

**VOLUNTARY COMPLIANCE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND ARROWHEAD REGIONAL MEDICAL CENTER**

**U.S. DEPARTMENT OF JUSTICE COMPLAINT #202-12C-462
UNITED STATES ATTORNEY'S OFFICE MATTER #2012V02560**

BACKGROUND

1. The parties ("Parties") to this Voluntary Compliance Agreement ("Agreement") are the United States of America ("United States") and Arrowhead Regional Medical Center ("ARMC").
2. ARMC is a public hospital located in Colton, California, operated by the County of San Bernardino, California.
3. This matter was initiated by a complaint filed by Complainant T.B. with the Civil Rights Division of the United States Department of Justice against ARMC, alleging violations of Title II of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12131-12134, and its implementing regulations, 28 C.F.R. Part 35.
4. Complainant T.B., who is deaf, alleged that ARMC personnel failed to provide a qualified sign language interpreter when necessary to ensure effective communication with her while her husband was a patient in ARMC's Edward G. Hirschman Burn Center from August 12-15, 2012, after he was struck by lightning.
5. Complainant J.F., who is also deaf, filed a complaint with the United States Attorney's Office for the Central District of California ("U.S. Attorney's Office") alleging that ARMC failed to provide her with any sign language interpreter from October 5-7, 2012, to ensure effective communication with her while she was a patient in ARMC's Behavioral Health Center.
6. Complainants filed a First Amended Complaint on June 9, 2013, in federal district court. They alleged violations of Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, the California Unruh Act, and Section 11135 of the California Government Code. They demanded declaratory relief, injunctive relief, compensatory damages, and attorneys' fees and costs.

INVESTIGATION AND FINDINGS

7. The United States is authorized under 42 U.S.C. § 12133, and 28 C.F.R. Part 35, Subpart F, to investigate the allegations of the complaints in this matter to determine ARMC's compliance with Title II of the ADA. The United States has the authority, where appropriate, to negotiate and secure voluntary compliance agreements, and to bring civil actions enforcing the ADA should they fail to secure voluntary compliance.

8. Complainants are deaf and as such are individuals with a "disability" within the meaning of the ADA. 42 U.S.C. § 12131(2); 28 C.F.R. § 35.104.
9. Complainant T.B. is a "companion" within the meaning of the ADA. 28 C.F.R. § 35.160(a)(2).
10. ARMC is a "public entity" within the meaning of Title II of the ADA. 42 U.S.C. § 12131(1)(B); 28 C.F.R. § 35.104.
11. The ADA prohibits discrimination on the basis of disability by a public entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.102. No qualified individual with a disability shall, on the basis of the 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 public entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130.
12. A public entity must take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a).
13. On the basis of its investigation, the United States has determined that ARMC denied Complainant T.B. a qualified interpreter on several occasions during her husband's stay at ARMC. The failure to provide appropriate auxiliary aids and services necessary for effective communication violates the ADA. 42 U.S.C. § 12132; 28 C.F.R. § 35.130. ARMC denies and disagrees with this determination.
14. Also on the basis of its investigation, the United States has determined that ARMC did not provide Complainant J.F. with a qualified interpreter at any point during her stay at ARMC. The failure to provide appropriate auxiliary aids and services necessary for effective communication violates the ADA. 42 U.S.C. § 12132; 28 C.F.R. § 35.130. ARMC denies and disagrees with this determination.
15. The Parties have determined that the complaints filed with the United States can be resolved without litigation, and they have agreed to the terms of this Agreement.
16. This Agreement is neither an admission of liability by ARMC nor a concession by the United States or the Complainants that their claims are not well-founded. By entering into this Agreement, ARMC does not admit the allegations alleged above, or admit to any violation of law, liability, fault, misconduct, or wrongdoing in connection with those allegations.

DEFINITIONS

17. The term "ARMC Personnel" means all ARMC employees, both full and part-time, and independent contractors with contracts to work on a substantially full-time basis for ARMC (or on a part-time basis exclusively for ARMC), including, without limitation, nurses, physicians, social workers, technicians, receptionists, telephone operators,

admitting personnel, billing staff, security staff, therapists, counselors and volunteers, who have or are likely to have direct contact with Patients or Companions as defined herein. The term also includes all affiliated physicians or other health care professionals who have medical staff privileges that permit them to see and/or treat Patients at ARMC.

