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Poverty Law
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Framing a Persuasive Advocacy Message

Medicare's "Improvement Standard"

Remote Communication for Persons with Hearing Disabilities

Financial Obligations in Illinois's Criminal Justice System

Right to Counsel in Foreclosure and the Due Process State-Action Requirement

Recovering Shriver's Vision for Poverty Law

"Fugitive Felon" Provision Settlement



Sargent Shriver National Center on Poverty Law



Improving Remote Communication Between Public Benefits Agencies and Deaf and Hard-of-Hearing Individuals

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After Hurricane Katrina, a deaf displaced person in Texas called, by using a relay operator, the Federal Emergency Management Agency (FEMA). Because the call was coming from a “third party,” FEMA refused to speak to the caller. In 2008 an elderly deaf couple caring for grandchildren in New York asked an advocate for the deaf to call the state’s child support call center to find out why child support payments had stopped. The call center refused to take the call for the same reason.

Approximately 17 percent of Americans, or thirty-six million people, report some degree of hearing loss.¹ On average, individuals with disabilities have lower incomes and are more likely to be poor than individuals without disabilities.² Thus many individuals who are deaf and hard of hearing are likely to be entitled to government benefits. To have meaningful access to benefits, these individuals need to communicate with public benefits agencies not just in person but by telephone or by other methods of remote communication.

Many public benefits agencies are modernizing their programs; modernizing typically involves reducing face-to-face interaction with clients and increasing reliance on telephone call centers to interview clients, answer questions, and give information on case status. For example, twenty-seven states are using call centers in some or all parts of the state in their food stamp programs.³ By 2005 nearly all states were accepting initial claims for Unemployment Insurance by telephone or online.⁴ Given this

¹National Institute on Deafness and Communication Disorders, National Institutes of Health, Quick Statistics (last updated Aug. 4, 2008), <http://bit.ly/39uWce>.

²See U.S. Census Bureau, Facts for Features, Americans with Disabilities Act: July 26 (last rev. Oct. 21, 2009), <http://bit.ly/XFbgZ>.

³Food and Nutrition Service, U.S. Department of Agriculture, Supplemental Nutrition Assistance Program: States Options Report 25 (8th ed. 2009), <http://bit.ly/12yPRA>.

⁴U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-07-573, FOOD STAMP PROGRAM: USE OF ALTERNATIVE METHODS TO APPLY FOR AND MAINTAIN BENEFITS COULD BE ENHANCED BY ADDITIONAL EVALUATION AND INFORMATION ON PROMISING PRACTICES 3 (2007), <http://bit.ly/42XXjt>; U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-05-413, UNEMPLOYMENT INSURANCE: BETTER DATA NEEDED TO ASSESS REEMPLOYMENT SERVICES TO CLAIMANTS 3 (2005), <http://bit.ly/125lo9>.

trend, effective remote communication between public benefits agencies and deaf and hard-of-hearing individuals is even more critical.

Here I discuss some of the technology and services that deaf and hard-of-hearing individuals use when communicating remotely with public benefits agencies; barriers that deaf and hard-of-hearing individuals face in communicating remotely with public benefits agencies; four federal disability rights laws that impose or are relevant to obligations on public benefits agencies regarding communication with individuals with disabilities; legal arguments that can be made to challenge agency practices that create barriers to effective remote communication with benefits agencies as well as individual and policy advocacy; and best practices for ensuring remote communication with deaf and hard-of-hearing individuals. This article is based on research conducted by the Northeastern University School of Law Legal Skills in a Social Context Social Justice Program. I welcome inquiries on the issues discussed here and on the broader issue of bringing public benefits agencies into compliance with federal disability rights laws.

Remote Communication Technology and Services for Deaf and Hard-of-Hearing Individuals

Text telephone (TTY) technology and relay services make it possible for deaf and hard-of-hearing individuals to communicate by telephone.

TTY. With a keyboard and a text display, a TTY can be connected directly to a telephone line or used in conjunction with a telephone by placing the telephone handset into the TTY coupler. TTY keystrokes are transmitted as audible signals through a telephone network and, when

received by another TTY, are displayed as text. If both the caller and call recipient have TTYs, they can communicate directly—text typed by one caller appears on the text display of the other caller’s TTY. If only one party has a TTY, the call must be placed through a relay service (discussed below).

