

The Obligations of the Hospitality Industry to Deaf and Hard of Hearing People Under the Americans with Disabilities Act

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Hotels and motels, like other places of public accommodation, must be accessible to individuals with disabilities, pursuant to Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101-12213. The ADA applies to all inns, hotels, motels or other places of lodging, except buildings in which the owner lives that contain not more than five rooms for rent.

AUXILIARY AID REQUIREMENTS

Places of public accommodation have a duty to provide auxiliary aids and services to individuals with hearing impairments where necessary to ensure effective communication. 28 C.F.R. §36.303(c). The ADA regulation defines "auxiliary aids and services" to include:

Qualified 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, telecommunications devices for deaf persons (TDDs)¹, 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).

For hotels and motels, the obvious auxiliary aids for deaf individuals are access to telephone and television service and to notification systems. The regulation specifies the following services.

Telephones Compatible With Hearing Aids

Some telephones do not emit a signal that is compatible with certain hearing aids. Hotels and motels must offer telephone receivers that are compatible with hearing aids, so that travelers can be assured that they can use the telephone in hotel facilities.

TTY for outgoing telephone calls

A TTY (also known as a TDD) is a simple keyboard device which can be attached to a telephone or plugged into a telephone line. A deaf person using a TTY can have a typed conversation over the telephone. If only one caller has a TTY, the conversation can take place over a relay service. The relay service operator reads the typed part of the conversation to the hearing caller and types

out the spoken part of the conversation to the deaf caller. The ADA requires hotels and motels to have TTYs if they offer telephone service for customers:

(d) Telecommunication devices for the deaf (TDDs).

- (1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.
- (2) This part does not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operation.

28 C.F.R. §36.303(d). A telephone in a place of lodging is an important service, and therefore hotels and motels which have telephones must provide TTYs for deaf customers. On the other hand, a retail store that might allow a customer to make an occasional call is not required to have TTYs on site.

In addition to regular outgoing calls, hotels usually offer telephone services such as communication with the front desk, security systems, wake-up calls and other telephone-dependent services. The Justice Department analysis to the ADA regulation compares retail stores, doctors' offices, restaurants, or similar establishments (which are not required to have on-site TTYs for making such calls) with hotels (which are required to have TTYs for this purpose):

A public accommodation is . . . required to make a [TTY] available to an individual with impaired hearing or speech, if it customarily offers telephone service to its customers, clients, patients, or participants on more than an incidental convenience basis. Where entry to a place of public accommodation requires use of a security entrance telephone, a TTY or other effective means of communication must be provided for use by an individual with impaired hearing or speech.

In other words, individual retail stores, doctors' offices, restaurants, or similar establishments are not required by this section to have TTYs, [because they can use the relay system.]. . . . On the other hand, hotels, hospitals and other similar establishments that offer nondisabled individuals the opportunity to make outgoing telephone calls on more than an incidental convenience basis must provide a TTY on request.

. . . Hotels should also provide a TTY or similar device at the front desk in order to take calls from guests who use TTYs in their rooms. In this way guests with hearing impairments can avail themselves of such hotel services as making inquiries of the front desk and ordering room service.

56 Fed. Reg. 35567 (July 26, 1991).

In order to provide equally accessible wake-up call or alarm clock service, hotels must be able to provide visual and tactile (bed vibrator) ringers for guests. These are simple devices that connect the telephone ringer to a light that flashes and a bed vibrator that shakes the bed when the telephone or doorbell rings.

Hotels are not required to have TTYs that would enable hotel staff to receive incoming TTY calls, since deaf callers can presumably use the relay system to make reservations or call in to guests. Hotels are expected to accept calls from callers using the relay system, and may need to train staff on the simple procedures and etiquette of using the relay.

TV Decoders

Hotels are also required to have television closed caption decoders available upon request for individuals with impaired hearing:

(e) Closed caption decoders. Places of lodging that provide televisions in five or more guest rooms and hospitals that provide television for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

28 C.F.R. §36.303(e). All new televisions with screens over 13 inches in diameter are equipped with decoder capability. Older televisions can be made accessible with a decoding device which is plugged into the television.

