

Dispelling the Myth that Privacy Laws Prevent Accessible Videoconferences

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This paper aims to dispel the myth that privacy legislation prohibits the use of closed captions and ASL interpreters during videoconferences. As a result, it aims to ensure that universities, health care providers, and any entity will fully honor accessibility requests for videoconferences that they host.

Videoconferencing is an essential component of modern life, especially in education and health care settings. In 2020, 75 percent of all undergraduate students in the United States took at least one remote college course.¹ In 2021, 37% of adults used a telemedicine service.² The use of videoconferencing platforms like Zoom skyrocketed during the pandemic, and a leading expert from the Harvard School of Business predicted that virtual meetings will be the norm in many settings moving forward.³

For the millions of Americans who are deaf and hard of hearing,⁴ closed captions, Communications Access Real Time Translation (CART), or an American Sign Language (ASL) interpreter are required to access videoconferencing. Therefore, if people who are deaf, hard of hearing, or DeafBlind are not provided with closed captions or an interpreter for a videoconference, they will not have access to the growing worlds of telemedicine and online education. This could exacerbate already existing disparities in education, employment, and health among deaf and hard of hearing people.⁵

¹ *Fast Facts: Distance Learning*, National Center for Education Statistics, <https://nces.ed.gov/fastfacts/display.asp?id=80> (last visited March 31, 2023).

² *Telemedicine Use Among Adults: 2021, United States*, Centers for Disease Control and Prevention, <https://www.cdc.gov/nchs/products/databriefs/db445.htm> (last visited April 17, 2023).

³ *Love them or hate them, virtual meetings are here to stay*, The Economist, <https://www.economist.com/international/2021/04/10/love-them-or-hate-them-virtual-meetings-are-here-to-stay> (last visited March 31, 2023).

⁴ *Deaf and Hard of Hearing Employment Statistics*, Gallaudet Univ., <https://www.gallaudet.edu/office-of-international-affairs/demographics/deaf-employment-reports/> (last visited March 29, 2023).

⁵ *Health Disparities Among Adults With Hearing Loss: United States, 2000-2006*, Center for Disease Control and Prevention, [https://www.cdc.gov/nchs/data/hestat/hearing00-06/hearing00-06.htm#:~:text=Prevalence%20of%20trouble%20hearing,-During%20the%20period&text=Men%20\(4.3%25\)%20were%20more,adults%20aged%20065%20and%20over.](https://www.cdc.gov/nchs/data/hestat/hearing00-06/hearing00-06.htm#:~:text=Prevalence%20of%20trouble%20hearing,-During%20the%20period&text=Men%20(4.3%25)%20were%20more,adults%20aged%20065%20and%20over.) (last visited March 31, 2023); *Deaf and Hard of Hearing Employment Statistics*, Gallaudet Univ., <https://www.gallaudet.edu/office-of-international-affairs/demographics/deaf-employment-reports/> (last visited March 29, 2023).

Moreover, current federal disability law mandates the provision of closed captions and ASL interpreters to people who are deaf, hard of hearing, and DeafBlind in certain circumstances. Title II and III of the Americans with Disabilities Act requires public accommodations, including schools and hospitals, to provide qualified readers or interpreters and other similar accommodations to people with disabilities.⁶ Furthermore, Section 504 of the Rehabilitation Act of 1973 prohibits employers and organizations who receive financial assistance from any federal department or agency from discriminating against people based on their disability.⁷

Despite these stakes, the National Association of the Deaf (NAD) continues to receive complaints from people who are deaf, hard of hearing, or DeafBlind, who have had their requests for third-party ASL and captioning services during a videoconference denied over concerns about privacy. According to the complainants, the denials typically come from universities and health care providers hosting videoconferences.

More particularly, the university or health care provider will justify the denial by claiming that privacy laws prevent them from allowing third parties, such as an ASL interpreter or provider of closed captions, to attend their videoconference. The person requesting an ASL interpreter or closed captions for the videoconference is not given the opportunity to sign a waiver that consents to the presence of a third party at the video conference. Instead, the person is met with a blanket denial.

According to some people who complained to NAD, universities and health care providers usually do not elaborate on which specific privacy law they believe prevents the use of closed captions or an ASL interpreter during a videoconference. NAD reached out directly to one university and asked for the specific privacy statute that concerned them. The university still did not give a direct answer.