Although once groundbreaking technology, TTYs are now considered outmoded by many deaf and hard-of-hearing individuals and are falling out of favor. Some deaf and hard-of-hearing individuals prefer Internet-based text relay, captioned telephone service, e-mail, and texting for at least some remote communication.⁵

Relay Services. Title IV of the Americans with Disabilities Act requires common carriers operating telephone voice transmission services to provide interstate and intrastate telecommunications relay services that make it possible for deaf and hard-of-hearing individuals to communicate with hearing individuals by using voice communication services.⁶ Relay services—accessible through toll-free numbers and by dialing 7-1-1, Internet connections, and websites, provide “communications assistants” (relay operators) who interpret or transliterate communication between a caller and an individual or entity called.⁷ If one party is using a TTY and the other is not, a communications assistant reads the typed text to the hearing individual and types responses to the TTY user.

Relay services also include speech-to-speech services, in which a communications assistant trained to understand speech patterns of individuals with disabilities facilitates communication by repeating spoken words so that they can be more easily understood; voice carryover services, in which an individual with a hearing but not a speech impair-

⁵Tracie Ortiz, Department of Educational Technology, University of Hawaii at Manoa, Local Turns Global: Expanding the Deaf Community Through Communication Technologies 3, TCC [Technology, Colleges, and Community] 2009 Proceedings, <http://bit.ly/2JTduR>; Shefali Anand, *Sign of the Times: Video, Email Are Boons to the Deaf*, WALL STREET JOURNAL, June 9, 2007, at A1, <http://bit.ly/3MRTzD>; see also National Exchange Carriers Association Interstate TRS [Telecommunications Relay Service], Internet, Captel [Captioned Telephone], and VRS [videorelay services] Minutes, Actuals January 2002–June 2009, Projection July 2009–June 2010 (July 29, 2009), <http://bit.ly/2GePo6> (chart 15) (showing decline in TTY [text telephone] minutes and increasing minutes of other forms of relay over time).

⁶Americans with Disabilities Act of 1990 (ADA) tit. IV, 47 U.S.C. § 225.

⁷47 C.F.R. § 64.601(a)(7) (2009).

ment can speak by telephone to another caller and have a communications assistant type the caller's response; and hearing carryover services, in which a person who has a speech impairment and is able to hear can listen to the other party and type or sign back a response so that a communications assistant can read the text or interpret the sign language to the other party.⁸

Videorelay services enable deaf and hard-of-hearing individuals to use American Sign Language (ASL) to communicate remotely with voice telephone users. Using videoconferencing equipment, the deaf caller and a communications assistant communicate by ASL; the communications assistant uses a telephone to communicate with the hearing party.⁹

Captioned telephone services use a telephone with a text display that enables individuals with some hearing to speak on the telephone, listen, and read what the other party is saying. The communications assistant repeats what the hearing party says, and, using specially trained voice recognition technology, the communications assistant's speech is converted to text that appears on the captioned telephone. Internet protocol relay uses a computer or other Web-based communication for text communication between the caller and the communication assistant.¹⁰

Communication Barriers

Individuals who are deaf or hard of hearing face a variety of potential barriers in attempting to contact public benefit programs remotely.

Interactive Voice Response Systems. Many public benefits agencies use auto-

mated systems, not live staff members, to answer telephones, route callers to appropriate offices or individuals, and take messages. These systems, collectively referred to as interactive voice response systems, can pose a number of problems for deaf and hard-of-hearing individuals. The latter may have difficulty hearing menu options and voicemail messages, particularly if the options and messages are in the high-frequency range, the message is spoken too rapidly, or poor-quality technology impairs sound clarity.¹¹ TTY callers must use relay services to call because interactive voice response systems do not usually connect directly to TTYs. Yet these systems are often programmed to allot insufficient time for relay callers because the relay operator must convert all prompts, menus, and messages to the relay user, who must respond. Some interactive voice response systems are programmed to give only a limited time to make choices or leave messages, and some disconnect callers who do not respond within the allotted time period.¹²

