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SAMPLE POLICY TEMPLATE:
Effective Communication for D/deaf People in Healthcare Settings

ORIGINAL PUBLICATION DATE: [00/00/0000] **LAST UPDATE DATE**: [00/00/0000]

POLICY BACKGROUND

Pursuant to the Americans with Disabilities Act ("ADA") and the Affordable Care Act ("ACA"), [healthcare provider] is required to provide communication with D/deaf patients and their companions with communication that is "as effective as" that provided for hearing patients. 28 C.F.R. § 35.160(a)(1).

To ensure there is effective communication, [healthcare provider] is required to provide and pay for the auxiliary aids and services preferred by the D/deaf patient or companion, in a timely manner and in such a way as to honor the privacy and independence of the D/deaf patient or companion. 28 C.F.R. §§ 35.160(b)(1)-(2), 36.303(c)(1)(ii).

POLICY PURPOSE

To describe [healthcare provider]'s policy to ensure effective communication for D/deaf people in [healthcare provider] facilities. To outline the auxiliary aids and services provided and paid for to that end.

SCOPE

Applicable to all communications held within healthcare system facilities, including outpatient facilities, from arrival to disposition. Applicable to conversations with both D/deaf patients *and* D/deaf companions of hearing patients, defined to include family, friend, or associate who is "an appropriate person with whom [healthcare] should communicate." 28 C.F.R. § 35.160(a)(2).

Applicable communications are all substantive healthcare conversations, including but not limited to occasions when obtaining a medical history; obtaining informed consent for treatment(s); explaining diagnosis and prognosis; creating advance directives; discussing medical treatments and/or procedures before, during, and after those treatments and/or procedures; conveying discharge directives; facilitating mental health counseling in individual and/or group formats; and delivering any educational presentations.

[HEALTHCARE PROVIDER] POLICY: EFFECTIVE COMMUNICATION FOR D/DEAF PEOPLE

I. [Healthcare provider] commits to general principles of effective communication.

A. [Healthcare provider] acknowledges that the term "effective communication" means communication with D/deaf patients and companions is "as effective as" communication with hearing patients and companions. 28 C.F.R. § 35.160(a)(1).

B. [Healthcare provider] acknowledges that effective communication preserves the privacy of the D/deaf

person. 28 C.F.R. § 35.160(b)(2).

C. [Healthcare provider] acknowledges that effective communication respects the independence of the D/deaf person. 28 C.F.R. § 35.160(b)(2). This requires communicating directly with the D/deaf person, rather than communicating through another individual, such as the companion of the D/deaf person. 28 C.F.R. §§ 35.160(c)(2), 36.303(c)(3).

D. [Healthcare provider] acknowledges the importance of bi-directionality for effective communication. This requires that facility personnel fully understand the D/deaf person and that the D/deaf person fully understands facility personnel.

II. [Healthcare provider] will provide and pay for auxiliary aids and services for effective communication.

A. [Healthcare provider] acknowledges that it is illegal to require a D/deaf person to provide or pay for their own auxiliary aids and services. [Healthcare provider] will never require a D/deaf person to provide or pay for their own auxiliary aids and services.

B. [Healthcare provider] will develop and maintain an updated roster of resources for auxiliary aids and services for effective communication, such as the Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind's website.

1. [Healthcare provider] will consider contracting with one or more agencies for the provision of auxiliary aids and services if demand necessitates.

C. [Healthcare provider] will give "primary consideration to the requests" of the D/deaf person when furnishing auxiliary aids and services for effective communication. 28 C.F.R. § 35.160(b)(2). This means the auxiliary aids and services provided will always be those preferred by the D/deaf person.