As explained in detail below, current United States privacy law does not prevent the use of closed captions and ASL interpreters during medical or educational videoconferences. Nevertheless, because the refusals for closed captions and ASL interpreters often take place in medical, educational, and research settings, we speculate that universities and health care providers may be concerned about the Family and Educational Rights Privacy Act (FERPA), the

⁶ 42 U.S.C. § 12111(9)(B); 42 U.S.C. § 12181(7)(F); 42 U.S.C. § 12181(7)(J).

⁷ *Your Rights Under Section 504 of the Rehabilitation Act*, U.S. Department of Health and Human Services, <https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/504.pdf> (last visited April 12, 2023).

Health Insurance Portability and Accountability Act (HIPAA), and Institutional Review Board (IRB) policies.

Moreover, many individuals who deny the use of closed captions or interpreters for videoconferences with covered entities are not attorneys well-versed in federal privacy statutes and disability law. They are well-meaning medical professionals and university administrators who are misinformed regarding the language of privacy statutes such as HIPAA and FERPA.

But the result of this misinformation is inaccessible videoconferences that lead the patients and students who are deaf, hard of hearing patients, or DeafBlind to suffer the consequences of. This inaccessibility prevents these students and patients from accessing essential medical and educational services.

This paper will first address that hospitals, universities, and other entities are not beholden to a generally applicable federal privacy law that regulates the use of personal data. It then explains how sectoral privacy laws like HIPAA and FERPA as well as IRB Guidelines do not prohibit the use of third-party ASL and captioning services. Finally, it notes that consent forms, waivers, and contracts signed by interpreters and people who are deaf, hard of hearing, or DeafBlind can adequately address any privacy concerns from health care providers and universities.

I. There is no generally applicable federal privacy law that prohibits the use of third-party ASL and captioning services during videoconferences.

The United States does not have a federal omnibus, generally applicable privacy law that governs the collection, use, and sharing of personal data.⁸ The American Data Privacy Protection Act (ADPPA), which was introduced in the House of Representatives and was placed on the House Calendar in late 2022 is the closest the United States Congress has ever come to passing a comprehensive federal privacy legislation.⁹ However, its future is uncertain, especially because the Congress is bitterly divided along political lines. Additionally, six states have recently enacted generally applicable data privacy laws that apply only to entities operating within those states.¹⁰ A full review of how each of these state privacy

⁸ See generally Meg Leta Jones & Margot E. Kaminski, *An American's Guide to the GDPR*, 98 DENV. L. REV. 93, 106-07 (2020).

⁹ *H.R.8152 - American Data Privacy and Protection Act*, U.S. Congress, <https://www.congress.gov/bill/117th-congress/house-bill/8152> (last visited Apr. 14, 2023).

¹⁰ *US State Privacy Legislation Tracker*, International Association of Privacy Professionals, <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/> (last visited Apr 18, 2023).

laws impacts the provision of accessible services is beyond the scope of this paper. However, it is unlikely that these state laws would prohibit the use of third-party ASL and captioning services during videoconferences.¹¹ Furthermore, nonprofits are exempt from three of the state privacy laws.¹²

Instead, the United States has a variety of federal sectoral privacy laws and state privacy laws.¹³ These sectoral laws regulate the collection and use of personal data in certain sectors (health care, education, etc.) or by certain entities (hospitals accepting insurance, federal administrative agencies, etc.).¹⁴ As such, the regulations from sectoral privacy laws only apply in specific, statutorily defined circumstances. Even in sectors covered by privacy laws, like education and health care, these laws do not regulate every entity or situation within that sector. As an example, HIPAA's privacy protections do not extend to entities that do not accept insurance or sensitive health data gathered through a smartwatch.¹⁵

The sectoral nature of American privacy laws means that legal privacy obligations only extend to specific entities in specific industries during specific situations, with all these specificities enumerated within a statute. Therefore, any entity not covered by a sectoral privacy law cannot use the concept of "privacy" as an excuse to not provide third-party ASL and captioning services during videoconferences because that entity does not have any general privacy obligations under federal law.