Lack of Adequate TTY and Relay Policies and Staff Training. Some public benefits agencies lack policies and training necessary to ensure that staff members know how to answer and place calls using a TTY or relay services and to ensure that TTY messages are returned promptly. Deaf and hard-of-hearing individuals report that agencies sometimes hang up on them when agency staff members do not hear a voice right away or because they believe that the call is from a telemarketer.¹³ Staff members at many public benefits agencies may be unfamiliar with videorelay technology and may not know how to handle such calls. And, because many agencies do not answer TTY calls with a live person, the caller's only option is to leave

⁸47 U.S.C. § 64.601(a)(8), (a)(13), (a)(15), (a)(19).

⁹*Id.* § 64.601(a)(18).

¹⁰For information about relay services, see Federal Communications Commission, Telecommunications Relay Services (Oct. 20, 2008), <http://bit.ly/G84rl>; National Association for the Deaf, Relay Services, <http://bit.ly/vDUSt>.

¹¹Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, Guidelines for Voice Menu Systems to Serve Deaf and Hearing Impaired Individuals 1 (2008), <http://bit.ly/3nzghw>.

¹²Inclusive Technologies, IVR [Interactive Voice Response] Accessibility—Deaf/TTY Users, <http://bit.ly/4fCNyu>.

¹³Several state relay services have "Don't Hang Up" campaigns to increase awareness about relay services and encouraging consumers to file complaints (see, e.g., New York Relay Service, www.nyrelay.com; Washington Relay, <http://bit.ly/2OeoPt>).

a message. These messages are often not returned or not returned promptly.

Relay Operators' and Third Parties' Refusal to Communicate. Public benefits agencies sometimes refuse to talk with anyone other than the public benefit applicant or recipient about an applicant's or recipient's case. While privacy and confidentiality requirements clearly motivate such practices, these practices can adversely affect particularly those who are deaf and hard of hearing and who thus are unable to call and speak to the agency directly by voice telephone as a result of their disabilities.

In the most extreme cases, a public benefits agency refuses to speak to a relay operator.¹⁴ Other agencies accept relay calls but not calls made by a friend, a relative, or an advocate calling on behalf of a deaf or hard-of-hearing individual.

Lack of Flexibility and Failure to Modify Policies and Practices. Some public benefits agencies assume that, because they make one method (e.g., a TTY) available for people who are deaf or hard of hearing to communicate with the agency remotely, they meet their legal obligation to ensure accessible communication with people with disabilities. However, no one means of communication is effective for and available to everyone with disabilities.¹⁵ Further, some individuals cannot use or do not have access to a particular method of communication on at least a

temporary basis when equipment breaks down.

Applicable Federal Disability Rights Laws

Four federal laws are relevant to the obligation to provide effective remote communication between public benefits agencies and deaf and hard-of-hearing individuals. Two apply directly to public benefits agencies; one applies to the federal government but contains standards adopted by many states; and the fourth sets standards for telecommunications products and services that give guidance on what equipment public benefits agencies should purchase and guidelines on how telephone systems should be programmed.

Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

The Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act contain a number of provisions applicable to communications between public benefit programs and individuals with disabilities. Title II of the ADA applies to the programs, services, and activities of all state and local governments.¹⁶ Section 504 of the Rehabilitation Act applies to programs receiving federal financial assistance.¹⁷ Unlike the ADA, which has regulations applicable to all state and local government programs, Section 504 requires executive agencies to promulgate their own Section 504 reg-

¹⁴After Hurricane Katrina, the National Center for Law and Economic Justice and other advocates wrote to the Federal Emergency Management Agency (FEMA) on behalf of deaf and hard-of-hearing individuals in Texas; those individuals had called FEMA and were told that FEMA would not speak to callers who used relay services (Letter from Cary LaCheen of National Center for Law and Economic Justice, Steve Ronfeldt of Public Interest Law Project, Deborah Fowler & Lynn White of Texas Appleseed, and Barbara Epperson of Advocacy Incorporated to R. David Paulison, Director, Federal Emergency Management Agency (Jan. 31, 2007) (in my files)). FEMA agreed to clarify with staff members that the prohibition on speaking with third parties without legal authorization did not apply to relay calls (Letter from Pauline Campbell, Director, Office of Equal Rights, FEMA, to Cary LaCheen, National Center for Law and Economic Justice (March 2, 2007) (in my files)).

