

VOLUNTARY RESOLUTION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA,
THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
OFFICE FOR CIVIL RIGHTS
AND
BAYSTATE MEDICAL CENTER, INC.
USAO # 2017V00591
DJ # 202-36-329
OCR # 01-19-322853

I. Parties to Agreement

1. The Parties to this Voluntary Resolution Agreement (“Agreement”) are:
 - a. the U.S. Department of Justice through the U.S. Attorney’s Office for the District of Massachusetts (“DOJ”), pursuant to its jurisdictional authority under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12188, and the U.S. Department of Health and Human Services (“HHS”), Office for Civil Rights (“OCR”), pursuant to its jurisdictional authority under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, and its implementing regulation, 45 C.F.R. Part 84, and Section 1557 of the Affordable Care Act (“Section 1557”), 42 U.S.C. § 18116, and its implementing regulation, 45 C.F.R. Part 92, and
 - b. Baystate Medical Center, Inc. (“Baystate”).

II. Background

2. This matter was initiated upon a Complaint filed with DOJ by an individual (the “Complainant”) who is deaf and utilizes American Sign Language (“ASL”) as her primary means of communication, alleging that Baystate failed to provide appropriate auxiliary aids and services when necessary to ensure effective communication during her scheduled labor and delivery hospitalization on or about October 11-13, 2016, in violation of the ADA and its implementing regulation.
3. Although Baystate provided an ASL interpreter near the beginning of Complainant’s labor, at all other times during labor and delivery, Baystate personnel attempted to communicate with the Complainant by relying on the father of Complainant’s baby to facilitate communication, lip-reading, gestures, and handwritten notes to communicate with the Complainant. The Complainant alleged that she was unable to communicate effectively with Baystate personnel about her labor and childbirth.
4. As a result of this complaint, DOJ and OCR initiated respective reviews of Baystate’s compliance with Title III of the ADA, Section 504, and Section 1557 with regard to the Complainant’s allegations, including a review of Baystate’s policies and procedures for ensuring effective communication with individuals who are deaf or hard of hearing.

5. During the course of its review, DOJ learned of a second aggrieved party (the “Additional Aggrieved Party”), who was also not provided with an ASL interpreter in both a January 2017 and a March 2020 scheduled labor and delivery hospitalization. This aggrieved party also alleges that she was unable to communicate effectively with Baystate personnel about her labor and childbirth during both visits.
6. Baystate cooperated fully in the investigation, providing DOJ and OCR with access to records, witnesses, and Baystate personnel. With respect to the Complainant, Baystate asserts that a Qualified Interpreter (as defined below) was available for all key components of the patient’s care except delivery (which came on suddenly and during the night) and for certain non-key components of the patient’s care. With respect to the Additional Aggrieved Party, Baystate asserts that a Qualified Interpreter was either offered to the Additional Aggrieved Party or present during the patient’s admissions. Baystate indicated no difficulty communicating with the Complainant or the Additional Aggrieved Party, and asserts that it was legally compliant at the time of Complainant’s and the Additional Aggrieved Party’s visits and, subsequently, those services have only been strengthened.

III. Jurisdiction

7. The Attorney General of the United States is responsible for administering and enforcing Title III of the ADA, 42 U.S.C. §§ 12101-12213, and the relevant regulations implementing Title III, 28 C.F.R. Part 36.
8. OCR is responsible for enforcing Section 504, 29 U.S.C. § 794(a), and its implementing regulation, 45 C.F.R. Part 84, which prohibit discrimination on the basis of disability in any program or activity receiving financial assistance from HHS.
9. OCR is also responsible for enforcing Section 1557, 42 U.S.C. § 18116, and its implementing regulation, 45 C.F.R. Part 92, which prohibit discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. The Section 1557 implementing regulation provides that, except as provided in Title I of the Patient Protection and Affordable Care Act (ACA), an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving federal financial assistance from HHS, or under any program or activity that is administered by HHS under Title I of the ACA or by any entity established under Title I of the ACA.
10. Baystate is a “public accommodation” within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(F), and its implementing regulation at 28 C.F.R. § 36.104, because it is a private entity that operates a hospital, which is place of public accommodation, and is thus subject to the requirements of Title III of the ADA.
11. Baystate is a recipient of financial assistance from HHS, including through its participation in Medicare, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et*

seq., and Medicaid, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, programs, and thus subject to the requirements of Section 504. 45 C.F.R. § 84.2. As a health program or activity receiving financial assistance from HHS, Baystate is subject to Section 1557 of the Patient Protection and Affordable Care Act. 45 C.F.R. § 92.3(a)(1).