II. Sectoral privacy laws do not prohibit the use of third-party ASL and captioning services during videoconferences.

HIPAA, FERPA, and IRB guidelines do not specifically prohibit or even address the use of closed captions, interpreters, or other accessibility services during videoconferences. Additionally, when professionals cite these specific

¹¹ For example, the Colorado Privacy Act does not apply to information regulated by FERPA, HIPAA, and IRB rules. § 6-1-1304(2). Therefore, health care entities and educational entities in Colorado would not face additional privacy hurdles from state legislation that is beyond their current federal obligations. And, as explained in Section II, these federal obligations do not prevent the use of accessible videoconferences.

¹² *Legislation in the States*, The Nonprofit Alliance, <https://tnpa.org/get-involved/policy-in-the-states/> (last visited April 18, 2023).

¹³ *An American's Guide to the GDPR* at 106-07.

¹⁴ *Id.*

¹⁵ *Guess What? HIPAA Isn't a Medical Privacy Law*, Consumer Reports, <https://www.consumerreports.org/health-privacy/guess-what-hipaa-isnt-a-medical-privacy-law-a2469399940/> (last visited Apr. 12, 2023).

statutes to circumvent the use of accessibility services, the statutes often do not apply in the circumstances presented.

HIPAA. HIPAA does not prohibit the provision of third-party ASL and captioning services. First, HIPAA applies only to specific health care entities: health plans, such as health insurance companies; most health care providers, and only those who conduct certain business electronically; and health care clearinghouses, which includes entities that process nonstandard health information they receive from another entity, such as data content.¹⁶

Health care providers believe that conversations their employees have about an individual's care or treatment with others is protected under HIPAA.¹⁷ However, according to the Privacy Rule under HIPAA, an individual's information may be used and shared for the individual's treatment and care coordination.¹⁸ So, if an individual requests the use of certain accessibility services, they must be provided under these circumstances. Similarly, under the Privacy Rule, a patient's information may be used and shared with an individual's family, relatives, friends, or others that individual may identify who are involved with the individual's health care,¹⁹ which arguably includes interpreters. If providers are concerned that conversations about an individual's care or treatment is protected under HIPAA, these concerns can be alleviated by having interpreters sign contracts guaranteeing the protection of the patient's privacy or having the patient sign a waiver or consent form.²⁰

Furthermore, due to the ongoing pandemic, health care providers have offered telehealth services, with one method known as audio-only telehealth services.²¹ To ensure compliance with various privacy laws, the U.S. Department of Health and Human Services (HHS) published a press release detailing how health care providers can ensure patients' privacy in these telehealth meetings, specifically for audio-only environments.²² However, in the release, HHS specifically described how individuals using telehealth services can "request

¹⁶ *Your Rights Under HIPAA*, U.S. Dept. of Health & Human Services, <https://www.hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html#:~:text=Your%20health%20information%20cannot%20be,purposes%20or%20sell%20your%20information> (last visited Apr. 13, 2023).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See discussion *supra*, Parts III–IV.

²¹ *Preparing for a virtual visit*, HRSA, <https://telehealth.hhs.gov/patients/preparing-for-a-video-visit#preparing-for-your-virtual-visit> (last visited Apr. 1, 2023).

²² *Id.*

assistance like a screen reader, closed captioning, translator/interpreter, or other support as needed.”²³ As a result, one should conclude that HHS permits the use of closed captioning, interpreters, and any other support, as it would not violate any privacy statutes.

FERPA. FERPA also does not prevent the provision of third-party ASL and captioning services. FERPA is a federal law meant to protect the privacy of student education records.²⁴ Under FERPA, student education records include records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution.²⁵ The statutory language does not include any explicit statement prohibiting the use of interpreters and closed captioning technology during school-related meetings concerning students’ private information.²⁶ If schools do have concerns regarding FERPA and the provision of third-party ASL and captioning services these concerns can be easily alleviated by obtaining consent from the parent or student for the presence of an ASL interpreter or closed captions during a videoconference.²⁷ The school can also protect the privacy of the student via contract with the ASL interpreter.²⁸

Additionally, schools could be required to provide third-party ASL and captioning services during videoconferences to students. According to a fact sheet released by the U.S. Department of Justice and the U.S. Department of Education, school districts are responsible for providing effective language assistance in circumstances where either a child or a parent may not understand the language of the school official.²⁹ Just as school districts are responsible for providing language assistance to non-English speakers, they should also be held responsible for providing effective accessibility assistance to people with disabilities.