18. 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. § 35.104.
19. The term "Auxiliary Aid and Service Log" shall refer to the log of information or data required by paragraph 44 of this Agreement.
20. 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 a service, program, or activity of ARMC, who, along with such individual, is an appropriate person with whom ARMC should communicate. 28 C.F.R. § 35.160(a) (2).
21. The term "Effective Date of this Agreement" means the date of the last signature below on this Voluntary Compliance Agreement.
22. The term "Exigent Circumstances" means an emergency or life/health threatening situation involving an imminent threat to the safety or welfare of any individual or the public requiring the immediate attention of the ARMC personnel involved in interacting with the Patient or Companion or issues beyond ARMC's control.
23. The term "hard of hearing" includes a person who has a hearing deficit and who may or may not primarily use visual aids for communication and may or may not use auxiliary aids.
24. The term "Non-Scheduled Incident" means a situation in which there are less than two hours between the time when a Patient or Companion who is deaf or hard of hearing makes a request for an interpreter or when the services of an interpreter are necessary.
25. The term "Patient" shall be broadly construed to include any individual who is seeking or receiving health care services from ARMC (including consultations, treatments, scheduling of appointments, discussion of billing matters, and attending health education classes), whether as an inpatient or an outpatient.
26. The term "qualified interpreter" means an interpreter who, through an on-site appearance or via a video remote interpreting service, 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. § 35.104.

27. The term "Scheduled Incident" means situations in which there are two or more hours between the time when an appointment is scheduled and when the services of the qualified interpreter are required.
28. The term "TTY" means a device used with a telephone to communicate with persons who are deaf or hard of hearing by typing and reading communications.
29. The term "video remote interpreting" (VRI) means an interpreting service that uses video conference technology over dedicated lines or wireless technology, and 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. §§ 35.104 & 35.160(d).

EQUITABLE RELIEF

A. Prohibition of Discrimination

30. Nondiscrimination. Pursuant to Title II of the ADA, ARMC shall not exclude Patients and Companions from participation in, or deny them the benefits of the services, programs, or activities of ARMC, or subject them to discrimination. ARMC shall provide appropriate auxiliary aids and services, including qualified interpreters, where such aids and services are necessary to ensure effective communication with deaf and hard of hearing Patients and Companions, as required by this Agreement and the ADA.
31. Retaliation and Coercion. ARMC shall not retaliate against or coerce in any way any person who made, or is making, a complaint according to the provisions of this Agreement or exercised, or is exercising, his or her rights under this Agreement or the ADA. 28 C.F.R. § 35.134.

B. Provision of Effective Communication

32. Appropriate Auxiliary Aids and Services. Pursuant to 28 C.F.R § 35.160(b), ARMC will provide to deaf or hard of hearing Patients and Companions any appropriate auxiliary aid or service that is necessary for effective communication after making the assessment described in paragraphs 35-38 of this Agreement so as to ensure no Patient or Companion is excluded from participation in or denied the benefits of the services, programs, or

activities of ARMC. Appropriate auxiliary aids and services will be provided as soon as practicable (without compromising patient care), except that the provision of on-site interpreters must be within the time frames described in paragraph 47 of this Agreement absent Exigent Circumstances. ARMC will advise Patients and Companions who require auxiliary aids or services that these are available throughout the Patient's stay at no cost.

