

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
THE WASHINGTON STATE HEALTH CARE AUTHORITY**

I. BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and the Washington State Health Care Authority (“HCA”). HCA is a state agency that, among other things, administers the Washington Apple Health program (“Apple Health”). Apple Health is Washington’s Medicaid program. Medicaid is the federally-matched medical aid program under Title XIX of the Social Security Act that provides health care coverage for people with low incomes and disabilities. Through Apple Health, HCA ensures that people in need are provided with access to preventative care and other health care services.
2. Health care providers are obligated under the Americans with Disabilities Act and its implementing regulations to take those steps necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless doing so would be considered a fundamental alteration or undue burden. Health care providers are obligated to furnish appropriate auxiliary aids or services, when necessary to ensure effective communication with such individuals with disabilities, including companions with disabilities.
3. Beginning in 2012, HCA opted to assist health care providers in Washington to meet their ADA obligations regarding effective communication during Apple Health appointments by creating and promoting a program under which sign language interpreters can be obtained for such appointments at state expense (“Interpreter Services Program”).
4. This matter was initiated by complaints filed with the United States alleging that HCA is administering its Interpreter Services Program in a discriminatory manner with respect to individuals who are deaf or hard of hearing in their attempts to access care through Apple Health. Specifically, the complaints alleged that although HCA holds its Interpreter Services Program out to health care providers as a means of providing interpreters for Apple Health appointments, it has so few sign language interpreters available to fill such appointments that the appointments are routinely cancelled or rescheduled, or the individuals are forced to continue without the assistance of an interpreter.

II. INVESTIGATION

5. The U.S. Attorney’s Office is authorized under the ADA to determine HCA’s compliance with Title II of the ADA and Title II’s implementing regulation, and to resolve the matter by informal resolution, such as through the terms of this settlement agreement. If informal resolution is not achieved, the U.S. Attorney’s Office is authorized to issue findings, and, where appropriate, to negotiate and secure voluntary compliance

agreements. 28 C.F.R. pt. 35, Subpart F. The Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action to enforce Title II of the ADA.

6. HCA is a “public entity” within the meaning of Title II of the ADA, 42 U.S.C. § 12131(1)(B). The ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132.
7. A public entity may not, in providing an aid, benefit, or service, directly or through contractual or other arrangements, deny an individual with a disability the opportunity to participate in or benefit from that aid, benefit, or service. 28 C.F.R. 35.130(b)(1)(i). Likewise, a public entity may not, directly or through contractual or other arrangements, provide a qualified individual with a disability with an aid, benefit, or service that is not equal to the aid, benefit, or service provided to others. 28 C.F.R. 35.130(b)(1)(ii). Nor may the entity provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result or to gain the same benefit from the entity’s aid, benefit, or service. 28 C.F.R. 35.130(b)(1)(iii).
8. On the basis of the United States’ investigation, the United States determined that HCA’s Interpreter Services Program holds itself out as a service by which health care providers may obtain sign language interpreters for Apple Health appointments in which a patient or companion requires such assistance for effective communication. The United States further determined that HCA’s Interpreter Services Program has been administered since 2012 through a contract with an interpreter services agency historically called CTS LanguageLink. Since 2012, CTS LanguageLink has had as few as zero and as many as approximately ten sign language interpreters signed up to offer sign language services for all Apple Health appointments statewide. In many counties, CTS LanguageLink has zero sign language interpreters available. As a result of this shortage, the fulfillment rate (the number of times the HCA Interpreter Services Program has been able to provide a sign language interpreter for each time one is requested under this system) has been at or below 30% since 2012. The low fulfillment rate has, in turn, lead to cancellation or rescheduling of health care appointments and/or the use of alternative and presumptively less effective means of communication during healthcare appointments with individuals who are deaf or hard of hearing or their companions.
9. On the basis of this investigation, the United States has concluded that HCA’s current administration of the Interpreter Services Program violates Title II of the ADA because it fails to ensure that the benefits of the Apple Health program are provided equally to qualified individuals with disabilities. Further, the administration of the Interpreter Service Program is such that qualified individuals with disabilities are not afforded an equal opportunity to obtain the same results and benefits under the Apple Health program as others.

