

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
BRIARLEAF NURSING AND CONVALESCENT, INC.**

This Settlement Agreement (“the Agreement”) is entered into between the United States of America, acting through the United States Attorney’s Office for the Eastern District of Pennsylvania (“U.S. Attorney’s Office”), and Briarleaf Nursing and Convalescent, Inc. (“Briarleaf”).

BACKGROUND

1. Briarleaf is a Pennsylvania corporation that operates a skilled nursing facility at 252 Belmont Avenue in Doylestown, Pennsylvania (“the facility”).
2. Briarleaf provides health care and other services to residents of the facility.
3. This matter was initiated by a complaint filed with the United States alleging that Briarleaf violated title III of the Americans with Disabilities Act (the “ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36. Specifically, complainant alleged that Briarleaf personnel refused to provide sign language interpretive services when necessary to ensure effective communication with complainant’s mother, a prospective resident at the facility.
4. Complainant’s mother was deaf for her entire life and used sign language as her primary means of communication. Complainant served as his mother’s primary caretaker and power of attorney. Complainant’s mother died in June 2015, and complainant currently serves as the representative of her estate.
5. Complainant alleged that on May 19, 2015, he contacted Briarleaf by telephone to inquire about his mother’s potential admission to the facility, as she was being discharged shortly from a local hospital and needed the level of care that Briarleaf provides.
6. Complainant allegedly told Briarleaf’s admissions representative that his mother would require a sign language interpreter 24 hours per day, 7 days per week. The Briarleaf representative allegedly responded that a sign language interpreter was not in the facility’s budget.

INVESTIGATION AND FINDINGS

7. The U.S. Attorney’s Office is authorized under 42 U.S.C. § 12188 and 28 C.F.R. Part 36, Subpart E, to investigate the allegations of the complaint to determine Briarleaf’s compliance with title III of the ADA. The U.S. Attorney’s Office has the authority to, where appropriate, negotiate and secure voluntary compliance agreements such as this Agreement, and to bring civil actions enforcing title III of the ADA should it fail to secure voluntary compliance.

8. Complainant's mother is an individual with a disability within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.104.
9. Briarleaf is a private, for-profit corporation that owns and operates a skilled nursing facility in Doylestown, Pennsylvania, that is registered to operate in the Commonwealth of Pennsylvania.
10. Briarleaf is a public accommodation within the meaning of title III of the ADA, 42 U.S.C. § 12181(7)(F), (K), and its implementing regulation at 28 C.F.R. § 36.104, because it owns and operates a place of public accommodation.
11. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).
12. On the basis of its investigation, the U.S. Attorney's Office determined that:
 - a. On May 19, 2015, a Briarleaf admissions representative spoke by telephone with complainant about his mother's potential admission to the facility. During this conversation, complainant informed Briarleaf that his mother is deaf and would need a sign language interpreter 24 hours per day, 7 days per week.
 - b. The Briarleaf admissions representative told complainant that a sign language interpreter was not in the facility's budget.
 - c. On May 25, 2015, Briarleaf's Nursing Home Administrator spoke with complainant about his mother's clinical condition, told him that the facility could not yet meet her clinical needs, and stated that the facility did not currently have the capability to provide the requested sign language interpreter services, but that she would research their availability.
 - d. In late May 2015, before complainant resolved the question of admission at Briarleaf or otherwise identified an appropriate nursing facility, his mother required hospitalization to treat a clinical condition. Because of the hospitalization, complainant's mother did not transition to Briarleaf or to any other nursing facility. Complainant's mother died on June 1, 2015.
13. The Parties have determined that the complaint filed with the United States can be resolved without litigation and have agreed to the terms of this Agreement. This Agreement is neither an admission of liability by Briarleaf nor a concession by the United States that its claims are not well founded.

DEFINITIONS

14. The term “auxiliary aids and services” includes qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing. 28 C.F.R. § 36.303(b)(1).
15. The term “Briarleaf Personnel” means all employees, both full and part-time, and independent contractors with contracts to work on a substantially full-time basis for Briarleaf (or on a part-time basis exclusively for Briarleaf), including, without limitation, nurses, physicians, social workers, technicians, admitting personnel, billing staff, security staff, therapists, and volunteers, who have or are likely to have direct contact with Residents or Companions as defined herein.
16. The term “qualified interpreter” means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. 28 C.F.R. § 36.104.
17. The term “Resident” shall be broadly construed to include any individual who is seeking or receiving health care or residential services from Briarleaf.
18. 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 a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate. 28 C.F.R. § 36.303(c)(1)(i).
19. “Effective Date of this Agreement” means the date of the last signature below.