Furthermore, according to the Department of Justice and the Department of Education, school districts are responsible for ensuring the requested interpreter can communicate with both the school administrator and the student or parent

²³ *Id.*

²⁴ *Family Educational Rights and Privacy Act (FERPA)*, U.S. Department of Education, <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited Apr. 1, 2023).

²⁵ 20 U.S.C. § 1232(g)(a)(4).

²⁶ *See* 20 U.S.C. § 1232g; 34 C.F.R. pt. 99.

²⁷ *See* discussion *supra*, Part IV.

²⁸ *See* discussion *supra*, Part III.

²⁹ *Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them*, U.S. Dept. of Justice, U.S. Dept. of Education, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>.

who may need accessibility services, and the school district is responsible for ensuring the interpreter is trained on the ethics of interpreting and the need to maintain confidentiality.³⁰ If a parent believes a school is not complying with these requirements, that parent may file a complaint and the school may be held liable.³¹

IRB Rules. Finally, IRB rules do not prohibit the provision of third-party ASL and captioning services during videoconferences. Institutional Review Boards (IRBs) were created to review research involving humans as subjects.³² IRB Guidelines do not explicitly prohibit the use third-party ASL and captioning services during research. Furthermore, IRB Guidelines allow research participants to consent to the use of ASL interpreters and closed captions during research.³³ Institutions conducting research could also contract with ASL interpreters to protect the privacy of research participants.³⁴

Additionally, IRB Guidelines encourage and require that videoconferences be accessible. IRB regulators³⁵ and advocates³⁶ agree that the research should be equitable and inclusive, and researchers' refusal to include people with disabilities in studied groups by failing to provide accessibility services furthers this societal exclusion. To help bridge this gap, the IRB Guidelines specifically require that the information given to the subject or the legally authorized representative, which may include a parent or guardian, is in a language understandable to the subject or their legally authorized representative.³⁷ As a result, researchers are required to

³⁰ *Id.*

³¹ *Office for Civil Rights (OCR) Complaint Forms*, U.S. Dept. of Education, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>.

³² *Institutional Review Boards Frequently Asked Questions*, U.S. Food & Drug Administration, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/institutional-review-boards-frequently-asked-questions> (last visited Apr. 13, 2023).

³³ See discussion *supra*, Part IV.

³⁴ See discussion *supra*, Part III.

³⁵ 45 CFR § 46.111(a)(3).

³⁶ Megan Phelan, *Institutional Review Boards Must Address the Ethics of Inclusion in Clinical Research*, American Association for the Advancement of Science, <https://www.aaas.org/news/institutional-review-boards-must-address-ethics-inclusion-clinical-research> (last visited Mar. 31, 2023).

³⁷ 45 C.F.R. § 46.116(3).

provide interpreters to help facilitate discussions, especially surrounding consent.³⁸

Other Sectoral Privacy Laws. Beyond FERPA, HIPAA, and IRB rules, there are a myriad of other federal sectoral privacy laws that govern a broad array of entities and sectors. While this paper assumes that universities and health care providers are primarily concerned about FERPA and HIPAA, these entities have not explicitly stated which privacy laws they feel prevents them from providing third-party ASL and captioning services during videoconferences. Therefore, to make clear that no current federal privacy law prevents the provision of accessible closed captions, this paper will briefly address other relevant federal sectoral privacy laws.

- The Privacy Act of 1974, which has been amended several times, governs the collection, use, and disclosure of personal information by federal agencies.³⁹
- The Children's Online Privacy Protection Act (COPPA) requires parental consent for online services before collecting personal information from children under 13.⁴⁰
- The Fair Credit Reporting Act (FCRA) regulates the collection, use, and disclosure of consumer credit information, which could be used for taking out loans or employment purposes, by credit reporting agencies and other entities that use credit reports.⁴¹
- The Electronic Communications Privacy Act (ECPA)⁴² governs how and when electronic communications can be intercepted, monitored and accessed by law enforcement entities.

³⁸ *Consenting Non-English Speakers*, University of California San Francisco, <https://irb.ucsf.edu/consenting-non-english-speakers#Use-a-qualified-interpreter-not-a-family-member-to-facilitate-the-consent-discussion> (last visited Apr. 13, 2023).