10. The Parties have determined that this matter can be resolved without resort to litigation and have agreed to remediate the identified issues through the terms of this Agreement.

III. DEFINITIONS

11. The term “Qualified Interpreter” means an interpreter who, via an on-site appearance or VRI service, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. § 35.104. Qualified interpreters include, for example, sign language interpreters, oral transliterators, tactile interpreters, and cued-language transliterators. Whether or not a particular interpreter is qualified will depend upon the form of communication that the patient or companion at issue typically uses. For purposes of this Agreement, a Qualified Interpreter must be knowledgeable with medical terminology.
12. The term “Patient” shall be broadly construed to include any individual who is seeking access to, or participating in, the goods, services, privileges, advantages, or accommodations of Apple Health.
13. The term “Companion” means a person who is deaf or hard of hearing and is a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of Apple Health, who, along with such individual, is an appropriate person with whom the public accommodation should communicate. 28 C.F.R. § 35.160.
14. The term “Interpreter Services Provider” or “ISP” shall refer to the entity that holds the contract with HCA to provide interpreter services for Apple Health appointments.
15. The term “HCA ISP System” shall refer to the ISP’s system under which health care providers can arrange for Qualified Interpreters to attend the medical and behavioral health appointments covered by AppleHealth for patients and companions with disabilities.
16. The term “Geographic Region” shall refer to the Accountable Communities of Health Regions set forth in Attachment A.

IV. CORRECTIVE ACTION

A. Qualified Interpreters

17. Interpreter Services Capacity. By July 1, 2018, HCA will enter a contract with an Interpreter Services Provider that has existing, active relationships with at least one hundred (100) Qualified Interpreters in the State of Washington. Further the ISP with which HCA contracts must have the ability to provide Qualified Interpreters to all Geographic Regions within the state.

18. Interpreter Services Competency. HCA's ISP must have an employee on staff who is either already trained on ADA regulations regarding effective communication with persons who are deaf or hard of hearing or who receives such training within **sixty (60) days** of the start of the ISP contract ("ADA Trained Employee"). HCA's ISP's ADA Trained Employee's job responsibilities must include working with HCA's ADA Coordinator to address complaints regarding the provision of sign language interpreters received through the grievance procedure referenced in Paragraph 26 below.
19. Interpreter Services Fulfillment. By April 2019, HCA's ISP System must deliver a fulfillment rate for Qualified Interpreters provided for Apple Health appointments in which a Patient or Companion requests a Qualified Interpreter of more than 90% in each Geographic Region in Washington State. Fulfillment rate shall be measured by the average of each month for each six-month period within the duration of this Agreement, beginning with the period from September 2018 to March 2019.
20. Improvements to Fulfillment. If the HCA ISP System fails to meet the requirements of Paragraph 19 for any six-month period in which it is measured:
- a. HCA must, for each Geographic Region with a fulfillment rate of under 90%, measured by the standard set forth in Paragraph 19, evaluate and identify the barriers to fulfillment. This evaluation must include consultation with stakeholders referenced in Paragraph 27 below.
 - b. If the results of the HCA evaluation indicate that a low number of available sign language interpreters is responsible for the failing levels of fulfillment, HCA shall:
 - i. Evaluate industry standards (defined as other employer's contract rates and treatment of sign language medical interpreters in the Pacific Northwest) and shall ensure that HCA/HCA's ISP's contract terms are at least as good as industry standard; and
 - ii. Conduct direct outreach to sign language-certified interpreters statewide informing them of improvements to the contract terms and rates and providing them with a mechanism to:
 1. Register to provide sign language interpreting with the ISP; or
 2. Provide feedback on the basis of their disinterest.
 - iii. Use the results of subparagraph (b)(ii)(2) of this section to inform further remedial measures.
 - c. Regardless of the cause of the shortfall, HCA shall propose appropriate, good faith measures to remedy the problems identified by Paragraphs 20(a) (and if applicable, 20(b)(ii)(2)) and shall identify these measures to the United States. If the United States and HCA are unable to reach agreement regarding appropriate remedial

measures, the United States may consider it a breach and take measures to enforce this Agreement as set forth in Paragraph 32.