12. Under Title III of the ADA, and its implementing regulation, public accommodations, including hospitals, are prohibited from discriminating on the basis of disability in the full and equal enjoyment of their goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. §§ 12181 – 12189; 28 C.F.R. Part 36. Specifically, a public accommodation shall take those steps that may be 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 the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden. 28 C.F.R. § 36.303(a).
13. Under Section 504, Section 1557, and the relevant implementing regulations, no qualified individual with a disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination by reason of disability in any health program or activity receiving financial assistance from HHS. 29 U.S.C. § 794; 42 U.S.C. § 18116; 45 C.F.R. §§ 84.4(a), 84.52(a)(1); 45 C.F.R. § 92.2. Specifically, a recipient of HHS financial assistance shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question. 45 C.F.R. § 84.52(d); 45 C.F.R. § 92.102(b). Furthermore, a covered health program or activity shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities, in accordance with the standards found at 28 C.F.R. §§ 35.160 through 35.164 (regulation implementing Title II of the ADA). 45 C.F.R. § 92.102(a) (incorporating 28 C.F.R. §§ 35.160 – 164).
14. The Complainant is an individual with a disability within the meaning of the ADA, 42 U.S.C. § 12102, Section 504, 29 U.S.C. § 705(20)(B) (incorporating the ADA definition of disability in 42 U.S.C. § 12102), and Section 1557, 45 C.F.R. § 92.102(c) (same).
15. Ensuring that hospitals do not discriminate on the basis of disability is an issue of general public importance. DOJ is authorized to investigate alleged violations of Title III of the ADA, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that the Attorney General concludes raises an issue of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.
16. OCR is responsible for investigating complaints and conducting compliance reviews to determine if recipients of HHS funding operate their programs and activities in compliance with Section 504 and Section 1557. OCR has the authority, where appropriate, to negotiate and secure voluntary compliance agreements. If noncompliance cannot be corrected by informal means, OCR may take any action authorized by law.

17. The Parties have come to a mutual understanding about the provision of appropriate auxiliary aids and services to ensure effective communication with individuals with disabilities. The Parties have determined that this matter can be resolved promptly and without further burden or the expense of additional investigation, enforcement proceedings, or litigation. Baystate agrees to the terms stipulated in this Agreement and affirms that it fully intends to comply with all applicable provisions of the ADA, Section 504, and Section 1557.

IV. Definitions

For purposes of this Agreement, the terms listed below shall have the following meaning:

18. The term "Auxiliary Aids and Services" includes qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; 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, 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.
19. The term "Duration of this Agreement" means the period of time this Agreement remains in effect.
20. The term "Effective Date of this Agreement" means the date the Agreement is signed by all Parties.
21. The term "Patient" means any individual who is seeking or receiving health care services (whether inpatient or outpatient, including consultations, treatment, scheduling of appointments, discussion of billing issues, attending health education classes, and other health care services) from Baystate.
22. The term "Companion" means a family member, friend, or associate of a Patient who, along with the Patient, is an appropriate person with whom Baystate should communicate.
23. 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. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language (ASL) is not necessarily qualified to interpret orally. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a Qualified Interpreter under this Agreement. Likewise, someone who is fluent in ASL but

unable to translate spoken communication into ASL or to translate signed communication into spoken words is not a Qualified Interpreter.

24. The term “Baystate personnel” means all employees, agents, and contractors working for or on behalf of Baystate who have or are reasonably likely to have direct contact with Patients or Companions, as defined here, including, without limitation, nurses, physicians, social workers, technicians, admitting personnel, receptionists, telephone operators, billing staff, security staff, counselors, therapists, and volunteers. The term also includes all physicians and other health care professionals employed by Baystate or Baystate Medical Practices, Inc. who have Medical Staff or Associate Professional Staff privileges that permit them to see and/or treat Patients at Baystate.
25. The term “video remote interpreting” (“VRI”) means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in 28 C.F.R. § 36.303(f) and 45 C.F.R. § 92.102(a) (same), as set forth in Paragraph 36.

