing a diagnosis, prognosis, and recommendation for treatment; obtaining informed consent for treatment; communicating with a patient during treatment, testing procedures, and during physician's rounds; providing instructions for medications, post-treatment activities, and follow-up treatments. However, for brief and relatively simple interactions that do not involve the discussion or provision of medical care, exchanging written notes will likely be effective communication.

For additional information on communicating with deaf and hard of hearing individuals in health care settings please refer to the following linked resources that both OCR and the United States Department of Justice have published on their websites:

http://www.hhs.gov/ocr/civilrights/resources/specialtopics/hospitalcommunication/index.html; http://www.hhs.gov/ocr/civilrights/resources/factsheets/effcomm.html; http://www.ada.gov/hospcombr.htm; http://www.ada.gov/effective-comm.htm.

These resources also include some material on effective communication with persons who have other disabilities, as well as individuals who have limited English proficiency, and related privacy issues under the Health Insurance Portability and Accountability Act.

We recognize that family members play a vital role in a patient's care and their participation is often critical to ensuring health care services are accessed and understood. However, an accurate exchange of information is critical for a health care provider to correctly diagnose and provide appropriate care and treatment to a patient. While persons who are deaf or hard of hearing are often accompanied to medical settings by family members and friends who they use as interpreters, these individuals often lack the impartiality and specialized vocabulary needed to interpret medical information effectively and accurately. This is often the case with minor children. Section 504, the ADA and Section 1557 place responsibility for providing effective communication, including the use of qualified interpreters, directly on health care providers. Under Section 1557 and the ADA standards[1], a health care provider can rely on a companion to interpret in only two situations:

> (1) In an emergency involving an imminent threat to the safety or welfare of an individual or the public, an adult or minor child accompanying a person who uses sign language may be relied upon to interpret or facilitate communication only when a qualified interpreter is not available.

[1] See ADA regulation 28 CFR 35.160(c)(2) and (3)

(2) In situations not involving an imminent threat, an adult accompanying someone who uses sign language may be relied upon to interpret or facilitate communication when a) the individual requests this, b) the accompanying adult agrees, and c) reliance on the accompanying adult is appropriate under the circumstances. This exception does not apply to minor children.

See http://www.ada.gov/effective-comm.htm

OCR and HRSA ask that you take steps to ensure that your facility provide all individuals with disabilities, including individuals who are deaf or hard of hearing with full and equal access and effective communication to healthcare services provided by your facility.

OCR and HRSA remain willing to support you in your voluntary efforts to comply with Federal and laws and regulations. If you need additional information about any of the aforementioned regulations or seek guidance, please contact OCR or HRSA for further information.

Thank you for your attention to these matters.

Sincerely,

/s/
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/s/
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