20. Video Remote Interpreting. If, at any point during the term of this Agreement, HCA decides to provide Video Remote Interpreting (VRI) through HCA's ISP System, HCA agrees to abide by the following terms:

- c. The HCA ISP System's VRI service shall have real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that comply with the requirements of 28 C.F.R. § 35.160(d).
- d. HCA shall not be responsible for ensuring that the health care providers who are the end-users of the system comply with the equipment and training requirements of 28 C.F.R. § 35.160(d), however, HCA shall require health care providers using their system to agree as a term of use that they:
 - i. Will abide by the equipment and training requirements of 28 C.F.R. § 35.160(d); and
 - ii. Will not rely upon VRI in circumstances where it would be incompatible with effective communication, including but not limited to circumstances where the patient or companion has limited range of view or cognitive or other sensory impairments.

B. Immediate Relief for Health Care Providers

21. Lack of Qualified Interpreters. Within **thirty (30) days** of the Effective Date of this Agreement, if there are no Qualified Interpreters on contract with HCA's ISP that are available for a given appointment for which HCA's ISP receives a request for Qualified Interpreter, HCA or HCA through its ISP shall:

- c. Immediately notify the requester –
 - i. That there is no ASL interpreter available;
 - ii. That the requester may cancel the appointment and be eligible for the reimbursement process or leave the appointment in pending status and continue attempting to fill the request (the requester shall be permitted to cancel at any time and remain eligible for the reimbursement process); and
 - iii. A reminder of the health care provider's legal obligations under Title III of the ADA to provide an appropriate auxiliary aid or service, including qualified interpreters where necessary to ensure effective communication, regardless of reimbursement by HCA.

- d. Send immediate notifications to the requester whenever the appointment status changes.

C. Sign Language Interpreter Data

22. Data to be Collected. Within **thirty (30)** days of the Effective Date of this Agreement, HCA (through its ISP as needed) will begin collecting data regarding the following:
- a. The number of Qualified Interpreters contracted with HCA's ISP to provide sign language interpreting (including the number of Qualified Interpreters qualified in American Sign Language, Signed English, and tactile interpreting and including the number of Certified Deaf Interpreters) (searchable by Geographic Region);
 - b. The number of requests made for Qualified Interpreters for Apple Health appointments statewide (searchable by date and Geographic Region) and the corresponding result of each request for sign language interpreter, including whether it was fulfilled, and if not, whether the appointment: (1) proceeded; (2) was rescheduled; or (3) was cancelled.
23. Data Publishing. HCA shall make the data collected in Paragraph 22(a) ("Data") available to the public through publication on either its website or its ISP's website. The Data shall be updated no less frequently than once per month, with the first publication to the website being no more than **sixty (60) days** from the Effective Date of this Agreement.

E. Community Engagement

24. Website Information. Within **thirty (30) days** of the Effective Date of this Agreement, HCA shall:
- c. Conspicuously post information regarding the availability of Qualified Interpreters for Apple Health patients and companions through HCA's ISP System and describing the method by which health care providers can access such services on its website (currently captured at www.hca.wa.gov/free-or-low-cost-health-care/apple-health-medicare-coverage);
 - d. Conspicuously post contact information for HCA's ADA Coordinator on its website providing HCA contact information (currently captured at www.hca.wa.gov/contact-hca); and
 - e. Conspicuously post information about HCA's ADA grievance procedure (referenced in Paragraph 25) on HCA's website for Interpreter Services (currently located at www.hca.wa.gov/billers-providers/programs-and-services/interpreter-services), including contact information for the ADA Coordinator and a description of how to file a grievance.

25. ADA Grievance Procedure. Within **thirty (30) days** of the Effective Date of this Agreement, HCA will adopt and publish a grievance procedure, amending the existing procedure (adopted in June 2017). As part of the amended procedure, HCA shall:

- c. Provide a method by which complainants may file their grievance online;
- d. Extend the period within which to make a complaint to 90 calendar days after the date of the alleged violation; and
- e. Retain records of all grievances filed through this process and actions taken in response, including communications with complainants, for the duration of this Agreement.

