

Americans with Disabilities Act

The **Americans with Disabilities Act ("the ADA")** is a federal law that protects the rights of people with disabilities. It protects against discrimination in **employment, state-funded programs, and places of public accommodation** such as stores, hospitals, and doctor's offices.

Another law, **Section 504 of the Rehabilitation Act ("Section 504")**, protects against discrimination in programs funded by the federal government - including any program funded by Medicaid. Although these laws apply to different programs, they have essentially the same requirements.

Who is Protected?

People with significant communication needs are generally considered people with disabilities for the purposes of the ADA and Section 504. That means that they are protected.

In some cases, people with disabilities may also have to show that they are "qualified individuals with disabilities." A "qualified individual" is someone who meets the requirements of a job or a program, either with or without reasonable accommodations. For example, some jobs can't be done without communication - but a person with a communication disability could still do the job with the right supports. That person would still be a "qualified individual" even if he or she could not do the job without communication supports.

What Kinds of Places are Covered?

The ADA has multiple sections, called **titles**. Each title covers a different kind of program.

- **Title I** covers employers. To be covered by the ADA, an employer must have 15 or more employees. States and local governments can also be covered under Title I when they're acting as an employer.
- **Title II** covers state and local government programs. These can include state hospitals, state universities, local police forces, and state Medicaid programs. They may also cover public transportation programs run by the state, city, or county.
- **Title III** covers places of public accommodation. These include:
 - Restaurants and other places serving food or drinks to the public
 - Hotels and similar places of lodging
 - Public gathering places like lecture halls and auditoriums
 - Public parks, playgrounds, zoos, and amusement parks
 - Stores and rental services
 - Services offered to the public, including pharmacies, doctors' offices, hospitals, lawyers, barber shops, and gas stations
 - Libraries, galleries, and museums
 - Social services establishments like day care centers, senior centers, adult day centers, shelters, and food banks;
 - Recreational facilities such as gymnasiums, bowling alleys, or golf courses
 - Educational services, including places of higher education and vocational schools
 - Public transportation stations and stops

Again, **Section 504** also covers programs that receive federal government funding. These can include:

- Any health facility that is reimbursed by Medicare or Medicaid
- Any place of higher education that serves students receiving federal financial aid
- Any federal government program, such as the Social Security Administration or Veterans' Hospitals

What Communication Supports are Available through the ADA and Section 504?

The ADA and Section 504 both protect against discrimination. Discrimination can mean *either*:

- Excluding someone based on a disability alone. For example:
 - A store cannot refuse to serve someone who uses a communication support.
 - A school cannot reject a student simply because the student uses communication supports.
- Failing to provide a reasonable accommodation. For example:
 - A testing service (such as the SAT) must make reasonable modifications to its policies so that a student can use necessary communication technology or supports. It may also have to provide the person with extra time in order to account for the extra time it takes to use certain forms of communication technology.
 - A doctor's office must allow a person to bring a communication supporter to an office appointment.
 - An employer must allow a person to use an AAC device at work.

Sometimes, the ADA and Section 504 will require provision of *auxiliary aids and services* to people with disabilities who need them, including people who need them in order to communicate effectively. These include:

- Sign language interpreters
- Note takers
- Captioning
- Information provided in writing
- Speech-to-speech interpreters or transliterators

In some cases, the ADA and Section 504 may even entitle a person to temporary use of an AAC device. For example, if a person with a communication disability is hospitalized and does not have his or her own AAC device, the hospital may be required to provide an AAC device for the person to use during the course of the hospital stay.

An organization's responsibility to provide these aids and services will depend on:

- **The nature of communication.** For example, a restaurant or store may be able to communicate with a customer through pointing or writing things down. In that case the store will not have to provide something more complicated, like an assistive communication device or a sign-language interpreter. However, a hospital may be required to provide a sign-language interpreter.
- **The type of organization or service.** Titles II and III of the ADA, as well as Section 504, include specific requirements [1] that auxiliary aids and services be provided to ensure effective communication. These services must **prioritize the person's preferred form of communication.**
 - Employers may sometimes also be required to provide similar services as a reasonable accommodation, but they have the ability to go through an interactive process to decide on which accommodation will be provided. This means that they may not be required to defer as much to the person's preferred form of communication.
- **The financial impact of providing effective communication supports.** Sometimes, an entity covered by the ADA may object that providing effective communication supports or accommodations is too expensive. The fact that services cost money, however, is not itself enough to exempt the entity from providing the communication support. Whether or not it is an undue financial burden should be decided in light of *all* the resources available to the organization. Therefore, a large hospital with a multi-million-dollar operating budget may be required to provide interpreter services even though the cost may seem high in comparison to the amount of money they are receiving to care for that particular patient.

How Do I Get Communication Supports through the ADA or Section 504?

An entity covered by the ADA or Section 504 needs to know that an accommodation is necessary before it is obligated to provide it.

In some cases, it will be obvious that a person has a disability, that the person cannot communicate without support, and that the person needs a particular communication. For example, if an individual arrives at a

hospital with a communication device and a supporter who is helping him or her use it, the hospital is on notice that that individual will need to be allowed to use the device and to stay with the supporter.

In other cases, the individual may need to actively request an accommodation. To request an accommodation, an individual must make it clear that he or she has a disability *and* needs a particular accommodation as a result of that disability. In these cases, it is critical that the word "disability" be used in the request; simply saying "I'd like this person here because she helps me understand things" may not be enough to provide notice that a support person is necessary under the ADA.

Sometimes an individual may be required to provide advance notice of an accommodation need. For example, when making a doctor's appointment, it may be necessary to tell the doctor's office about the need for an interpreter *at the time that the appointment is made*. And in some contexts - for example, employment or requests for accommodations in educational or testing contexts - it may be necessary to not only provide advance notice but also provide documentation of the need for the accommodation.

Whether or not advance notice or documentation is required may depend on the nature of the service (i.e., a "walk-in" service versus an ongoing service or appointment) and the difficulty of providing the accommodation (i.e., arranging for an interpreter or simply allowing a person to bring a communication supporter to an appointment). When possible, always ask service providers in advance what their accommodation policies are.

Additional Resources

- To find useful scripts for requesting communication supports in the health-care context, visit <http://autismandhealth.org> [2] and click on "Personalized Accommodations Report."
- For more information on effective communication in schools, see this Joint Guidance [3] from the Department of Justice and Department of Education.
- For more on State and Local Governments' obligations, see this Best Practices Toolkit [4] by the Department of Justice.
- To ask questions about the ADA and its requirements, try contacting the Department of Justice ADA Information Line [5].

Language

English

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Links

- [1] <https://www.ada.gov/effective-comm.htm>
[2] <http://autismandhealth.org>
[3] https://www.ada.gov/dae_doj_eff_comm/dae_doj_eff_comm_faqs.htm
[4] <https://www.ada.gov/pcatoolkit/chap3toolkit.htm>
[5] <https://www.ada.gov/taprog.htm>