V. Actions To Be Taken By Baystate

A. Provision of Effective Communication

26. Appropriate Auxiliary Aids and Services. Consistent with the ADA, Section 504, and Section 1557, Baystate will furnish appropriate auxiliary aids and services where necessary to ensure that communications with Patients, Companions, and members of the public who are deaf or hard of hearing are as effective as communications with others. In order to be effective, Baystate will provide auxiliary aids and services in a timely manner, in accessible formats, and in such a way so as to protect the privacy and independence of the individual with a disability.
27. Policies and Procedures. DOJ and OCR acknowledge, as specified herein, that Baystate’s current policy already contains several provisions that are consistent with the requirements of this Agreement. Within ninety (90) calendar days of the Effective Date of this Agreement, Baystate shall review its policy and any related procedures, and revise as necessary, to ensure it is taking any necessary steps to provide effective communication with Patients and Companions who are deaf or hard of hearing, including Patients and Companions seeking labor and delivery services, consistent with the requirements of this Agreement, the ADA, Section 504, and Section 1557.
28. Prohibition of Surcharges. Baystate’s current policy states that “interpreters are provided to patients and their family members at no charge.” Baystate will amend its policies to clarify that all appropriate auxiliary aids and services required by this Agreement will be provided free of charge to Patients and Companions who are deaf or hard of hearing.
29. Timing of Communication Assessment and Determination. Baystate personnel will perform and document a communication assessment as part of each initial Patient assessment, and reassess communication effectiveness, as described here. If there is any indication from an initial assessment, inquiry, request, or Baystate’s observations that a

Patient or Companion is deaf or hard of hearing and auxiliary aids and services are necessary, Baystate personnel who are primarily responsible for coordinating and/or providing patient care services, in consultation with the Patient or Companion whenever possible, will determine which appropriate auxiliary aids and services are necessary as described in Paragraph 30. The initial assessment and determination of which appropriate auxiliary aids and services are necessary will be made at the earliest of the following:

- a. the time an appointment is scheduled, provided that the Patient or Companion communicates the need for auxiliary aids or services;
- b. the time Baystate becomes aware that a Patient or Companion who may require auxiliary aids or service is en route to Baystate; or
- c. the time the Patient or Companion initially comes in contact with Baystate personnel.

In all instances where Baystate personnel become aware that a Patient or Companion who may require auxiliary aids or services is en route to the Emergency Department (by ambulance or otherwise), Baystate personnel will make reasonable efforts to conduct an assessment in advance of the Patient or Companion's arrival and seek to have appropriate auxiliary aids and services available as soon as practicable after the Patient or Companion's arrival at Baystate.

30. Communication Assessment Criteria. In determining what type of auxiliary aids or services are needed to ensure effective communication, Baystate will take into account all relevant facts and circumstances, including without limitation the following:
- a. the method of communication used by the individual;
 - b. the nature, length, and complexity of the communication at issue;
 - c. the context in which the communication is taking place; and
 - d. as applicable to the provision of Qualified Interpreters, the circumstances and criteria described in Paragraphs 34-36.

Consistent with Section 1557, Baystate also will give primary consideration to the request of a Patient or Companion who is deaf or hard of hearing.

31. Documentation of Communication Assessment Relating to Provision of Auxiliary Aids and Services. Documentation of any assessment and determination as to the provision of auxiliary aids and services will be maintained in the Patient's medical records and, for the Duration of this Agreement, will also be maintained in the Auxiliary Aid and Service Log(s), as set forth in Paragraph 40. Consistent with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. Parts 160 and 164, Baystate shall label or make a notation in the Patient's record to alert Baystate personnel to the fact that the Patient or Companion is deaf or hard of hearing and will take appropriate steps to ensure that all Baystate personnel reasonably likely to have contact with a Patient or a Companion are made aware of the auxiliary aid or service(s) that have been identified as necessary to communicate effectively with the Patient or Companion.

32. Determination Not to Provide Requested Auxiliary Aid or Service. If, after conducting the assessment as described in Paragraphs 29 and 30 of this Agreement, Baystate determines that it will not provide a particular auxiliary aid or service requested by a Patient or Companion who is deaf or hard of hearing based on undue financial or administrative burden or because an equally effective auxiliary aid or service is available, Baystate personnel shall so advise the Patient or Companion requesting the auxiliary aid or service, notify the Patient or Companion of its grievance procedure, and secure a means of effective communication in a timely manner. Baystate shall document the basis for the determination, including the date of the determination, the name and title of the Baystate personnel who made the determination, and the alternative auxiliary aid or service, if any, that Baystate decided to provide, in the Auxiliary Aid and Service Log, as set forth in Paragraph 40. Any alternative auxiliary aid or service will also be documented in the Patient's medical record. A copy of this documentation shall be provided to the Patient or Companion upon request.
33. Redetermination and Subsequent Visits. Baystate shall reassess its determination of which appropriate auxiliary aids and services are necessary, in consultation with the Patient or Companion, promptly after a Patient or Companion indicates that communication is not currently or has not been effective. Baystate will document in the Auxiliary Aid and Service Log, as set forth in Paragraph 40, any instance where a Patient or Companion indicates that the auxiliary aids and services provided by Baystate have not been effective; any reassessment; and the results of any redeterminations. Any alternative auxiliary aid or service provided will also be documented in the Patient's medical record. With respect to any subsequent visits, Baystate will consult the Patient's records to review what, if any, auxiliary aids or services may be necessary without requiring additional assessments or requests for the appropriate auxiliary aids and services by the Patient or Companion, unless the Patient or Companion indicates otherwise.
34. Circumstances Under Which Qualified Interpreters Will Be Provided. Baystate shall provide Qualified Interpreters, on-site or through a VRI service, to Patients and Companions as necessary to ensure effective communication. The following are examples of circumstances and types of communication when it is likely necessary to provide a Qualified Interpreter:
- a. obtaining a Patient's medical history or description of symptoms and medical condition;
 - b. discussing or explaining a Patient's diagnosis, current condition, prognosis, treatment options, or recommendation for treatment;
 - c. discussing or explaining procedures, tests, or treatments;
 - d. discussing or explaining test results;
 - e. discussing or explaining prescribed medications, instructions for how and when medication is to be taken, and possible side effects and interactions of medications;
 - f. obtaining informed consent or permission for procedures, surgery, or other treatment options;
 - g. communicating during treatment and testing;
 - h. communicating during labor and delivery;