26. Communication with Health Care Providers. By August 1, 2018, HCA shall send a communication to health care providers in Washington that are participating in Apple Health through the usual and customary methods, including but not limited to sending notification through the GovDelivery listserv and posting on HCA's Interpreter Services Program website. This communication will include the following information:

- c. A description of the low fulfillment rates for sign language interpreters booked through the HCA Interpreter System since 2012;
- d. Steps that HCA has taken to address problems encountered with low fulfillment rates for sign language interpreters, including reference to the entry of this Agreement;
- e. A description of the short term solution set forth in Paragraph 21 above and how health care providers can utilize that solution;
- f. A link to the grievance procedures set forth in Paragraph 25; and
- g. A reminder of health care providers' independent obligations to provide interpreter services where necessary under Title III of the ADA.

HCA shall share a draft of this letter with the United States by July 1, 2018 and shall reach agreement regarding its content prior to its distribution.

27. Stakeholder Meetings. For the duration of this Agreement and beginning no later than **sixty (60) days** from the Effective Date of this Agreement, HCA shall conduct a minimum of quarterly stakeholder meetings for the first nine months of this agreement (*i.e.* at least three (3) such meetings), after which it shall, if approved by DOJ, conduct a minimum of two stakeholder meetings per year. These meetings will be between members of HCA responsible for the administration of the HCA ISP System, representatives from the ISP, representatives from the United States, and community stakeholders representing health care providers participating in Apple Health and members of the deaf community (including but not limited to those invited to attend the

stakeholder meetings held in 2017) to assess progress in providing access to Qualified Interpreters and to identify remaining areas of concern.

J. Reporting and Monitoring

28. Frequency of Reports. During the term of this Agreement and beginning as of the Effective Date of this Agreement, HCA will report in the first week of every business quarter (or, if DOJ approves, in the first week of every other business quarter), and once thirty (30) days prior to end of the term of the Agreement, to the U.S. Attorney's Office as to its compliance with this Agreement. The reports shall be forwarded by electronic mail or regular mail to this address or to the designated U.S. Attorney's Office employee handling this matter, should the assignment change (in which case HCA shall receive notice of the change in writing from the U.S. Attorney's Office):

Christina Fogg
Assistant United States Attorney
United States Attorney's Office, W.D. Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
christina.fogg@usdoj.gov

29. Content of Reports. The quarterly compliance reports shall describe efforts to comply with the terms of this Agreement and shall include:
- a. Confirmation that HCA has performed the requirements due within that reporting period from the provision set forth above;
 - b. Copies of all ADA grievances received in the reporting period by either the ISP or HCA (to either the ADA Coordinator, Risk Management, or any other HCA entity receiving complaints) and actions taken in response; and
 - c. Beginning in April 2019, and at intervals of every other reporting period, the fulfillment rate set forth in Paragraph 19 and steps taken in response, as applicable from Paragraph 20.

K. Enforcement and Miscellaneous

30. Duration of the Agreement. This Agreement will be in effect for three (3) years from the Effective Date or for as long as the State offers providers interpreter services, whichever is shorter.
31. Enforcement. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from undertaking further investigation or from filing a civil suit under Title II in this matter, except as provided in Paragraph 33. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against HCA for violations of any statutes,

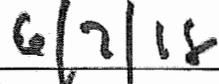
regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA for violations unrelated to this matter.

32. Compliance Review and Enforcement. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or any requirement thereof has been violated by instituting a civil action in U.S. District Court. If the United States believes that this Agreement or any portion of it has been violated, it will raise its claim(s) in writing with HCA, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow HCA thirty (30) days from the date it notifies HCA of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.
33. Entire Agreement. This Agreement and the attachments hereto constitute the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other federal law.
34. Binding. This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. Each party has a duty to so inform any such successor in interest.
35. Non-Waiver. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.
36. Effective Date. The effective date of this Agreement is the date of the last signature below.
37. Execution. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR WASHINGTON STATE HEALTH CARE AUTHORITY:

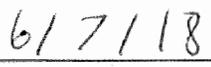


Sue Birch
Director

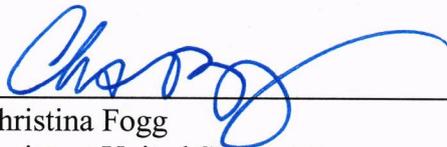

Date



Nissa Iversen
Assistant Attorney General


Date

FOR THE UNITED STATES:



Christina Fogg
Assistant United States Attorney
United States Attorney's Office

6/11/2018

Date

ACH Regions Map