EQUITABLE RELIEF

A. **Prohibition of Discrimination**

20. Nondiscrimination. Briarleaf shall provide appropriate auxiliary aids and services, including qualified interpreters, where such aids and services are necessary to ensure effective communication with Residents and Companions who are deaf or hard of

hearing. Pursuant to 42 U.S.C. § 12182(a), Briarleaf shall also provide Residents and Companions who are deaf or hard of hearing with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of Briarleaf as required by this Agreement and the ADA.

21. Discrimination by Association. Briarleaf shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of that person with someone who is deaf or hard of hearing. *See* 42 U.S.C. § 12182(b)(1)(E).
22. Retaliation and Coercion. Briarleaf shall not retaliate against or coerce in any way any person who made, or is making, a complaint pursuant to the provisions of this Agreement or exercised, or is exercising, his or her rights under this Agreement or the ADA. *See* 42 U.S.C. § 12203.

B. Effective Communication

23. Appropriate Auxiliary Aids and Services. Pursuant to 42 U.S.C. § 12182(b)(2)(A)(iii), Briarleaf will provide to Residents and Companions who are deaf or hard of hearing any appropriate auxiliary aids and services that are necessary for effective communication after making the assessment described in paragraphs 24-25 of this Agreement. Appropriate auxiliary aids and services will be provided as soon as practicable (without compromising a Resident's health care), except that the provision of on-site interpreters must be within the time frame described in paragraph 33 of this Agreement. Briarleaf will advise Residents and Companions who require auxiliary aids or services that these are available throughout the Resident's stay at the facility as requested by the Resident.
24. General Assessment Criteria. The determination of appropriate auxiliary aids or services, and the timing, duration, and frequency with which they will be provided, will be made by Briarleaf in consultation with the person with a disability. The assessment made by the applicable Briarleaf Personnel will take into account all relevant facts and circumstances, including, for example, the individual's communication skills and knowledge, and the nature and complexity of the communication at issue.
25. Time for Assessment. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided, must be made at the time that the resident arrives at Briarleaf or when the Resident who is deaf or hard of hearing encounters a healthcare provider for treatment at the facility, whichever is earlier. The applicable Briarleaf Personnel will perform an assessment (see paragraph 24) as part of the admission process and document the results in the Resident's medical records. In the event that communication is not effective, the applicable Briarleaf Personnel will reassess which appropriate auxiliary aids and services are necessary, in consultation with the person with a disability, where possible, and provide such aid or service based on the reassessment.

26. ADA Administrator/ADA Coordinators. Briarleaf will designate one employee at the facility as an ADA Administrator and further may designate one or more ADA Coordinators. The ADA Administrator or at least one ADA Coordinator, if so designated, will be available 24 hours per day, 7 days per week, to answer questions and provide appropriate assistance regarding immediate access to, and proper use of, the appropriate auxiliary aids and services, including qualified interpreters. The ADA Administrator and all designated ADA Coordinator(s) will know where the appropriate auxiliary aids are stored and how to operate them and will be responsible, as necessary, for their provision, maintenance, repair, replacement, and/or distribution. The ADA Administrator or the ADA Coordinator(s) will be responsible for the complaint resolution mechanism described in paragraph 28 of this Agreement. Briarleaf will designate the ADA Administrator and any ADA Coordinators no later than thirty (30) days following execution of this Agreement.
27. Auxiliary Aid and Service Log. Briarleaf will maintain a log in which requests for qualified interpreters on site or through video remote services will be documented. The log will indicate the time and date the request was made, the name of the Resident or Companion who is deaf or hard of hearing, the time and date of a scheduled encounter for medical treatment (if a scheduled appointment was made), the nature of the auxiliary aid or service provided, and the time and date the appropriate auxiliary aid or service was provided. If no auxiliary aid or service was provided, the log shall contain a statement why the auxiliary aid and service was not provided and identify the decision maker. Such logs will be maintained by the ADA Administrator for the entire duration of the Agreement, and will be incorporated into the annual Compliance Reports as described in paragraph 43 of this Agreement.
28. Complaint Resolution. Briarleaf will utilize its established grievance resolution mechanism for the investigation of disputes regarding effective communication with Residents and Companions who are deaf or hard of hearing. Briarleaf will maintain records of all grievances regarding effective communication, whether oral or written, made to Briarleaf and actions taken with respect thereto. At the time Briarleaf completes its assessment described in paragraphs 24-25 and advises the Resident and/or Companion of its determination of which appropriate auxiliary aids and services are necessary, Briarleaf will notify persons who are deaf or hard of hearing of its grievance resolution mechanism, to whom complaints should be made, and of the right to receive a written response to the grievance. A written response to any grievance filed shall be completed within thirty (30) days of receipt of the complaint. Copies of all grievances related to provision of services for Residents and/or Companions who are deaf or hard of hearing and the responses thereto will be maintained by the ADA Administrator for the entire duration of the Agreement.
29. Prohibition of Surcharges. All appropriate auxiliary aids and services required by this Agreement will be provided free of charge to the Resident and/or Companion who is deaf or hard of hearing.