³⁹ *OVERVIEW OF THE PRIVACY ACT OF 1974*, 2020 Edition, U.S. Dept. of Justice, <https://www.justice.gov/media/1122281/dl?inline> (last visited Apr. 13, 2023).

⁴⁰ *Children's Online Privacy Protection Rule ("COPPA")*, Federal Trade Commission, <https://www.ftc.gov/legal-library/browse/rules/childrens-online-privacy-protection-rule-coppa>

⁴¹ 15 U.S.C. § 1681.

⁴² *Electronic Communications Privacy Act*, Electronic Privacy Information Center, <https://epic.org/ecpa/> (last visited Apr. 14, 2023).

- The Gramm-Leach-Bliley Act (GLBA)⁴³, whose rulemaking authority is divided between the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB), regulates the notice, collection and disclosure of non-public personal information by financial institutions such as banks.
- The Video Privacy Protection Act (VPPA) governs the use of personal information collected by video rental and streaming services.⁴⁴
- The Driver's Privacy Protection Act (DPPA) governs the use of personal information contained in records held by state Departments of Motor Vehicles.⁴⁵

These laws only apply to sectors- federal agencies, children's websites, credit reporting, law enforcement, financial institutions, video streaming, and state Departments of Motor Vehicles- that would not implicate the work of most hospitals or universities. Furthermore, most of these laws deal with the collection and use of specific sensitive data within those specific sectors and not the presence of third parties at virtual meetings. Therefore, these other sectoral privacy laws are irrelevant to the issue of providing closed captions or ASL interpreters to people who are deaf, hard of hearing, or DeafBlind.

III. Even if a specific sectoral privacy law impacts the provision of third-party ASL and captioning services during videoconferences, there are effective remedies.

As explained above, the privacy laws mentioned in this paper do not *specifically* regulate or apply in settings where a person needs to closed captions, or an ASL interpreter during a videoconference involving a health care provider or university. However, even if these privacy laws did ever apply in such a situation, there are remedies that would still allow universities and health care providers to offer third-party ASL and captioning services during videoconferences. These remedies are consent mechanisms, such as waivers and contracts.

⁴³ *Gramm-Leach-Bliley Act (Privacy of Consumer Financial Information)*, Federal Deposit Insurance Corporation, <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/8/viii-1-1.pdf> (last visited Apr. 13, 2023).

⁴⁴ 18 U.S.C. § 2710.

⁴⁵ 18 U.S.C. § 2721.

A. Universities and health care providers can require interpreters or closed caption providers to protect the privacy of a student or patient via contract.

If universities and health care providers are concerned that the presence of third parties, such as interpreters or closed caption software, on videoconferences will harm the privacy of students and patients, then they should and sometimes must ensure privacy compliance from third parties through contractual mechanisms. In HIPAA, for example, covered entities are responsible for ensuring through contracts and agreements that the third parties with whom it shares protected health information with have adequate privacy safeguards in place.⁴⁶

Therefore, hospitals and universities should require that ASL interpreters participating in videoconferences sign confidentiality agreements. ASL interpreters are professionals who are used to confidentiality agreements in their industry. Indeed, ASL interpreters are required to adhere to the Code of Professional Conduct tenets, among the most important of which is “to adhere to standards of confidential communication.”⁴⁷ Universities and health care entities can and should vet all closed caption service providers and only do business with those providers who have adequate privacy policies or agree to their privacy policies via contract. Any contractual mechanism produced by a university or health care provider can mandate that third parties also abide by the terms of legislation like FERPA or HIPAA.

The remedy is ideal, as it assures both that the privacy of a person who is deaf, hard of hearing, or DeafBlind is protected by all parties and that videoconferences are made accessible. Furthermore, the above solution places the onus of ensuring privacy and accessibility on universities, health care providers, and third parties and not on people who are deaf, hard of hearing, or DeafBlind.

B. Universities and health care providers can obtain consent from a patient or student for the use of third-party ASL or captioning services during a videoconference

While the above remedy is ideal, if it cannot be achieved, accessible videoconferences can still be achieved by asking for consent from the person requesting third-party ASL and captioning services during a videoconference. Such consent would prevent universities and health care entities from facing

⁴⁶ U.S. Department of Health and Human Services, *Business Associates*, <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html> (last visited April 18, 2023).