¹⁵E.g., TTY is not an effective means of communication for some individuals with both hearing and vision impairments because these individuals have difficulty reading the print on a TTY. Some individuals who are deaf from birth or an early age have difficulty using TTYs because they have a limited ability to read and write English since American Sign Language, not English, is their first language. Many courts have noted this limitation in cases challenging the failure to provide sign-language interpreters to deaf individuals when defendants used written notes (in English) as a substitute (see, e.g., *Boyer v. Tift County Hospital Authority*, No. 7:06-cv-027 (HL), 2008 U.S. Dist. LEXIS 59700, at *2-3 (M.D. Ga. July 31, 2008); *Young v. Nicholson*, No. CV-05-407-RHW, 2007 U.D. Dist. LEXIS 2756, at *19-20 (E.D. Wash. Jan. 12, 2007); *Center v. City of West Carrollton*, 227 F. Supp. 2d 863, 864-65 (S.D. Ohio 2002).

¹⁶ADA tit. II, 42 U.S.C. §§ 12131 et seq.; 28 C.F.R. pt. 35 (2009).

¹⁷Rehabilitation Act § 504, 29 U.S.C. § 794(a).

ulations.¹⁸ The U.S. Department of Justice issued Section 504 coordination regulations, with which federal agency Section 504 regulations should be consistent.¹⁹

Title II of the ADA applies to state and local government programs and services when those services are provided directly by the state or local government entity and when they are applied indirectly through contractual, licensing, or other arrangements.²⁰ Call centers and customer service centers operated by contractors for public benefits agencies are part of the public benefit program and thus are subject to the requirements of Title II of the ADA.²¹ Likewise, call centers operated by a public benefits agency receiving federal financial assistance are a part of the agency's public benefit program and are subject to Section 504.²²

The ADA and Section 504 require programs to provide meaningful access to programs and services.²³ Programs must provide an equal opportunity to participate in and benefit from programs and services to people with disabilities.²⁴ Reasonable modifications in policies and practices must be made when necessary to avoid discrimination against individuals with disabilities.²⁵ Methods of program administration may not have a discrimi-

natory effect on individuals with disabilities.²⁶ These general provisions apply to communication along with other aspects of public benefit programs.

The ADA and Section 504 also contain specific requirements pertaining to communication access. ADA regulations require that public entities take appropriate steps to ensure that communication with individuals with disabilities is as effective as communication with others.²⁷ Section 504 regulations have similar provisions.²⁸ The ADA has specific provisions on telephone communication. ADA Title II regulations provide that when a public entity communicates by telephone with applicants and beneficiaries, telecommunication devices for the deaf (TTYs) or equally effective communications systems, such as relay services, must be used to communicate with individuals with impaired hearing or speech.²⁹ Interpretive Guidance to the ADA regulations makes clear that public entities do not have to have a TTY to make calls to and receive calls from deaf callers except for telephone emergency services.³⁰

Title II of the ADA and Section 504 can be enforced by filing an administrative complaint with the appropriate desig-

¹⁸See, e.g., 7 C.F.R. pt. 15b (2009) (U.S. Department of Agriculture Section 504 regulations apply to the Food Stamp Program, now known as SNAP (Supplemental Nutrition Assistance Program)); 45 C.F.R. pt. 84 (2009) (U.S. Department of Health and Human Services Section 504 regulations apply to Medicaid and Temporary Assistance for Needy Families programs).

¹⁹28 C.F.R. pt. 41 (2009) (U.S. Department of Justice Section 504 coordination regulations); *id.* § 41.4(a) (requiring agency Section 504 regulations to be consistent with Justice Department Section 504 coordination regulations).

²⁰See, e.g., *id.* § 35.130(b)(1), (b)(3).