33. ADA Coordinator. ARMC has and shall have at least one ARMC employee designated as an ADA Coordinator at all times. The ADA Coordinator will be the person responsible for receiving and investigating allegations against ARMC for any alleged noncompliance issues or any actions that would be prohibited by the Title II of the ADA or this Agreement. The ADA Coordinator, or his/her designee, shall be available twenty-four (24) hours a day, seven days a week, to answer questions and provide appropriate assistance regarding immediate access to and proper use of any auxiliary aid or service required by this Agreement, including qualified interpreters. The ADA Coordinator, or any individual to whom the duties are delegated when the ADA Coordinator is incapacitated or unavailable, will know where any given auxiliary aid is stored, how to obtain the aid or service and how to operate any aid. The ADA Coordinator or his/her designee will be responsible for the maintenance, repair, replacement, and distribution of any aid. ARMC will circulate broadly within the hospital the name, telephone number, function, and office location of the ADA Coordinator, including a TTY telephone number that may be called by ARMC Personnel, Patients, Companions or members of the public in order to obtain the ADA Coordinator's assistance. The ADA Coordinator shall be responsible for the complaint resolution mechanism described in Section F of this Agreement.
34. Review of New and Modified Policies. ARMC shall submit copies of all policies, procedures, documentation forms, and logs to the U.S. Attorney's Office that pertain to the provision of effective communication or are created or modified in order to comply with this Agreement prior to implementing such policies and/or procedures. The United States will have the option to submit any proposed changes to the proposed policies, procedures, forms and logs within twenty-one (21) days of receipt. ARMC will adjust its proposed policies, procedures, forms and logs to reflect any comments or concerns identified by the United States or, if rejected, provide the United States with a written explanation of the rejection. The Parties will work together in good faith to reach agreement as to the final language of all policies, procedures, documentation forms, and logs. ARMC has an independent obligation to ensure that its policies comply with the ADA.
35. General Assessment Criteria. As part of its Patient registration process, by way of the Patient intake form or by way of interaction or observation, and whether in person or by telephone or TTY, ARMC Personnel shall inquire whether the Patient and/or the Patient's Companion is deaf or hard of hearing. If the Patient states he/she is deaf or hard of hearing, and/or has a Companion who is deaf or hard of hearing, or if through ARMC Personnel's observations or interactions with the Patient or Companion, ARMC determines the Patient or Companion may be deaf or hard of hearing, ARMC Personnel shall provide the Patient with a Deaf and Hard of Hearing Communication Request Form

("Form") described in paragraph 37 of this Agreement to determine which auxiliary aid or service is necessary to provide the Patient or Companion with effective communication. The determination of which appropriate auxiliary aid or service is necessary, and the timing, duration, and frequency with which it will be provided, must be made at the time an appointment is scheduled for the Patient or on the arrival of Patient or Companion at the hospital, whichever is earlier. However, the determination as to which appropriate auxiliary aid to provide shall be continually evaluated and adjusted as necessary during the course of the Patient's treatment at ARMC, pursuant to the terms of this Agreement.

36. Primary Consideration. In determining which auxiliary aid or service is necessary to comply with the ADA, ARMC agrees to give primary consideration to the Patient's or Companion's expressed preference for a particular auxiliary aid or service. "Primary consideration" means that ARMC Personnel will inquire as to the choice of auxiliary aid or service of the individual and will honor the expressed choice unless ARMC can demonstrate that another effective means of communication exists or that use of the means chosen would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.
37. Determination Form. Once ARMC Personnel have determined a Patient or Companion is or may be deaf or hard of hearing, or once a request for an auxiliary aid or service has been made to any ARMC Personnel, ARMC shall immediately, absent Exigent Circumstances, provide the Patient or Companion with a Deaf and Hard of Hearing Communication Request Form ("Form"). (A model Form is provided as Attachment A for reference.) ARMC will develop a form for conducting the initial assessment no later than thirty (30) days following the Effective Date of this Agreement. The Form shall be kept in the Patient's medical chart.
38. General Determination of Appropriate Aid or Service. The determination of which auxiliary aid or service is necessary, and the timing, duration, and frequency with which it will be provided, will be made by ARMC Personnel based on review of the completed Form and in consultation with the Patient or Companion, wherever possible, to ensure effective communication. The determination made by ARMC will take into account all relevant facts and circumstances, including without limitation the following:

- a) the aid or service requested by, or on behalf of, the Patient or Companion;
- b) the nature, length, complexity and importance of the communication at issue;
- c) the Patient's or Companion's communication skills and knowledge, including their normal method(s) of communication;
- d) the Patient's health status or changes thereto;
- e) the reasonably foreseeable health care activities of the Patient (e.g., group therapy sessions, medical tests or procedures, rehabilitation services, meetings with health care professionals or social workers, or discussions concerning billing, insurance, self-care, prognoses, diagnoses, history, and discharge); and
- f) any factors relevant to determining whether the specific type of auxiliary aid or service is effective under the circumstances.

The determination of which auxiliary aid or service to provide will be documented in the Patient's medical chart, along with the name, title and phone number of the ARMC Personnel who made the determination and initiated the request for the aid or service.