⁴⁷ *The National Association of the Deaf and the Registry of Interpreters for the Deaf Code of Professional Conduct*, the Registry of Interpreters for the Deaf, <https://rid.org/programs/ethics/code-of-professional-conduct/> pp. 2-3, (last visited Apr. 14, 2023).

potential liability or privacy violation claims. Again, an entity should first seek to require interpreters and closed caption providers to protect student and patient privacy via contracts and confidentiality agreements. However, if that cannot be achieved then consent should be sought from the person who is deaf, hard of hearing, or DeafBlind before denying their request for third-party ASL and captioning services during a videoconference. HIPAA, FERPA, and IRB Guidelines all provide mechanisms for obtaining consent.

More specifically, under HIPAA, patients must give written authorization before any entity storing their information discloses their protected health information,⁴⁸ which includes any information an individual's health care providers put in their medical record, conversations their doctor has about care or treatment, information in the health insurer's computer system, and billing information at their clinic.⁴⁹ Relatedly, patients can choose to authorize the use of sharing information to a closed captioning system or to an interpreter or accept any risks associated with accessibility-related services by providing their authorization. A covered entity can obtain the individual's agreement or reasonably infer, based on the exercise of professional judgment, that the individual requesting the services does not object to the disclosure of protected health information to the interpreter.,

Furthermore, some administrators or educators may argue that if they provided interpreters, closed captions, or a different accessibility service, it could ultimately create an "education record," and this information would be protected under FERPA.⁵⁰ However, under FERPA, information may be transferred to a third party if the parents of the student provides written consent.⁵¹ Similarly, under FERPA, a third-party interpreter may also assist a student during a student meeting involving the discussion of private information as long as the student's parent provides consent.⁵²

Finally, individuals who are interested in participating in IRB-approved research projects may provide broad consent or informed consent to authorize the

⁴⁸ *HIPAA Questions and Answers Relating to Research*, Johns Hopkins Medicine, [https://www.hopkinsmedicine.org/institutional review board/hipaa research/faq research.html#:~:text=Answer%3A%20Informed%20consent%20is%20required,protected%20health%20information%20for%20research](https://www.hopkinsmedicine.org/institutional-review-board/hipaa-research/faq-research.html#:~:text=Answer%3A%20Informed%20consent%20is%20required,protected%20health%20information%20for%20research) (last visited Apr. 1, 2023).

⁴⁹ *Summary of the HIPAA Privacy Rule*, U.S. Dept. of Health & Human Services, <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited Apr. 13, 2023).

⁵⁰ 20 U.S.C. 1232g(a)(4)(A).

⁵¹ 20 U.S.C. 1232g(b)(4)(B).

⁵² 34 C.F.R. pt. 99.31(a)(1)(i)(B)(1-3).

use of accessibility services. Researchers can obtain broad consent when the researcher is providing information related to the storage, maintenance, and secondary research uses of identifiable private information,⁵³ which would include any information created as a result of using closed captions or an interpreter. With broad consent, this would ensure individuals understand any potential risks associated with using accessibility services. If the researcher believes there must be informed consent rather than broad consent to provide accessible services, under the relevant IRB requirement, the information given to the subject or the legally authorized representative must be in a language understandable to the subject or the legally authorized representative,⁵⁴ which may require the use of closed captions or an interpreter.

* * *

Protecting the privacy of all people, including people who are deaf, hard of hearing, or DeafBlind, is an admirable goal. Yet achieving this goal does not have to come at the expense of accessible videoconferences. People who are deaf, hard of hearing, or DeafBlind deserve full access to online health and education, and this access can be achieved through closed captions and ASL interpreters. Specific federal sectoral privacy laws often do not apply in many circumstances and even when they do apply, they do not prevent the use of closed captions or ASL interpreters. Despite this reality, if health care entities and universities continue to have privacy concerns regarding ASL interpreters, closed captions, and other third-party services, they can use contracts and waivers to ensure third parties respect patient and student privacy as well as limit their liability.

⁵³ 45 C.F.R. § 46.116.

⁵⁴ 45 C.F.R § 46.116(a)(3).