



Allison (Ally) Kjellander

Associate

208.383.3930

Boise

aakjellander@hollandhart.com

OCR Addresses Healthcare Discrimination Experienced by Deaf and Hard of Hearing Patients

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The U.S. Department of Health and Human Services Office for Civil Rights (“OCR”) entered into a Voluntary Resolution Agreement (“Agreement”) with CHI St. Vincent Hot Springs (“CHI”) to ensure there are effective communication accommodations in a healthcare setting for patients who are deaf or hard of hearing. The Agreement resolves a complaint filed with OCR by an individual (“Complainant”) alleging that CHI discriminated against her based on her disabilities (deafness and Usher Syndrome) when CHI failed to provide Complainant with appropriate auxiliary aids during her September 1, 2019, Emergency Department visit. Complainant alleged that this instance violated Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and Section 1557 of the Affordable Care Act of 2010 (“Section 1557”).

CHI receives federal financial assistance (“FFA”) and is thus subject to Section 504 and Section 1557. Section 504 prohibits discrimination on the basis of a disability under any health program or activity receiving FFA, while Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability under any health program or activity receiving FFA. Although the Agreement is binding only between OCR and CHI, it serves not only as a demonstration of the Biden Administration’s commitment to healthcare equity, but also as a warning to other healthcare providers receiving FFA. Thus, healthcare providers should ensure their policies, procedures, and implementation of those are consistent with the obligations imposed on CHI.

Under the Agreement, OCR obligates CHI to do the following to accommodate individuals that are deaf or hard of hearing¹ (“Patient”):

1. Document and perform a communication assessment as part of each initial Patient assessment, any subsequent visit, and reasonably reassess communication effectiveness.
2. Implement a video remote interpreting service² (“VRI”) that uses qualified interpreters³ to interpret for the Patient that is free to the Patient.
3. Ask the Patient whether VRI is meeting the Patient’s communication needs and record the Patient’s response.
4. If a Patient cannot communicate effectively using VRI, use all reasonable efforts to locate an on-site qualified interpreter or

other auxiliary aid or service that will provide timely, effective communication.

5. Inform the Patient of the status of the reasonable efforts being used to locate an on-site qualified interpreter or other auxiliary aid or service that will provide effective communication.
6. Document the concern and the steps taken to locate an on-site qualified interpreter or other auxiliary aid or service that will provide effective communication.

For more information on the Agreement, [click here](#).

1 This includes any companion to the patient as well. "Companion" means a family member, friend, or associate of a patient who, along with the patient, is an appropriate person with whom the provider should communicate. 28 C.F.R. § 35.104(a)(2).

2 "VRI" 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. 28 C.F.R. § 35.104.

3 "Qualified Interpreter" means an interpreter who, via a VRI services or an onsite appearance, adheres to generally accepted interpreter ethics principles, including client confidentiality; and 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. 28 C.F.R. § 35.104.

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