30. Record of Need for Auxiliary Aid or Service. Briarleaf will take appropriate steps to ensure that all Briarleaf Personnel are made aware of a Resident or Companion's need for an auxiliary aid or service so that effective communication with such person will be achieved. These steps will include designating this information in the Resident's medical records.

C. Qualified Interpreters

31. Circumstances Under Which Interpreters Will Be Provided. Depending on the complexity and nature of the communication, a qualified interpreter may be necessary to ensure effective means of communication for Residents and Companions. When an interpreter is needed, Briarleaf shall provide qualified sign language interpreters to Residents and Companions who are deaf or hard of hearing and whose primary means of communication is sign language, and qualified oral interpreters to such Residents and Companions who rely primarily on lip reading as necessary for effective communication. Examples of circumstances when the communication may be sufficiently lengthy or complex so as to require an interpreter include the following:

- a. Discussing a Resident's medical needs upon admission to the facility;
- b. Discussing a Resident's symptoms and medical condition, medications, and medical history;
- c. Explaining medical conditions, treatment options, tests, medications, surgery and other procedures;
- d. Providing a diagnosis and recommendation for treatment;
- e. Communicating with a patient during treatment, rehabilitation or occupational therapy, testing procedures, and during a nurse's or physician's rounds;
- f. Obtaining informed consent for treatment;
- g. Providing instructions for medications, post-treatment activities, and follow-up treatments;
- h. Providing information about blood or organ donations; and
- i. Discussing powers of attorney, living wills and/or complex billing and insurance matters.

32. Chosen Method for Obtaining Interpreters. In March 2016, after the United States requested information from the facility as part of its investigation, the facility voluntarily contacted the Deaf-Hearing Communication Centre, Inc., and made contractual arrangements to receive qualified on site interpreters as well as VRI services at the facility's request. Briarleaf acknowledges that the contractual arrangements are currently in place and will remain in place for the duration of this Agreement.

33. Provision of Interpreters in a Timely Manner.

- a. Non-scheduled Interpreter Requests: A non-scheduled interpreter request means a request for an interpreter made by a Resident or Companion who is deaf or hard of hearing less than three hours before a Resident's scheduled time for

examination or treatment. For non-scheduled interpreter requests, applicable Briarleaf Personnel will complete the assessment described in paragraphs 24-25 above. The interpreter shall be provided no more than (a) three hours from the time the facility completes the assessment if the service is provided through a contract interpreting service or a staff interpreter who is located off-site or (b) one hour from the time Briarleaf completes the assessment if the service is provided through a Video Remote Interpreting service as described in paragraph 34 below. Briarleaf agrees to address any deviations from this response time with the interpreting service provider.