- i. communicating during discharge or post-operative planning and instruction;
 - j. providing mental health evaluations, group or individual therapy, counseling, or other therapeutic activities, including grief counseling and crisis intervention;
 - k. providing information about blood or organ donations;
 - l. explaining living wills or powers of attorney (or their availability);
 - m. discussing complex financial or insurance matters;
 - n. providing educational presentations, such as classes concerning birthing, nutrition, CPR, and weight management; and
 - o. any other circumstance in which a qualified interpreter is necessary to ensure a Patient's rights provided by law.
35. Video Remote Interpreting (VRI) Services Assessment Criteria. In determining whether a Qualified Interpreter via VRI service is appropriate to provide effective communication, relevant factors may include:
- a. the Patient or Companion is limited in his or her ability to see the video screen, either due to limited vision or the physical positioning of the Patient;
 - b. the Patient or Companion has limited ability to move his or her head, hands, or arms;
 - c. the Patient has cognitive limitations, consciousness issues or pain issues;
 - d. there are multiple people in a room and the information exchanged is highly complex or fast-paced;
 - e. the Patient or Companion may move repeatedly to areas of Baystate that do not have a designated high-speed internet line;
 - f. the Patient will be treated in a room where there are space restrictions; and
 - g. whether the VRI can be provided in accordance with the performance standards described in Paragraph 36.
36. Standards for Providing Video Remote Interpreting (VRI). Whenever a Qualified Interpreter via VRI service is provided or used, Baystate shall ensure that it provides the VRI service in accordance with the following standards:
- a. 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;
 - b. 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;
 - c. A clear, audible transmission of voices; and
 - d. Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI service.

Once the system is operating, Baystate personnel shall ask the Patient or Companion whether the VRI service is meeting his or her communication needs and make reasonable efforts to make a record of his or her response. In the event that the Patient or Companion cannot communicate effectively using any VRI service Baystate elects to acquire and offer, Baystate shall make all reasonable efforts to locate an on-site

Qualified Interpreter or other auxiliary aid or service that will provide effective communication; periodically inform the Patient or Companion of the status of those efforts; and document the concern and the steps taken to locate an on-site Qualified Interpreter. For the duration of this Agreement, Baystate will monitor the effectiveness of the VRI service and, if applicable, address any deviations with the VRI service provider.

37. Restricted Use of Adults Accompanying a Patient or Companion to Interpret or Facilitate Communication. Baystate's current policy prohibits Baystate personnel from requesting or requiring a Patient to bring a family member or friend to interpret on their behalf. Baystate shall never require or coerce a Patient or Companion who is deaf or hard of hearing to bring another individual to interpret or facilitate communications between Baystate personnel and such Patient or Companion. Baystate shall not rely on an adult accompanying a Patient or Companion to interpret or facilitate communication except in either of the following circumstances:
- a. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available. This provision applies to exigent circumstances where any delay in providing immediate services to the individual could have life-altering or life-ending consequences and is not intended to obviate the obligation to provide a Qualified Interpreter or other auxiliary aids and services in typical and foreseeable emergencies that are part of the normal operations of a hospital.
 - b. If a Patient or Companion who is deaf or hard of hearing specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that person for such assistance is appropriate under the circumstances. In such circumstances, Baystate shall advise the Patient or Companion that the full range of auxiliary aids and services is available without charge and shall give appropriate consideration to any relevant issues and concerns that may arise, such as privacy and confidentiality. Baystate will document such a request in the Patient's medical record. This provision in no way lessens Baystate's obligation to provide appropriate auxiliary aids and services as required by this Agreement.
38. Restricted Use of Minors to Interpret or Facilitate Communication. Baystate's current policy prohibits Baystate personnel from relying on a minor to interpret on a Patient's behalf. Baystate shall not rely on a minor accompanying a Patient or Companion to interpret or facilitate communications between Baystate personnel and a Patient or Companion except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.
39. Timeframe for Providing Qualified Interpreters. Baystate shall ensure that it provides Qualified Interpreters in a timely manner, as set forth below.
- a. Request for Qualified Interpreter for a non-scheduled incident. For all non-scheduled incidents, such as visits to the Emergency Department, Baystate will