39. Determination Not to Provide an Auxiliary Aid or Service. If, after conducting a determination, ARMC denies the Patient's or Companion's choice of auxiliary aid or service or otherwise determines that the circumstances do not warrant provision of a particular auxiliary aid or service, ARMC Personnel will so advise the person requesting the aid or service, and will document the date and time of the denial, the name and title of the ARMC Personnel making the determination, any alternative auxiliary aid or service that was provided, and the basis for the determination for denying the requested auxiliary aid or service in the Auxiliary Aid and Service Log. If ARMC makes a decision to deny any auxiliary aid or service based on undue financial and administrative burden, that decision must be made by the ADA Coordinator or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. A copy of the written statement will be provided to the Patient or Companion; will be maintained with the Auxiliary Aid and Service Log described in paragraph 44 of this Agreement; and will be placed in the Patient's medical chart.
40. Reassessment. In the event that a utilized auxiliary aid or service was not effective for communication, ARMC Personnel will promptly reassess which appropriate auxiliary aids and services are necessary, in consultation with the Patient or Companion, where possible, and provide such aid or service based on the reassessment. ARMC will document in the Auxiliary Aid and Service Log any instances where a Patient or Companion indicates that the hospital failed to provide any auxiliary aid or service, or if an aid or service was ineffective.
41. Medical Chart. The Patient's medical chart and/or electronic file shall be conspicuously labeled to alert ARMC Personnel to the fact that the Patient and or Companion is deaf or hard of hearing. As discussed in this Agreement, the chart shall contain all the required information pertaining to the offer, provision and use of auxiliary aids or services to the Patient or Companion.

42. On-going Communication with Patients and Companions. ARMC will take appropriate steps to ensure that all ARMC Personnel having contact with a Patient or a Companion are made aware of the person's need for an auxiliary aid or service so that effective communication will be achieved during the Patient's stay.
43. Subsequent Patient Visits. During a Patient or Companion's subsequent visit, ARMC Personnel shall reference the Patient's prior medical records, where available, as part of the communication assessment required by paragraph 35 of this Agreement.
44. Auxiliary Aid and Service Log. ARMC will maintain a log of each request for an auxiliary aid or service. The log will contain the following information: (a) the name of the Patient (and Companion, if applicable); (b) the type of Auxiliary Aid or Service requested; (c) the time and date the request was made; (d) the time and date of the scheduled appointment (if a scheduled appointment was made); (e) the name of the ARMC Personnel who performed any communication assessment or reassessment; (f) the name of any ARMC Personnel responsible for determining whether or not to provide the requested auxiliary aid or service; (g) the type of the auxiliary aid or service provided; (h) the time and date the auxiliary aid or service was provided, or a statement that the auxiliary aid or service was not provided and the reason for the denial; and (i) any delays in the provision of auxiliary aid or service. Such logs will be maintained by the ADA Coordinator, and will be incorporated into the semi-annual compliance reports as described in paragraph 69 of this Agreement. ARMC will establish the Auxiliary Aid and Service Log within thirty (30) days of the Effective Date of this Agreement.
45. Prohibition of Surcharges. All appropriate auxiliary aids and/or services required by this Agreement will be provided free of charge to the deaf or hard of hearing Patient and/or Companion.

C. Provision of Qualified Interpreters

46. 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 communication for patients. When ARMC determines pursuant to paragraphs 35-38 of this Agreement that an interpreter is needed, ARMC shall provide qualified sign language interpreters to Patients and Companions who rely on sign language as a primary means of communication, and qualified oral interpreters to such Patients and Companions who rely primarily on lip reading, as necessary for effective communication. The following is a non-exhaustive list of circumstances when it may be necessary to provide interpreters:
- a) Discussing a Patient's symptoms and medical condition, medications, and medical history (including medical, psychiatric, psychosocial, nutritional);
 - b) Reviewing, explaining or obtaining (i) informed consent or permission for treatment, (ii) Health Care Proxy, (iii) powers of attorney, (iv) living wills, (v) DNR/DNI, (vi) Patient Bill of Rights, and (vii) the Form developed pursuant to paragraph 37 of this Agreement;

- c) Determining if a Patient is conscious;
- d) Explaining a Patient's diagnosis or prognosis and recommendation for treatment;
- e) Explaining medical procedures to be selected by the Patient or used, including tests, treatment, treatment options or surgery;
- f) Explaining medications prescribed (such as dosage, instructions for how and when the medication is to be taken, and side effects or food or drug interactions);
- g) Determining any condition or allergy of a Patient that may affect the Patient's choice of medication;
- h) Explaining follow-up treatments, post-treatment activities, therapies, test results or recovery;
- i) Assisting with communication during routine nursing care (i.e. general routine care involving rapport, comfort and anxiety level of the Patient);
- j) Explaining a change in regimen, environment, condition or unfamiliar treatment;
- k) Explaining and resolving emergency situations that arise;
- l) Providing information about blood donations or apheresis (removal of blood components);
- m) Discussing discharge planning and discharge instructions;
- n) Religious services and spiritual counseling provided by ARMC;
- o) Providing mental health services, individual or group therapy or counseling, other therapeutic activities including, but not limited to grief counseling and crisis intervention;
- p) Explaining complex billing or insurance issues that may arise;
- q) Providing educational services, such as classes concerning birthing, nutrition, CPR, and weight management.