- b. Scheduled Interpreter Requests. A scheduled interpreter request is a request for an interpreter made three or more hours before the services of the interpreter are required. For scheduled interpreter requests, applicable Briarleaf Personnel will complete the assessment described in paragraphs 24-25 above in advance, and, when an interpreter is appropriate, Briarleaf will make a qualified interpreter available at the time of the scheduled encounter. If an interpreter fails to arrive for the scheduled encounter, upon notice that the interpreter failed to arrive, Briarleaf will immediately call the interpreter service for another qualified interpreter.
 - c. Data Collection on Interpreter Response Time and Effectiveness. Briarleaf will monitor the performance of each qualified interpreter service it uses to provide communication to Residents or Companions who are deaf or hard of hearing. As part of the Auxiliary Aid and Service Log, described in paragraph 27, Briarleaf shall collect information regarding response times for each request for an interpreter.
34. Video Remote Interpreting (VRI). VRI can provide immediate, effective access to interpreting services in a variety of situations including emergencies and unplanned incidents. When using VRI services, Briarleaf shall ensure that it provides: (1) 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 do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; (3) a clear, audible transmission of voices; and (4) adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI. 28 C.F.R. § 36.303(f). VRI shall not be used when it is not effective due, for example, to a Resident's limited ability to move his or her head, hands or arms; vision or cognitive issues; or significant pain; or due to space limitations in the room. In March 2016, after the United States requested information from the facility as part of its investigation, Briarleaf voluntarily established the capability for offering VRI services through a contract with the Deaf-Hearing Communication Centre, Inc., and will maintain this (or similar) capability for the duration of this Agreement. Briarleaf is not responsible for power outages or service

interruption due to acts of God or third party problems. However, VRI shall not be used as a substitute for an on-site interpreter, and an on-site interpreter shall be provided in accordance with the timetable set forth above, if, based on the circumstances, VRI is not providing effective communication after it has been provided or is not available due to circumstances outside of Briarleaf's control.

35. Notice to Residents and Companions Who Are Deaf or Hard of Hearing. As soon as applicable Briarleaf Personnel have determined that a qualified interpreter is necessary for effective communication with a Resident or Companion who is deaf or hard of hearing, Briarleaf will inform the Resident or Companion (or a family member or friend, if the Resident or Companion is not available) of the current status of efforts being taken to secure a qualified interpreter on his or her behalf. Briarleaf will provide additional updates to the Resident or Companion as necessary until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not lessen Briarleaf's obligation to provide qualified interpreters in a timely manner as required by paragraph 33 of this Agreement.
36. Other Means of Communication. Briarleaf agrees that between the time an interpreter is requested and the interpreter is provided, Briarleaf Personnel will continue to try to communicate with the Resident or Companion who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication, including using sign language pictographs. This provision in no way lessens Briarleaf's obligation to provide qualified interpreters in a timely manner as required by paragraph 33 of this Agreement.

D. Notice to Community

37. Policy Statement. Within ninety (90) days after the Effective Date of this Agreement, Briarleaf shall post and maintain a sign of conspicuous size and print at the facility's admitting station(s) and wherever a Resident's Bill of Rights is required by law to be posted. Such signs shall be to the following effect:

Sign language and oral interpreters, TTYs, and other auxiliary aids and services are available free of charge as necessary to ensure effective communication with people who are deaf or hard-of-hearing. For assistance, please contact any Briarleaf personnel or the Admissions Office at _____ (voice/TTY), room _____.

These signs will include the international symbols for "interpreters" and "TTYs."

38. Resident Handbook. Briarleaf will include in all future printings of its Resident Handbook (or equivalent) and all similar publications a statement to the following effect:

When necessary to ensure effective communication with residents and their companions who are deaf or hard-of-hearing, we provide appropriate auxiliary aids and services free of charge, such as: sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with caption capability or closed caption decoders, and open and closed captioning of many Briarleaf programs.

Please ask Briarleaf personnel for assistance, or contact the Admissions Office at _____ (voice or TTY), room _____.

Briarleaf will also include in future printings of its Resident Handbook or policies a description of its complaint resolution mechanism.

E. Notice to Briarleaf Personnel

39. Standard Operating Procedures. In March 2016, after the United States requested information from the facility as part of its investigation, Briarleaf voluntarily established a standard operating procedure for communicating effectively with residents who are deaf or hard of hearing and disseminated the procedure to nursing and certain other facility personnel. The standard operating procedure includes language to the effect that Briarleaf will make all possible attempts to communicate with prospective and current Residents and their Companions to understand their communication needs and to accommodate those needs. This standard operating procedure will remain in effect for the duration of the Agreement.

