

Provider Regulation

Advocates for Deaf Community Expose Health-Care Provider Compliance Challenges

Many of the millions of deaf people in the U.S. have an acute need for legal services, especially in the medical setting, according to lawyers who focus their practice on representing members of the deaf and hard-of-hearing community.

New York's Eisenberg & Baum LLP, which dedicates much of its practice to serving the needs of these individuals, is giving health-care providers and health systems insights on how they can ensure that deaf individuals have equal access to the medical care they need.

By bringing claims on behalf of deaf patients and their families—under the Americans With Disabilities Act, the Rehabilitation Act, the Affordable Care Act's Section 1557, as well as state anti-discrimination laws—the firm's lawyers keep the pressure on providers, employers and public agencies to ensure they are meeting their obligation to communicate effectively with the deaf and hearing impaired. Although the firm exclusively represents plaintiffs, it has suggested model policies and procedures in a number of cases to help providers address their clients' concerns in health-care settings.

The ADA for over 25 years has required places of public accommodation—including hospitals and health-care providers—to ensure they have a means of effectively communicating with deaf and hard-of-hearing people, but many facilities don't understand what that entails, partners Eric M. Baum and Andrew Rozynski told Bloomberg BNA.

The stakes can be high for providers because the costs of litigating the claims these individuals bring can be a lot higher than the costs of providing the interpretation services that best meet their needs, the attorneys said.

Discrimination Experience. The firm handles a range of legal issues for its deaf clients but mostly pursues discrimination claims on their behalf. Clients often seek their assistance with workplace-based claims, and the firm's lawyers speak up for clients in their interactions with police. Public authorities often don't understand how to communicate with deaf people, and misunderstandings occur that lead to a need for legal counsel, the attorneys said.

Baum had over 20 years of experience litigating discrimination cases when he realized deaf individuals often lacked representation in legal matters and didn't know where to go to find it. "No law firm was handling

these cases," Baum told Bloomberg BNA, noting he saw many instances of blatant discrimination against the deaf that went unremedied.

Baum convinced partner Douglas Eisenberg the firm "could make a difference," and the Eisenberg & Baum Law Center for Deaf and Hard of Hearing was born. Rozynski joined the firm and now serves as the center's co-director, along with Sheryl Eisenberg-Michalowski, the firm's deaf liaison/advocate.

Eisenberg-Michalowski has been deaf since birth, and Rozynski, whose parents are deaf, is fluent in American Sign Language (ASL). Four attorneys and two full-time paralegals round out the center's staff.

Challenges for Deaf Patients, Providers. The center's mission is to change the way hearing people treat deaf individuals. One of the areas most in need of change, they have found, is health care, as witnessed by several cases in which Eisenberg & Baum has sued facilities or provided assistance to attorneys less-experienced in this area.

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ERIC M. BAUM, EISENBERG & BAUM, NEW YORK

Providers for many years relied on family members to interpret for deaf patients or believed they could carry on complex medical discussions with deaf individuals through lip-reading or passing notes. These are "misconceptions," Rozynski said. Most deaf people can't follow a conversation through lip-reading, and many have difficulty comprehending doctors' written notes.

English isn't a deaf person's first language, Rozynski said, and deaf people can have the same difficulties with English comprehension as non-native English speakers. Many people grow up using ASL to communicate, and that isn't the same as speaking English.

Providers have made efforts to comply with the ADA's requirements, but those efforts sometimes fall short, the attorneys said.

Most deaf people prefer live ASL interpreters, Eisenberg-Michalowski said. Interpreters who are familiar with medical terms generally are the most effective for communicating with deaf patients or patients' deaf family members.

Hospitals and health-care providers, however, often resist requests for live interpreters because they are expensive. And, as Rozynski said, it isn't always necessary to have an interpreter on staff to provide 24/7 interpreting services in a hospital setting.

Some providers have tried to fill the gap by using video remote interpreting (VRI) services. VRI services use the internet to connect an off-site ASL interpreter to a deaf patient or family member. The services can be available at odd times or in areas where there isn't a large demand for the services.

VRI services also have several drawbacks, according to Eisenberg-Michalowski. A good internet connection, for example, is essential to use VRI services smoothly, and many hospitals simply don't have one, she said. Rozynski added that there may be clinical situations in which VRI services aren't a good fit. For example, a patient who has just had back surgery usually isn't able to sit up and look at a computer screen to follow the remote interpreter.

Improvement Suggestions. Health-care providers and facilities can best serve deaf people by assessing each individual's needs as soon as he or she arrives seeking treatment, Baum told Bloomberg BNA. Each person should have an individualized communication plan.

The plan should address the circumstances under which the individual will need a live interpreter versus when a VRI service would be adequate, he said. For example, live interpreters may be needed prior to complex procedures to explain to patients the treatment's scope, the risks involved and the discharge plan. But there might be a time during a hospital stay when the patient could communicate effectively with providers through some other means. VRI services provide flexibility, Rozynski said.

Across-the-board plans aren't optimal because "patients' needs vary with the situation," Baum said. He recommends providers assess communication needs on a case-by-case basis and that they designate a person to be in charge of ensuring the plan is followed.

Health-care providers often fail in providing effective communication for deaf people because they "don't ask what's needed; they just go with what they think is appropriate," Rozynski said.

They also often fail when it comes to cultural sensitivity. This includes approaching deaf people and talking to them face-to-face. It's important to speak to the person, not to his or her interpreter, Eisenberg-Michalowski said.

Some providers balk at providing some means of communication because of the cost, the attorneys noted. But providing a live ASL interpreter or training staff to care appropriately for deaf patients may cost a

lot less than a lawsuit. Rozynski said doctors or clinics required to comply with the ADA also may be eligible for tax credits available to small businesses that implement effective communication systems.

And then there is the publicity: Eisenberg-Michalowski said deaf individuals tend to spread the word when they find health-care providers who are sensitive to their needs and willing to provide interpreters.

Personal Reasons. Rozynski has very personal reasons for representing deaf clients. He told Bloomberg BNA he often acted as an interpreter for his deaf parents as he was growing up. When his father lost his job during Rozynski's college years, he watched as potential employers lost interest once they learned his father was deaf.

Following that experience, Rozynski designed his legal education to prepare himself to serve the deaf community. He opened his own small law firm after graduation exclusively to represent deaf clients. He brought that practice to Eisenberg & Baum after meeting Eisenberg-Michalowski at a conference and learning the firm shared his goals.

Eisenberg-Michalowski experienced discrimination first-hand. Mainstreamed through the New York City educational system, she often felt as though she were drowning while in school, she told Bloomberg BNA. It wasn't until college, and later grad school, that she realized she had the right to demand support services that would help her succeed.

Eisenberg-Michalowski's role at the firm is to facilitate matters between the attorneys and their deaf clients, ensuring the clients understand the legal process. She also spreads word of the firm throughout the deaf community.

Many deaf people still feel lost, she said. Some don't realize there are lawyers who know and understand the issues they face and are able to represent deaf people effectively. When she explains the firm's mission, she finds community members are excited to learn they have advocates to fight for their rights, including equal access to health care, Eisenberg-Michalowski said.

Eisenberg & Baum wants to change the way employers, providers and others treat members of the deaf and hard of hearing community, Baum told Bloomberg BNA. The firm's biggest successes, he said, have come when it has been able to "effectuate positive policy change."

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