Safety Equipment - Visual and Tactile Alerting Devices

Deaf individuals in a hotel need a notification system so that they can be alerted to sounds such as a ringing telephone, a fire alarm, a doorbell or an intercom. Hotels must provide adequate visual and/or tactile alerting devices for deaf individuals, so that a deaf patron will be awakened and alerted to an emergency fire or smoke alarm, an incoming telephone call or a door knock. This equipment can be permanently installed in guest rooms (see below), or temporarily installed in a guest room using portable equipment. In addition to the requirements of the ADA, local fire codes may require hotels to have visible flashing smoke alarms with adequate strobe and candela power to alert a deaf person to an emergency.

Interpreters and Transcription Services

When a hotel provides entertainment services or other public events, or rents its facilities to tenants who provide public entertainment or educational activities, then the hotel has obligations to assure effective communication during these events. For most such events, the appropriate auxiliary aids would be sign language or oral interpreters, or real-time transcription services for persons who

do not use sign language. The term "qualified interpreter" is defined in the regulation to mean:

. . . 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.

The Analysis to this regulation makes it clear that Congress, as well as the Department of Justice, "expects that public accommodations will consult with the individual with a disability before providing a particular auxiliary aid or service." 56 Fed.Reg. at 35567. The Department of Justice further states:

It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication.

56 Fed.Reg. at 35567.

The most important consideration is the type of service that will be necessary to give "effective communication" to a deaf individual. For example, in addition to providing an interpreter, it may be necessary to change seating arrangements or lighting so that there is a clear line of sight to the interpreter, and so that the interpreter is clearly visible to deaf individuals. Policies and practices may have to be altered in order to provide access to persons with disabilities.

Undue Burden Limitation

When a portable, nonstructural, device is available to remove a communication barrier, it is considered to be an auxiliary aid, and not a architectural modification. Examples of devices that are considered to be auxiliary aids include portable visual alarms and visual alerting systems, telephone handsets with amplifiers, TV decoders, bed vibrators and TTYs. They are therefore to be provided by the hotel to deaf customers, regardless of the number of individuals who request them, unless such provision is an undue burden. The hotel must take the above steps to ensure equal treatment, unless it can demonstrate that taking those steps would fundamentally alter the nature of the goods or services, or would result in an undue burden, i.e., significant difficulty or expense. Even if the public accommodation is able to demonstrate that there is a fundamental alteration or an undue burden in the provision of a particular auxiliary aid it must, however, be prepared to provide an alternative auxiliary aid, where one exists. 28 C.F.R. §36.303(f).

Surcharge for Loan of Equipment

The rule prohibits the assessment of a charge or "surcharge" for compliance with this section, 28 C.F.R. §36.301(c). However, the analysis of the rule does state that "reasonable, completely refundable deposits" are not considered surcharges prohibited by this section:

Requiring deposits is an important means of ensuring the availability of equipment necessary to ensure compliance with the ADA.

56 Fed. Reg. 35564. It would be improper for a hotel to require a deposit on assistive equipment unless it requires a deposit from any patrons who need loaned equipment (e.g., video cassettes or videocassette players, irons or hairdryers). A deposit may not exceed the value of the equipment that is loaned.

REMOVAL OF ARCHITECTURAL BARRIERS IN EXISTING HOTEL FACILITIES

In addition to the requirement to provide auxiliary aids, hotels must also remove some architectural barriers, including communications barriers that are "structural in nature". The hotel must make such removal only where the removal of the barrier is "readily achievable, i.e. easily accomplishable and able to be carried out without much difficulty or expense." 28 C.F.R. §36.304. One example given in the regulation of a readily achievable architectural barrier to communication is flashing alarm lights (e.g., for fire/smoke alarms or doorbells or other notification systems).

Permanently installed assistive listening devices, flashing fire/smoke alarms, doorbell lights, and other notification systems, electrical outlets for TTY use near the telephone, and pay TTYs are all important means of eliminating architectural barriers to communication. Providing such services for deaf guests would usually be "readily achievable." In addition, some state laws already require hotels to have visual smoke/fire alarm systems for their deaf guests.