F. Training

40. Training to Briarleaf Personnel Concerning the ADA. Between March 2016 and June 2016, after the United States requested information from the facility as part of its investigation, Briarleaf voluntarily provided mandatory training to all of its nursing and certain other facility personnel regarding the ADA and the facility's obligation to provide effective communication to Residents who are deaf or hard of hearing. The training materials stated, among other things, that (a) the key is to ensure effective communication, (b) effective communication will vary based on an individual's needs, and (c) a sign language interpreter service is available at Briarleaf when necessary to provide effective communication. In June 2016, Briarleaf provided the training materials to the United States as part of the investigation. Briarleaf shall provide refresher training at least once each year for the duration of the Agreement.
41. New Employees. New Briarleaf Personnel must receive a copy of the training materials within thirty (30) days of their hire.

42. Training Attendance Sheets. In June 2016, as part of the investigation, Briarleaf provided to the United States confirmation of the ADA training by producing sign-in sheets reflecting the names, signatures, department, and date of the training sessions.

G. Reporting, Monitoring, and Violations

43. Compliance Reports. Beginning one year after the Effective Date of this Agreement and every year thereafter for the duration of the Agreement, Briarleaf will provide a written report (“Compliance Report”) to the U.S. Attorney’s Office regarding the status of its compliance with this Agreement. The Compliance Report will include data relevant to the Agreement, including but not limited to:
- a. the information required in Auxiliary Aid and Service Log described in paragraph 27; and
 - b. the number of complaints received by Briarleaf from Residents and Companions who are deaf or hard of hearing regarding auxiliary aids and services and/or effective communication, and the resolution of such complaints including any supporting documents.

Briarleaf will maintain records to document the information contained in the Compliance Reports and will make them available, upon request, to the United States Attorney’s Office.

44. Complaints. During the term of this Agreement, Briarleaf will notify the U.S. Attorney’s Office if any person files a lawsuit, complaint, or formal charge with a state or federal agency, alleging that Briarleaf failed to provide auxiliary aids and services to Residents or Companions who are deaf or hard of hearing or otherwise failed to provide effective communication with such Residents or Companions. Such notification must be provided in writing via certified mail within twenty (20) days of the date Briarleaf received notice of the lawsuit, complaint, or formal charge and will include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation possessed by Briarleaf relevant to the allegation. Briarleaf will reference this provision of the Agreement in the notification to the U.S. Attorney’s Office and address the notification to the Chief of the Civil Division.

H. Enforcement and Miscellaneous

45. Duration of the Agreement. This Agreement will be in effect for two (2) years from the Effective Date.
46. Enforcement. In consideration of the terms of this Agreement as set forth above, the U.S. Attorney’s Office agrees to refrain from undertaking further investigation or from filing a civil suit under title III in this matter arising out of the findings and investigation

described in paragraphs 7-13, except as provided in paragraph 47. 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 Briarleaf 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.

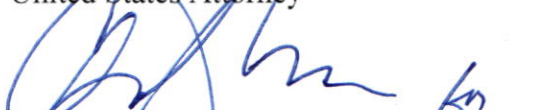
47. Compliance Review and Enforcement. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or any requirement thereof has been violated by instituting a civil action in U.S. District Court. If the United States believes that this Agreement or any portion of it has been violated, it will raise its claim(s) in writing with Briarleaf, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow Briarleaf thirty (30) days from the date it notifies Briarleaf of any breach of this Agreement to cure the breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.
48. 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. No modification of this Agreement shall be effective unless in writing, signed by the Parties, and agreed to by the United States.
49. 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.
50. 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 any instance or provision.
51. Voluntary Agreement. Briarleaf represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
52. Public Access. All Parties consent to the public disclosure of this Agreement, and information about this Agreement may be made available to the public upon request.
53. Execution of Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
54. Signatures. Facsimiles or scanned PDFs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

55. Tolling Agreement. The Tolling Agreement between the United States and Briarleaf dated April 26, 2016, is hereby terminated.

For the United States of America:



ZANE DAVID MEMEGER
United States Attorney



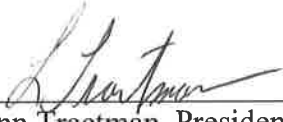
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division



MICHAEL S. MACKO
Assistant United States Attorney

DATED: 10/12/16

For Briarleaf Nursing and Convalescent, Inc.:



Lynn Tractman, President
Briarleaf Nursing and Convalescent, Inc.

DATED:

7 October 2016