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ADA Amendments of 2010—Effective Communication Requirements

Here is some technical assistance information regarding the ADA Amendments of 2010. http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_withbold.htm I am sharing it with you for your use in preparing policy or an E-mail update (whatever your process) to county office managers and staff as well as for training purposes.

The definition of a qualified interpreter was amended to state:

Qualified interpreter means an interpreter who, **via a video remote interpreting (VRI) service or an on-site appearance**, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. **Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.**

Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 36.303(f).

Go to the regulation where the added language is in bold. The entity has an obligation to afford effective communication and if VRI is the only way it can provide timely and qualified interpreting services then it may be required.

Review the bold sections of the text

http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_withbold.htm search it by the term “**video**” and you will quickly find all the applicable references.

Note also the new language regarding service animals and vehicles used by the mobility impaired.

Finally, the amendments apply to Section 504 & Title II of the ADA.

§ 36.303 Auxiliary aids and services. **NEW LANGUAGE IN BOLD**

- (a) *General.* A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public

accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

- (b) *Examples.* The term "auxiliary aids and services" includes –
 - (1) Qualified interpreters **on-site or through video remote interpreting (VRI) services**; notetakers; **real-time** computer-aided transcription services; written materials; **exchange of written notes**; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, **including real-time captioning; voice, text, and video-based telecommunications products and systems**, including **text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology**; or other effective methods of making aurally delivered information available to individuals **who are deaf or hard of hearing**;
 - (2) Qualified readers; taped texts; audio recordings; Brailled materials **and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP)**; large print materials; **accessible electronic and information technology**; or other effective methods of making visually delivered materials available to individuals who are blind **or have low vision**;
 - (3) Acquisition or modification of equipment or devices; and
 - (4) Other similar services and actions.
- (c) *Effective communication.*
 - (1) A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. **This includes an obligation to provide effective communication to companions who are individuals with disabilities.**
 - (i) **For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate.**
 - (ii) **The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the**

individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

- **(2) A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.**
- **(3) A public accommodation shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except –**
 - **(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or**
 - **(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.**
- **(4) A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.**
- **(d) Telecommunications.**
 - **(1) When a public accommodation uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems.**
 - **(2) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing**

telephone calls using the public accommodation's equipment on more than an incidental convenience basis shall make available public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment.

- **(3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.**
- **(4) A public accommodation shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.**
- **(5) This part does not require a public accommodation to use a TTY for receiving or making telephone calls incident to its operations.**
- **(e) *Closed caption decoders.*** Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.
- **(f) *Video remote interpreting (VRI) services.*** A public accommodation that chooses to provide qualified interpreters via VRI service shall ensure that it provides –
 - **(1) 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;**
 - **(2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;**
 - **(3) A clear, audible transmission of voices; and**
 - **(4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.**
- **(g) *Alternatives.*** If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

SERVICE ANIMALS

***Definition: Service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.**

§ 36.302 Modifications in policies, practices, or procedures.

- (a) *General*. A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.
- (b) *Specialties* –
 - (1) *General*. A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.
 - (2) *Illustration – medical specialties*. A health care provider may refer an individual with a disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition

cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

- **c) *Service animals.***

- (1) *General.* Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
- (2) *Exceptions.* **A public accommodation may ask an individual with a disability to remove a service animal from the premises if:**
 - (i) **The animal is out of control and the animal's handler does not take effective action to control it; or**
 - (ii) **The animal is not housebroken.**
- (3) *If an animal is properly excluded.* **If a public accommodation properly excludes a service animal under § 36.302(c)(2), it shall give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.**
- (4) *Animal under handler's control.* **A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).**
- (5) *Care or supervision.* **A public accommodation is not responsible for the care or supervision of a service animal.**
- (6) *Inquiries.* **A public accommodation shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or**

providing assistance with stability or balance to an individual with an observable mobility disability).

- **(7) Access to areas of a public accommodation.** Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.
- **(8) Surcharges.** A public accommodation shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.
- **(9) Miniature horses.**
 - **(i) A public accommodation shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.**
 - **(ii) Assessment factors.** In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public accommodation shall consider –
 - **(A) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;**
 - **(B) Whether the handler has sufficient control of the miniature horse;**
 - **(C) Whether the miniature horse is housebroken; and**
 - **(D) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.**
 - **(iii) Other requirements.** Sections 36.302(c)(3) through (c)(8), which apply to service animals, shall also apply to miniature horses.