D. [Healthcare provider] acknowledges the variety of types of auxiliary aids and services that may be preferred and requested by D/deaf people, including but not limited to:

1. Video relay, voice carry-over, and captioned phone calls
    a. Accessible phones, providing videophone, captioning, and/or amplification, if phones are provided to the public in the healthcare facilities. Moreover, any interactive phone system must provide alternatives (such as direct dial or email) for people who use videophones or captioned telephones.
2. Sign language interpreters
    a. Hearing sign language interpreters
    b. D/deaf sign language interpreters
        i. It is generally considered best practice to have D/deaf sign language interpreter(s) working with hearing sign language interpreter(s).
    c. Sign languages interpreters expert in languages other than American Sign Language ("ASL"), such as Black, Mexican, or Russian Sign Language
    d. Tactile interpretation for people who are DeafBlind
3. Communication Access Realtime Translation ("CART")

4. Captions on any asynchronous programming, such as educational materials or televisions, if televisions are provided to the public in the hospital facilities.
5. Video remote interpreting ("VRI")
    a. [Healthcare provider] acknowledges that VRI is not an acceptable auxiliary aid or service when the D/deaf patient: has limited movement; has vision or cognitive issues; is under the influence of drugs or alcohol; is in significant pain, including labor; and if there are space limitations in the room. Most significantly, if the medical issue is or could be complex, VRI is not an acceptable auxiliary aid or service. If so, 28 C.F.R. § 35.160(d) (incorporated by reference in 45 C.F.R. § 92.202(a)).
    b. [Healthcare provider] acknowledges that VRI is only an acceptable auxiliary aid or service if it is the D/deaf patient's preferred method of communication. 28 C.F.R. § 35.160(b)(2).

E. [Healthcare provider] will ensure all auxiliary aids and services are qualified and up to par.
    1. [Healthcare provider] will ensure sign language interpreters are "able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. § 35.104.
    2. [Healthcare provider] will ensure that all sign language interpreters are certified.
    3. [Healthcare provider] will ensure that VRI, when utilized, has high quality, real time, full motion, sharply delineated video that does not have lags, choppy, blurry, or grainy images or irregular pauses in communication. The video must be large enough to display the participating interlocutors' face, arms, hands, and fingers, regardless of their body position. VRI must supply clear, audible audio. Those involved with the VRI must be adequately trained to effectively and efficiently set up and operate it. If so, 28 C.F.R. § 35.160(d) (incorporated by reference in 45 C.F.R. § 92.202(a)).
F. [Healthcare provider] acknowledges that writing notes and reading lips are inappropriate auxiliary aids and services.
G. [Healthcare provider] acknowledges that it is almost always illegal to rely on a D/deaf person's companion to assist with communication. 28 C.F.R. § 35.160(c)(2). [Healthcare provider] will never rely on a D/deaf person's companion, except:
    1. When there is "an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
    2. When the D/deaf person "specifically requests that an 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." 28 C.F.R. § 35.160(c)(2)(ii).
        a. It is only permissible to rely on a D/deaf person's *minor* companion in an emergency, as defined in the first subsection.

IV. [Healthcare provider] will train staff on the requirements of effective communication.

A. [Healthcare provider] will train staff annually on the requirements of effective communication under the ADA and ACA, with attention to the aforementioned general principles of effective communication.

B. [Healthcare provider] will train staff on the relevant auxiliary aids and services that may be preferred and requested by D/deaf people, including but not limited to how to communicate using an interpreter and/or how to set up VRI.

1. Relevance is determined by staff position and communication occasions, for example, whether receiving calls for appointments or discussing diagnosis.

C. [Healthcare provider] will maintain an ADA compliance office, which will, among other responsibilities: conduct annual, orientation, and as-needed trainings; manage the roster of resources for auxiliary aids and services; and respond to related feedback grievances from the D/deaf community.

V. [Healthcare provider] will publicize information on effective communication resources for D/deaf people and keep records on communication preferences where appropriate.

A. [Healthcare provider] will ensure D/deaf patients and companions are able to know their communications resources and how to request them. To that end, [Healthcare provider] will publicize information on:

1. Online forms should provide information concerning options and a field to indicate communication preference(s).
2. Physical signage at the hospital facilities' front desks, check-in desks, nurses' stations, etc.
3. Written forms with opportunity to indicate communication preferences.

B. [Healthcare provider] will ensure D/deaf patients' electronic health records such as MyChart or EPIC indicate their communications preferences and technologies, where appropriate.

VI. [Healthcare provider] will communicate vital, public-facing information effectively.

A. [Healthcare provider] will translate vital, public-facing information so that it is effectively communicated.

B. [Healthcare provider] will provide translations of other non-vital written materials provided during healthcare facilities visits as needed.