²¹See *id.* § 35.130(b)(1), (3); U.S. Department of Justice, Americans with Disabilities Act Title II Technical Assistance Manual § II-1.3000 (1993), <http://bit.ly/2iVCXa>.

²²See 29 U.S.C. § 794(a) (Section 504 by its terms applies to entities receiving federal financial assistance).

²³*Alexander v. Choate*, 469 U.S. 287, 301 (1985).

²⁴7 C.F.R. § 15b.4(b)(1)(ii) (2009); 28 C.F.R. §§ 35.130(b)(1)(ii), 41.51(b)(1)(ii) (2009); 84 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2) (2009).

²⁵28 C.F.R. §§ 35.130(b)(7), 41.51(b)(1)(vii) (2009); 45 C.F.R. § 84.4(b)(1)(vii) (2009).

²⁶7 C.F.R. § 15b.4(b)(4) (2009); 28 C.F.R. §§ 35.160(a), 41.51(b)(3) (2009); 45 C.F.R. § 84.4(b)(4) (2009).

²⁷28 C.F.R. § 35.160(a) (2009).

²⁸See, e.g., 7 C.F.R. § 15b.4(d) (2009); 28 C.F.R. § 41.51(e) (2009).

²⁹28 C.F.R. § 35.161 (2009).

³⁰*Id.* pt. 35 app. A § 35.162 (2009) (Appendix A is known as "Interpretive Guidance").

nated federal agency or by filing a lawsuit in court.³¹

Section 508 of the Rehabilitation Act. Section 508 of the Rehabilitation Act applies to federal agencies and requires electronic and information technology, including voicemail, interactive voice response systems, and messaging systems, to be accessible to and usable by people with disabilities, unless making this technology accessible and usable by people with disabilities would be an undue burden.³² If doing so would be an undue burden, the federal agency must provide an alternative means of access to information and data.³³ The U.S. Access Board promulgated Section 508 electronic and information technology standards with which executive agencies must comply, unless compliance would be an undue burden.³⁴ These standards require voicemail, autoattendant, and interactive voice response systems to be usable by TTY users and require these systems to alert individuals when the time for a response is about to run out and to allow sufficient time to indicate that more time is needed.³⁵ Although Section 508 does not by its terms apply to state and local public benefits agencies, a number of states have adopted Section 508 standards or other information technology standards that apply to their state agencies.³⁶ Section 508 can be enforced by filing an administrative complaint with

the federal agency violating the law or by filing a lawsuit in court.³⁷

Section 255 of the Communications Act. Section 255 of the Communications Act of 1996 requires that, if readily achievable, telecommunications products and services designed, developed, and fabricated after February 8, 1996, be accessible to and usable by people with disabilities.³⁸ If accessibility is not readily achievable, telecommunications products and services must be compatible with devices and equipment—such as TTYs and assistive listening devices—used to achieve access by people with disabilities.³⁹ The law applies to telecommunications equipment; telecommunications services, including regular telephone calls, computer-provided directory assistance, call waiting, speed dialing, caller ID (identification), call tracing, and repeat dialing; and information services, including voicemail systems and interactive voice response systems.⁴⁰ For voicemail and interactive voice response services, the Federal Communications Commission (FCC) has promulgated regulations that explain how the accessibility, usability, and compatibility requirements apply to these technologies.⁴¹ Advisory Guidance issued by the U.S. Access Board notes that interactive voice response systems are not usable by deaf and hard-of-hearing individuals and recommends augmenting the use of

³¹42 U.S.C. § 12133; 28 C.F.R. §§ 35.171, 35.190 (2009) (ADA); 29 U.S.C. § 794a(a)(2); 7 C.F.R. § 15b.42; 45 C.F.R. § 84.61 (2009) (Rehabilitation Act).

³²Rehabilitation Act § 508, 29 U.S.C. § 794d(a)(1)(A)(i).

³³*Id.* § 794d(a)(1)(B).

