

Office of Deaf Services

ADA Title II and ACA Section 1557 Compliance in DD Services

Title II of the Americans with Disabilities Act and Section 1557 of the Affordable Care Act apply to all programs, services, and activities provided or made available by the Department of Mental Health. This includes programs services, and activities made available through contract, licensure, certification, or other arrangement.

Requirements of ADA Title II and ACA Section 1557

All programs, services, and activities must provide:

- ▶ Equal opportunity for deaf and hard of hearing (D/HH) individuals to participate and to obtain the same benefit as other individuals;
- ▶ Communication for D/HH individuals that is as effective as communication with others;
- ▶ Reasonable modifications of policies, practices, and procedures when needed to afford equal access, equal opportunity, or equally effective communication;
- ▶ Auxiliary aids and services, including interpreters, when necessary for effective communication;
- ▶ Primary consideration to the auxiliary aids and services requested by the D/HH individual;
- ▶ Notification of rights, including how to request auxiliary aids and services and how to file a grievance or complaint under the ADA and Section 1557.

All programs, services, and activities must not:

- ▶ Deny services or equal opportunity to a D/HH individual on the basis that the individual is D/HH or requires auxiliary aids or services for effective communication;
- ▶ Deny a requested auxiliary aid or service without obtaining a written decision from the DMH director or his/her designee or proposing an alternative that would provide equally effective communication;
- ▶ Require or request that a D/HH individual provide their own interpreter;
- ▶ Use an individual as an interpreter who is not licensed and appropriately certified as an interpreter by the State and qualified to interpret for a particular assignment;
- ▶ Deny services to or otherwise retaliate against an individual on the basis that the individual has asserted a right protected by the ADA or Section 1557, including the right to participate in a grievance or complaint.

Responsibilities of DD Regional Offices, TCM Entities, and Service Providers

Any entity involved in providing services must ensure their own compliance with Title II and Section 1557 requirements. They must also report any complaints or allegations of noncompliance to DMH. Additionally:

DD Regional Offices must:

- ▶ Ensure TCM entities and service providers comply with Title II and Section 1557 requirements;
- ▶ Fund interpreting services as required by DOR 4.141 and *Guidelines for Use/Billing of Interpreters – Developmental Disabilities*;
- ▶ When requested by a TCM entity, determine the most appropriate funding source for interpreting services or other auxiliary aids and services in situations in which the Regional Office is not required to provide funding;
- ▶ Ensure field staff contact the Director of Deaf Services for guidance as required by DOR 8.080 when the use of an interpreter is required;
- ▶ Not aid or perpetuate discrimination against a D/HH individual by providing significant assistance to an agency, organization, or person that does not comply with Title II and Section 1557 requirements in providing any aid, benefit, or service to beneficiaries of DMH's programs.

TCM entities must:

- ▶ Document the communication needs of D/HH consumers, including needed auxiliary aids and services, in the consumer's ISP without regard to whether any providers currently provide the requested aids and services;
- ▶ Ensure service providers comply with all Title II and Section 1557 requirements;
- ▶ Coordinate with providers and DD Regional Offices to ensure reasonable modifications are made and auxiliary aids and services are provided when needed to afford equal access, equal opportunity, or equally effective communication.

If DMH offices, TCM entities, or service providers have any questions about the rights or needs of deaf or hard of hearing consumers, please feel free to contact the Office of Deaf Services for consultation, technical assistance, or training opportunities.

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Reference: [28 CFR Part 35](#); [45 CFR Part 92](#)