provide a Qualified Interpreter, via an on-site appearance or VRI service, as soon as practicable after a request or determination that a Qualified Interpreter is necessary. When providing a Qualified Interpreter via VRI, the Qualified Interpreter will be provided within thirty (30) minutes. If an on-site Qualified Interpreter is determined to be necessary pursuant to the assessment set forth in Paragraphs 29 and 30 of this Agreement, Baystate will make reasonable efforts to provide an on-site Qualified Interpreter within two (2) hours. Between the time when a Qualified Interpreter is requested and when a Qualified Interpreter is made available, Baystate personnel will inform the Patient or Companion of the current efforts being taken to secure a Qualified Interpreter and continue to communicate with the Patient 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 the most effective means of communication available where appropriate. Notification of the efforts to secure a Qualified Interpreter does not lessen Baystate's obligation to provide a Qualified Interpreter as required by this Agreement. Efforts to communicate with the Patient or Companion in the interim shall not involve the use of accompanying adults or minors to interpret or facilitate communication, except under the limited circumstances specified in Paragraphs 37 and 38.

- b. Request for Qualified Interpreter for scheduled events. For all scheduled events when there are four (4) or more hours before the time when an interpreter is required, Baystate shall make a Qualified Interpreter available at the time of the scheduled event. If a Qualified Interpreter fails to arrive or is not available for the scheduled appointment, upon notice that the interpreter failed to arrive or is not available, Baystate will take reasonable steps to locate another Qualified Interpreter as soon as they are made aware that the requested interpreter will not be provided.
- c. Throughout Hospitalization. Baystate will continue to provide Qualified Interpreters to Patients and Companions admitted to Baystate, throughout their hospitalization, as may be necessary for effective communication for the circumstances and types of the communication between the Patient and Baystate personnel, as described in Paragraph 34. Patients will not be required to renew requests for Qualified Interpreters for these events.

Baystate will make reasonable efforts to monitor the response times for each request for a Qualified Interpreter. Any deviations from the applicable response times will be documented in the Auxiliary Aid and Service Log, as described in Paragraph 40, and, if applicable, addressed with the interpreting service provider.

- 40. Auxiliary Aid and Service Log(s). Within forty-five (45) calendar days of the Effective Date of this Agreement, Baystate shall document and maintain a log, or logs, of each request for an auxiliary aid or service, recording the time and date of the request; the name of the individual who made the request; the name of the individual for whom the auxiliary aid or service is being requested (if different from the requestor); the specific auxiliary aid or service requested; the time and date of the request and, if applicable, the scheduled event; the time and date the auxiliary aid or service was provided; the type of

auxiliary aid or service provided if different from what was requested; and, if applicable, a statement and explanation as to why the requested auxiliary aid or service was not provided. Such logs will be maintained for the Duration of this Agreement.

41. Notice of Nondiscrimination and Availability of Auxiliary Aids and Services. Baystate shall take appropriate and continuing steps to notify Patients, Companions, Baystate personnel, and the public, including individuals who are deaf or hard of hearing and individuals who are blind or have low vision, of the rights and protections afforded by the ADA, Section 504, or Section 1557, and the following:
 - a. that it does not discriminate on the basis of disability in its programs and activities;
 - b. that it provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;
 - c. a description of how to obtain auxiliary aids and services;
 - d. the identity of, and contact information for, the Civil Rights Coordinator, designated pursuant to Paragraph 44;
 - e. the availability of the grievance procedure and how to file a grievance; and
 - f. how to file a discrimination complaint with OCR.