³⁴36 C.F.R. pt. 1194 (2009) (Electronic and Information Technology Accessibility Standards); § 1194.2(a) (requirement that standards must be complied with unless doing so would be an undue burden). These standards, originally published in the *Federal Register* on December 21, 2000, are available on the U.S. Access Board's <http://bit.ly/4xNCf4>.

³⁵36 C.F.R. § 1194.23(c),(d) (2009).

³⁶For a list of states that have adopted Section 508 standards or other information technology standards, see Hewlett Packard, State IT [Information Technology] Accessibility (n.d.), <http://bit.ly/3p1muW>.

³⁷29 U.S.C. § 794(f)(1)(A), (f)(3).

³⁸Communications Act of 1996, 47 U.S.C. §§ 153 (defining “telecommunications,” “telecommunications equipment,” and “telecommunications service”), 255(b), (c) (standards for accessibility by people with disabilities); 36 C.F.R. § 1193.21 (2009); 47 C.F.R. § 6.5(a)(1), (b)(1) (2009).

³⁹Communications Act of 1996, 47 U.S.C. § 255(d); 36 C.F.R. § 1193.21 (2009); 47 C.F.R. § 6.5(a)(2), (b)(2) (2009).

⁴⁰Communications Act of 1996, 47 U.S.C. § 255(b), (c). For an overview of Section 255, see U.S. Access Board, <http://bit.ly/tjwCt>.

⁴¹See 47 C.F.R. pt. 7 (2009).

an automated system with an automated TTY system or having methods for a deaf caller to opt out of the automated system.⁴² Section 255 may be enforced by filing a complaint with the FCC against the manufacturer or telecommunication services provider.⁴³

Removing Barriers to Remote Communication with Public Benefits Agencies

Many of the communication barriers discussed earlier violate the federal disability rights laws. To obtain accommodations for individual clients, advocates can use these laws as the basis for individual advocacy and policy advocacy to obtain improved agency policies or practices, and advocates can use these laws in litigation.

Legal Arguments. Interactive voice response systems that create barriers to access for deaf and hard-of-hearing callers violate ADA and Section 504 requirements on the obligation to provide effective communication with individuals with disabilities and violate some of the more general prohibitions of the ADA and Section 504.⁴⁴ They may violate state information technology laws also.⁴⁵

A public entity's refusal to accept an individual's calls made through a relay opera-

tor violates federal disability rights laws.⁴⁶ Privacy and confidentiality concerns are not justifiable rationales for refusing to accept such calls. FCC regulations forbid relay operators from "disclosing the content of any relayed conversation" with limited exceptions.⁴⁷ Courts hold that relay operators are language conduits, not third parties, and that federal regulations requiring real-time, verbatim transmission of statements assure reliable transmission.⁴⁸

Likewise, public benefits agencies' blanket refusal to speak to third parties (e.g., advocates, family, or friends) who call on behalf of individuals with disabilities violates disability rights laws by

- failing to ensure effective communication with individuals with disabilities;⁴⁹
- administering the public benefit program in a manner that has a discriminatory effect;⁵⁰
- denying individuals with disabilities a meaningful access to programs and an equal opportunity to participate in and benefit from the program;⁵¹ and
- denying reasonable modifications when necessary to avoid discrimination.⁵²

⁴²36 C.F.R. pt. 1193 app. A § 1193.33(b) (2009) (Appendix A is entitled "Advisory Guidance"); 63 Fed. Reg. 5608, 5637 (Feb. 3, 1998).

⁴³47 U.S.C. § 255(f); 47 C.F.R. §§ 6.16–6.22 (2009). For the online complaint form, see Consumer and Governmental Affairs Bureau, Federal Communications Commission, File a Complaint, <http://bit.ly/2Zex3x>.

⁴⁴See 7 C.F.R. §§ 15b.4(b)(1)(ii), 15b.4(b)(4), 15b.4(d) (2009); 28 C.F.R. §§ 35.160(a), 41.41(b)(3), 41.51(b)(1)(ii), 41.51(b)(1)(vii) (2009); 45 C.F.R. §§ 84.4(b)(1)(ii), 84.4(b)(1)(vii), 84.4(b)(4) (2009).

⁴⁵For further information on state information technology laws, see *supra* note 35 and accompanying text.