An existing hotel is not required to make existing structures more accessible than the requirements for new buildings (see below). The rules for new construction are a maximum, not a minimum. Therefore, as with newly constructed hotels, a hotel is not obligated to make more than 8 per cent of its rooms permanently barrier-free for deaf individuals, even if doing so would be "readily achievable." 56 Fed. Reg. 35570 (July 26, 1991). [Note, however, there is no such numerical limit built in to the requirement to provide "auxiliary aids" such as portable TTYs and portable decoders and tactile alarms, as long as the requests to provide such services do not constitute an "undue burden" on the hotel facility. Hotels may be required to procure additional devices when the number of requests they receive for such devices exceeds the number of units that they have on site.]

NEW CONSTRUCTION AND RENOVATION REQUIREMENTS

New and newly altered hotels must be built to comply with very explicit requirements detailed in a document titled the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG), 28 C.F.R. Part 36, Appendix A. The standards differ slightly for new construction and for alterations, but the only way that directly affects persons with hearing impairments is in the provision of interior public text telephones.

ADAAG requires at least 4 per cent of the first 100 hotel rooms and approximately 2 per cent of rooms in excess of 100 to be accessible to both mobility-impaired and deaf individuals. ADAAG §9.1.2. The minimum standards for physical accessibility in hotel rooms incorporate the requirement to provide visual alarms, notification devices and accessible telephones. ADAAG §9.2(8). Moreover, an identical percentage of additional rooms must be accessible to deaf individuals. ADAAG §9.1.3. Therefore, at least 8 per cent of the first 100 rooms must have built-in visual alarms, visual notification devices for the door and telephone, volume-control telephones, and an accessible electrical outlet for a TTY in proximity to the telephone. ADAAG §9.3. The accessible rooms must be dispersed among classes of sleeping accommodations (e.g., luxury to basic). ADAAG §9.1.4(1).

The requirement to provide both audible and visual alarms is in ADAAG §4.1.3(14). The minimum standards for visual alarms in restrooms, hallways, general usage areas, etc. are in §4.28.3 (integrated into the building alarm system, minimum photometric and location features such as color, pulse, candela). Minimum standards for auxiliary alarms in accessible sleeping accommodations are in §4.28.4. There is "advisory" language about the effectiveness of visual alarms and the preference for tactile alarms to waken sleepers. ADA §4.28.4.

<u>Number of Rooms in Facility</u>	<u>Number that must be accessible for persons with Hearing Impairments*</u>
1 to 25	2
26 to 50	4
51 to 75	6
76 to 100	8
101 to 150	10
151 to 200	12
201 to 300	14
301 to 400	16
401 to 500	18
501 to 1000	4% of total
1001 and over	40 plus 2 for each 100 over 100

* half of these must also be accessible for persons with mobility impairments.

ADAAG also addresses the obligation to make meeting rooms, assembly areas and conference rooms accessible by means of assistive listening systems. Briefly, the requirement is to provide assistive listening systems in assembly areas with at least 50 fixed seats, or an amplification system is at 4.1.3(19)(b). The standards for permanent assistive listening systems are in 4.33.6 and 4.33.7 (within 50 feet of the stage, full viewing areas). Other assembly areas can be equipped with portable systems. Minimum number of receivers must be at least two or four per cent of total number of seats, whichever is more. 4.1.3(19)(b). See ADAAG, §§4.33.6 and A4.33.7 for advisory discussion of placement and types of assistive listening systems.

Requirements for elevators are at ADAAG §§4.10.12(2), 4.10.13 and 4.10.14. These sections require visual control indicators and emergency two-way communications systems that do not require voice communication.

The other major "architectural" requirements placed on hotels by ADAAG involve the installation of pay TTY telephones and other accessible telephones where public telephones are available.

¹ Deaf individuals use a simple keyboard device to communicate over the telephone. These devices are known as TTYs or TDDs. Although the terms are used interchangeably, the term TTY is preferred.

For more information, visit www.nad.org/hotelsmotels.

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