42. Training of Baystate Personnel. To ensure compliance with this Agreement and the law as it relates to the provision of auxiliary aids and services, Baystate agrees to conduct the following trainings within the timeframes specified in Paragraph 43. Baystate shall maintain copies of the training materials and attendance records for each training. Each training will be of sufficient duration and content to train Baystate personnel in the following areas relative to their responsibilities for coordinating or providing patient care:
 - a. the requirement to ensure effective communication with Patients and Companions who are deaf or hard of hearing, are blind or have low vision, or have a speech disability;
 - b. information regarding the types of communication disabilities, the different languages and methods of communication used by individuals who are deaf or hard of hearing, and the types of auxiliary aids and services available to ensure effective communication;
 - c. procedures to promptly identify communication needs of individuals who are deaf and hard of hearing, including determining what types of auxiliary aids and services are necessary and assessing when certain auxiliary aids and services are effective in different circumstances;
 - d. procedures to promptly obtain auxiliary aids and services, including how to quickly and efficiently set up and operate VRI, and the appropriate steps to take when efforts to obtain auxiliary aids and services are unsuccessful or communication is not effective;
 - e. procedures for documenting communication assessments and requests for auxiliary aids and services in the Patient's record and the Auxiliary Aid and Service Log, where appropriate;
 - f. the availability and proper use of auxiliary aids and services to communicate by

- telephone for individuals who are deaf or hard of hearing, including the use of video relay services (VRS) and text telephones (TTY);
- g. Baystate's grievance procedure; and
 - h. any other applicable requirements of this Agreement.

43. Timeframe for the Provision of Training

- a. Baystate Personnel. Within ninety (90) calendar days of the Effective Date of this Agreement, and on an annual basis thereafter for the Duration of this Agreement, Baystate will provide mandatory training for all Baystate personnel, including: the charge nurses, physicians, nurses, and others responsible for coordinating and/or providing patient care services.
- b. Training of New Baystate Personnel or other Hospital Personnel. Within sixty (60) calendar days of their start date at Baystate, all new Baystate personnel will receive training regarding the availability and use of auxiliary aids and services for Patients and Companions, and regarding the process for assessing the need for such services and the process for obtaining same. Other Baystate personnel in positions or departments not previously identified herein shall be provided with comparable training as necessary. A screening of a video of any of the trainings provided above will suffice to meet this obligation.

B. Other Nondiscrimination Obligations

44. Designation of Civil Rights Coordinator. Within fifteen (15) calendar days of the Effective Date of this Agreement, Baystate shall designate at least one employee to be responsible for:
- a. the coordination of Baystate's efforts to comply with the ADA, Section 504, and Section 1557;
 - b. the investigation of any grievance communicated to Baystate alleging discrimination on the basis of disability;
 - c. knowing where auxiliary aids are stored and how to operate any auxiliary aid;
 - d. the maintenance, repair, replacement, and distribution of any auxiliary aid;
 - e. providing a contact person available twenty-four (24) hours a day, seven (7) days a 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, from Baystate personnel, Patients, and Companions; and
 - f. Baystate's compliance with the terms of this Agreement set forth here, including coordinating and/or conducting trainings, maintaining records, providing compliance reports and logs, and creating and modifying policies and procedures.
45. Retaliation and Coercion. Baystate shall not retaliate against or coerce in any way any person who made or is making a complaint or exercised or is exercising his or her rights under the ADA, Section 504, or Section 1557, or who has assisted or participated in the investigation of any matter covered by this Agreement.

VI. Release and Remuneration for Complainants

46. Release by Complainant and Additional Aggrieved Party. Within fourteen (14) calendar days of the Effective Date of this Agreement, DOJ shall deliver to counsel for Baystate releases signed by the Complainant and the Additional Aggrieved Party.

47. Compensatory Relief for Complainant. Within the timeframes set forth below, Baystate shall compensate the Complainant pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2) in the following amount: \$60,000.00, less any payments from the compensation that Baystate may be required under applicable law to make to the Commonwealth of Massachusetts or one of its agencies or departments (“Commonwealth”). This compensation is relief that DOJ is authorized to obtain for the Complainant under Title III of the ADA. Baystate will not withhold taxes from the monetary award, and the Complainant, through the signed release, will accept full responsibility for taxes due and owing, if any, on such funds. Baystate will issue to the Complainant an IRS Form 1099 reflecting the amount paid. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by DOJ concerning the characterization of the Compensatory Relief for purposes of the Internal Revenue laws, Title 26 of the United States Code. Within five (5) days of the Effective Date of this Agreement, Baystate shall commence the process for determining whether any payment is required to be made to the Commonwealth. Within thirty (30) days of receiving (1) a final response from the Commonwealth as to whether any payment is required to be made and (2) Complainant’s signed release, Baystate shall make the payment set forth above.