⁴⁶Cf. *United States v. Space Hunters Incorporated*, No. 00 Civ. 1781 (RCC), 2001 U.S. Dist. LEXIS 12804 (S.D.N.Y. Aug. 23, 2001), enforced, 2004 U.S. Dist. LEXIS 23699 (S.D.N.Y. Nov. 22, 2004), *aff'd in part*, 429 F.3d 416 (2d Cir. 2005) (housing rental service that refused to talk to deaf callers through relay service violated Fair Housing Amendments Act).

⁴⁷47 U.S.C. § 225(d)(1)(F) (Federal Communications Commission required to promulgate regulations prohibiting relay operators from disclosing content of calls made by relay); 47 C.F.R. § 64.604(a)(2)(i) (2009).

⁴⁸See, e.g., *Germano v. International Profit Association Incorporated*, No. 07-3914, 2008 U.S. App. LEXIS 19990, *10–11 (7th Cir. Sept. 12, 2008) (testimony about statements made through relay communications assistant were not hearsay because communications assistant served as "no more than a language conduit").

⁴⁹See 28 C.F.R. § 35.160(a) (2009).

⁵⁰See 7 C.F.R. § 15b.4(b)(4) (2009); 28 C.F.R. §§ 35.160(a), 41.51(b)(3) (2009); 45 C.F.R. § 84.4(b)(4) (2009).

⁵¹See *Alexander*, 469 U.S. at 301 (meaningful access); 7 C.F.R. § 15b.4(b)(1)(ii) (2009); 28 C.F.R. §§ 35.130(b)(1)(ii), 41.51(b)(1)(ii) (2009); 84 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2) (2009) (equal opportunity to participate in and benefit from programs).

⁵²See 28 C.F.R. §§ 35.130(b)(7), 41.51(b)(1)(vii) (2009); 45 C.F.R. § 84.4(b)(1)(vii) (2009).

If an agency's voice telephone is answered by a live person, the failure to answer a TTY line with a live person denies equal access to programs and services and fails to provide communication that is as effective as with others in violation of the ADA and Section 504.⁵³

Advocacy on Behalf of Individuals. Advocates can and should request reasonable modifications of agency practices for individual clients who are deaf or hard of hearing when necessary to ensure that the agency's communication with the clients is as effective as it is with others. For example, agency policies prohibiting staff members from speaking with third parties by telephone should be modified for individuals who are deaf and hard of hearing and who need someone to call the agency on their behalf, and general policies requiring staff members to communicate with clients only by telephone, letter, or in person should be modified to enable deaf or hearing-impaired persons to communicate with staff members by e-mail.

Policy Advocacy. Advocates should reach out to local advocates for the deaf, independent living centers, and other disability rights organizations in their communities about communication-access issues and work together to change policies. Advocates can raise communication-access issues with public benefits agencies when agencies are developing or revising ADA policies, upgrading telephone and computer systems, developing or revising manuals for call centers, and drafting or revising call-center contracts. Section 255 of the Communications Act applies to manufacturers, not buyers and users of telecommunication products, but can be used to inform policy advocacy. Advocates should insist, for example, that telecommunications technology purchased by agencies is accessible to and usable by people with disabilities, that interactive

voice response systems be programmed to permit callers to speak to a live person, that call centers have policies accepting calls from third parties calling on behalf of individuals with disabilities, and that call-center staff members be trained on TTY and relay-service use.

Many public benefits agencies may have given little thought to these accessibility issues, and some may be amenable to developing or revising policies, conducting staff training, or taking other steps to resolve problems brought to their attention. In New York the National Center for Law and Economic Justice, Empire Justice Center, and New York Legal Assistance Group persuaded a state agency with responsibility for child support enforcement to revise a policy prohibiting State Child Support Helpline call-center staff members from speaking with third parties calling on behalf of individuals who have disabilities and cannot make voice telephone calls on their own. Under the new policy, the call center must ask why a third party is calling on a parent's behalf, and, if the parent has a disability that prevents the parent from verbally verifying identity and giving the call center permission to speak to the caller, the caller is referred to a designated call-center staff member who can take the call and give information.⁵⁴

Best Practices

Public benefits agencies can act to improve or ensure effective remote communication with individuals with disabilities, and advocates may want to urge such action.

Improve Use of Voicemail, Autoattendant, and Interactive Voice Response. Public benefits agencies should ensure that voicemail, autoattendant, and interactive voice response systems are clear and audible and that they are pro-

⁵³See 7 C.F.R. § 15b.4(b)(1)(ii) (2009) (prohibiting methods of discrimination with discriminatory effect); 28 C.F.R. §§ 35.130(b)(1)(ii), 41.51(b)(1)(ii) (2009) (equal opportunity to participate and benefit); 29 U.S.C. § 794; 42 U.S.C. § 12132; 28 C.F.R. § 35.160(a) (2009) (effective communication); see also *Alexander*, 469 U.S. at 301 (meaningful access).

⁵⁴Memorandum from Scott E. Cade, Deputy Commissioner and Director, New York State Office of Temporary and Disability Assistance, Center for Child Well-Being, to CSE [Child Support Enforcement] Coordinators, SCU [Support Collection Unit] Supervisors (June 1, 2009) (on file with author) ("Customer Service Helpline Update: Third Party Referrals and ADA Information").

grammed to allow individuals to request more time to make selections or leave messages. Autoattendant and interactive voice response systems should default to a live person when an option is not selected within the allotted time period. They should also offer callers an immediate option of bypassing the voice menu system to speak to a live person.⁵⁵

Answer TTY with a Live Person. Public benefits agencies should have a TTY that is answered by a live person so that many of the problems that TTY callers face with interactive voice response systems can be avoided.⁵⁶

Use Text-Based Communication. Some deaf and hard-of-hearing individuals prefer text-based communication (e-mail, text messaging, and instant messaging) for at least some types of remote communication.⁵⁷ Public benefits agencies should communicate with individuals with disabilities through text-based communication when necessary to ensure effective communication with these individuals and should offer applicants and recipients the option of communicating with the agency through text-based communication. Doing so would not necessarily require additional staff resources as increased staff time spent communicating by these methods should be offset by a decrease in staff time required to make and receive client calls. If an agency permits text-based communication, it should develop policies to ensure that messages are read and responded to within specified time periods.

Create Release Forms. Agencies can allay confidentiality and privacy concerns about communicating with (nonrelay) third parties by having clients sign release forms authorizing the agency to

communicate with third parties. Agencies should create release forms for this purpose.

Improve Staff Training. Agency and call-center or other contractor staff members answering telephones and making outgoing calls to applicants and recipients should be trained in how to answer and place direct TTY and relay calls and in agency policies for making or answering these calls and timetables for responding to TTY messages. They should also be trained in how to communicate with hard-of-hearing individuals by, for example, pacing communication and placing calls from locations with minimum background noise. Staff members should be trained in general ADA requirements, especially the obligation to provide reasonable modifications such as exceptions to agency policies when necessary to ensure effective communication with deaf and hard-of-hearing individuals.⁵⁸



The ability of public benefit applicants and recipients to communicate with public benefits agencies through other than face-to-face communication is critical. Advocates should be aware of potential communication barriers, legal requirements, and best practices for effective communication and should take on communication-access issues in their advocacy efforts.

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COMMENTS?

We invite you to fill out the comment form at www.povertylaw.org/reviewsurvey. Thank you.

—The Editors

⁵⁵Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, *supra* note 11, at 2; see also Inclusive Technologies, Checklist for TTY IVR Accessibility, <http://bit.ly/12Ebir> (IVR accessibility checklist asking whether there is option to reach live person).

⁵⁶Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, *supra* note 11, at 2.

⁵⁷See *supra* note 5.

⁵⁸28 C.F.R. §§ 35.130(b)(7), 35.160(a) (2009); see also U.S. Department of Justice, ADA Best Practices Tool Kit for State and Local Governments ch. 3, <http://bit.ly/2hvazt> (last updated Sept. 14, 2009) (“General Effective Communication Requirements Under Title II of the ADA”).



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