48. Compensatory Relief for Additional Aggrieved Party. Within the timeframes set forth below, Baystate shall compensate the Additional Aggrieved Party pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2) in the following amount: \$ 75,000.00, less any payments from the compensation that Baystate may be required under applicable law to make to the Commonwealth of Massachusetts or one of its agencies or departments (“Commonwealth”). This compensation is relief that DOJ is authorized to obtain for the Additional Aggrieved Party under Title III of the ADA. Baystate will not withhold taxes from the monetary award, and the Additional Aggrieved Party, through the signed release, will accept full responsibility for taxes due and owing, if any, on such funds. Baystate will issue to the Additional Aggrieved Party an IRS Form 1099 reflecting the amount paid. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by DOJ concerning the characterization of the Compensatory Relief for purposes of the Internal Revenue laws, Title 26 of the United States Code. Within five (5) days of the Effective Date of this Agreement, Baystate shall commence the process for determining whether any payment is required to be made to the Commonwealth. Within thirty (30) days of receiving (1) a final response from the Commonwealth as to whether any payment is required to be made and (2) Complainant’s signed release, Baystate shall make the payment set forth above.

VII. Reporting and Monitoring

49. Unless otherwise provided, all payments required by this Agreement shall be submitted to DOJ by U.S. Mail at the following address:

U.S. Attorney's Office, District of Massachusetts
1 Courthouse Way, Suite 9200
Boston, MA 02210
Attn: Gregory J. Dorchak, AUSA

Unless otherwise provided, all notices, reports or other such documents required by this Agreement shall be submitted to the HHS Office for Civil Rights, New England Region, by email to [REDACTED], and to DOJ by email to [REDACTED]

50. Records. Baystate shall maintain appropriate records to document the information required by this Agreement, and shall make them available, upon request, to DOJ and OCR, throughout the duration of this Agreement.
51. Complaints. For the duration of this Agreement, Baystate shall notify DOJ and OCR if any person files a lawsuit, written complaint, or formal charge against Baystate with a state or federal agency, alleging that Baystate failed to provide auxiliary aids or services to deaf or hard of hearing Patients or Companions or otherwise failed to ensure effective communication with such Patients or Companions. Such notification must be provided in writing via certified mail within twenty (20) calendar days of the date Baystate receives notice of the allegation and must include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation possessed by Baystate relevant to the allegation. Baystate will reference this provision of the Agreement in the notification to DOJ and OCR.
52. Compliance Report. Baystate shall provide an initial written report ("Compliance Report") to DOJ and OCR regarding the status of its compliance with this Agreement within nine(9) months of the Effective Date of this Agreement and a second Compliance Report within eighteen (18) months of the Effective Date of this Agreement (covering the preceding nine-month period).
53. Required Content for Compliance Reports. Each Compliance Report shall include appropriate documentation of the steps Baystate has taken to comply with each term of this Agreement, including:
- a. any revised policies and procedures;
 - b. the distribution of policies and procedures;
 - c. the training required by this Agreement, including the training materials and attendance records;
 - d. a list of any grievances and/or complaints filed by Patients or Companions regarding the provision of Auxiliary Aids and Services, including any allegations of discrimination on the basis of disability related to the provision of Auxiliary Aids

and Services, with such list to include a description of the allegations, the date filed, the status and/or outcome of each grievance or complaint, and a copy of the grievance itself;

- e. a copy of the Auxiliary Aid and Service Log(s) described in Paragraph 40; and
- f. a description of how Baystate monitors the timeliness of providing Qualified Interpreters, as set forth in Paragraph 39, and the effectiveness of providing VRI services, as set forth in Paragraph 36.

VIII. Enforcement

54. Duration of this Agreement. This Agreement shall terminate in two (2) years from its Effective Date, at which point if DOJ and OCR determine that Baystate substantially complied with this Agreement, then DOJ and OCR's review and monitoring of this Agreement shall terminate.
55. Compliance Review and Enforcement. DOJ and OCR may review compliance with this Agreement at any time during the term of this Agreement as set forth in Paragraph 54. If DOJ and OCR believe that Baystate has failed to comply with this Agreement, they will notify Baystate in writing and the Parties will attempt to resolve the issue(s) in good faith. DOJ and OCR will allow Baystate sixty (60) calendar days from the date they notify Baystate to cure said failure to comply. If DOJ and OCR determine they are unable to reach satisfactory resolution of the issue(s), DOJ and OCR may take any action authorized by law to secure compliance with Title III of the ADA, Section 504, and Section 1557, including instituting a civil action in U.S. District Court to enforce the terms of this Agreement.
56. The Parties will not, individually or in combination with one another, seek to have any court declare or determine that any portion of this Agreement is invalid, illegal, or unenforceable. In the event that a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, such provision shall be severed from the Agreement and all other provisions shall remain valid and enforceable; provided, however, that if the severance of any such provision materially alters the rights or obligation of the Parties, they shall, through reasonable, good faith negotiations, agree upon such other amendments as may be necessary to restore the Parties as closely as possible to the relative rights and obligation initially intended to them within the Agreement.

IX. Other Provisions

57. In consideration of the terms of this Agreement, DOJ and OCR agree to refrain from undertaking further investigation or taking steps toward instituting a civil suit or administrative action in DJ # 202-36-329, USAO # 2017V00591, and OCR #01-19-322853 against Baystate based on the allegations lodged against Baystate, except as provided in Paragraph 55. Except as related to the above-mentioned complaints, nothing contained in this Agreement is intended or shall be construed as a waiver by DOJ and OCR of any right to institute proceedings against Baystate for violations of any statutes, regulations, or rules administered by DOJ and OCR or to prevent or limit the rights of DOJ and OCR to obtain relief under the ADA, Section 504, or Section 1557.

58. This Agreement does not constitute a finding by DOJ and OCR that Baystate is in full compliance with the ADA, Section 504, and Section 1557. This Agreement is not intended to remedy any other potential violations of the ADA, Section 504, Section 1557, or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of disability. Nothing in this Agreement relieves Baystate of its continuing obligations to comply fully with the requirements of the ADA, Section 504, and Section 1557.
59. Nothing in this Agreement shall be construed or deemed as an admission by Baystate of any liability or fault regarding any of Complainant's or the Additional Aggrieved Party's factual allegations that Baystate engaged in any wrongful or illegal activity, that any of DOJ and OCR's allegations, including but not limited to those relating to the Complainant and Additional Aggrieved Party, are true, or that any person suffered any injury as a result of the events as alleged by DOJ and OCR, and nothing in this Agreement shall be construed as a waiver by Baystate to defend against any allegation claiming that Baystate violated any statutes, regulations, or rules administrated by DOJ and OCR or to prevent or limit the right of Baystate to challenge any claim alleging noncompliance under the ADA, Section 504, or Section 1557. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other tribunal as an admission or concession of liability or wrongdoing of any nature on the part of Baystate except in an action by DOJ or OCR challenging Baystate's compliance with this Agreement.
60. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matters raised here, and no prior or contemporaneous 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, including attachments, is enforceable. This Agreement can only be modified by mutual written agreement of the Parties.
61. Changing Circumstances. During the term of this Agreement, there may be a change in circumstances such as, for example and without limitation, an increased or decreased availability of Qualified Interpreters or developments in technology to assist or improve communications with persons who are deaf, deaf-blind, or hard of hearing. If Baystate determines that such changes create opportunities for communicating with Patients and Companions more efficiently or effectively than is required under this Agreement, or create difficulties not presently contemplated in the provision of auxiliary aids and services, Baystate may propose changes to this Agreement by presenting written proposals to DOJ and OCR. Such changes may be made to the Agreement if DOJ and OCR upon review, grant their approval in writing, which approval will not be unreasonably withheld or delayed.
62. Binding. This Agreement is final and binding on Baystate, including all principals, agents, executors, administrators, representatives, employees, successors, and assigns. In the event that Baystate seeks to sell, transfer, or assign substantially all of its assets or a controlling membership position in Baystate during the term of this Agreement, then, as a condition of such sale, transfer, or assignment, Baystate will obtain the written agreement of the successor, buyer, transferee, or assignee to all obligations remaining under this Agreement for the remaining term of this Agreement.

63. Non-Waiver. Failure by DOJ or OCR to seek enforcement of any provision of this Agreement is not a waiver of the agencies' respective right to enforce any provision of this Agreement.
64. Headings. The headings in this Agreement are for convenience only and shall not affect in any way the language of the provision to which they refer.
65. Execution of Agreement. The undersigned represent that they have been fully authorized to enter into and execute this Agreement under the terms and conditions contained herein. This Agreement may be executed in counterparts.
66. Publication or Disclosure of Agreement. DOJ and OCR place no restriction on the publication of the Agreement. In addition, DOJ and OCR may be required to disclose material related to this Agreement to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulation, 45 C.F.R. Part 5.
67. Timeframe for Implementation of Required Actions to Be Taken. Unless otherwise specifically indicated herein, the timeframe for implementation of the actions to be taken by Baystate shall be 90 calendar days from the Effective Date of this Agreement.

AGREED BY THE PARTIES:

FOR BAYSTATE MEDICAL CENTER, INC.:


Name: **Marion A. McGowan**
Title: **Executive Vice President + COO**

Dated: 11/11/2021

FOR THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES:


Susan Pezzullo Rhodes
Regional Manager, New England Region
Office for Civil Rights, Room 1875
JFK Federal Building
Boston, MA 02203

Dated: 11/12/2021

FOR THE UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF MASSACHUSETTS:


Gregory J. Dorchak
Assistant United States Attorney

Dated: 11/16/2021