47. Provision of Interpreters in a Timely Manner.

- a) Non-Scheduled Incidents: After determining in accordance with paragraphs 35-38 that an interpreter is necessary, ARMC will provide an interpreter as soon as practicable and absent Exigent Circumstances pursuant to the following terms:
 - i) *if the Patient or Companion expresses a preference for VRI over an on-site interpreter*, ARMC shall have the VRI equipment set up, logged on, and available to the Patient or Companion as soon as practicable, but no later than twenty (20) minutes after the Patient or Companion expresses that preference. An online interpreter shall be available to the Patient or Companion via the VRI service as soon as practicable, but no later than twenty-five (25) minutes from log-on, provided that any delay between 10 to 25 minutes from the time of logon to the time an online interpreter is secured is permissible only when such delay is caused by the VRI provider, not by ARMC Personnel or equipment. Deviations from these response times will be addressed with the interpreting service provider, and performance goals will be reviewed with the U.S. Attorney's Office every six months during the term of this Agreement. The VRI equipment shall stay with the Patient or Companion for the duration of the Patient's stay or, absent Exigent Circumstances, be provided to the Patient or Companion within ten minutes of a request for the VRI equipment, and shall be used by the Patient or Companion,

subject to the limitations contained in paragraph 48. Notwithstanding the foregoing, nothing in this section shall lessen ARMC's obligation to provide effective communication to a Patient or Companion consistent with the terms of this Agreement, including the provisions set forth in paragraph 49;

ii) *if the Patient or Companion has not expressed a preference for an on-site interpreter or VRI service* or cannot fill out the Form, but there is some indication that he/she would benefit from an interpreter, ARMC shall, at a minimum, have the VRI equipment set up, logged on, and available to the Patient or Companion as soon as practicable, but no later than twenty (20) minutes after filling out the Form or arrival at ARMC. An online interpreter shall be available to the Patient or Companion via the VRI service as soon as practicable, but no later than twenty-five (25) minutes from log-on, provided that any delay between 10 to 25 minutes from the time of logon to the time an online interpreter is secured is permissible only when such delay is caused by the VRI provider, not ARMC personnel or equipment. Deviations from these response times will be addressed with the interpreting service provider, and performance goals will be reviewed with the U.S. Attorney's Office every six months during the term of this Agreement. The VRI equipment shall stay with the Patient or Companion for the duration of the patient's stay or, absent Exigent Circumstances, be provided to the Patient or Companion within ten minutes of a request for the equipment and shall be used by the Patient or Companion (if VRI is not substituted by an on-site interpreter), subject to the limitations contained in paragraph 48. Notwithstanding the foregoing, nothing in this section shall lessen ARMC's obligation to provide effective communication to a Patient or Companion consistent with the terms of this Agreement, including the provisions set forth in paragraph 49;

iii) *if the Patient or Companion has expressed a preference for an on-site interpreter*, absent Exigent Circumstances, ARMC will use its best efforts to make the request for an interpreter within 15 minutes after completing the determination described in paragraphs 35-38 of this Agreement, in which it is determined that an on-site interpreter is requested or necessary. ARMC will use its best efforts to provide an interpreter no more than two hours from the time ARMC Personnel completes the assessment. In no event will ARMC's response time exceed three hours unless good cause can be shown for the delay, and such delay and cause for the delay are documented in the Patient's medical chart and in the Auxiliary Aid and Service Log. Deviations from these response times will be addressed with the interpreting service provider, and performance goals will be reviewed with the U.S. Attorney's Office every six months during the term of this Agreement.

iv) At all times, ARMC shall contract with at least one interpreter agency that can provide interpretation services consistent with the terms of this Agreement. If the interpreter agency cannot provide an interpreter, ARMC Personnel will take the following steps: (i) Provide the best auxiliary aid available under the circumstances, including having the VRI computer equipment set up, logged on,

and available to the Patient or Companion as soon as practicable as described in subparagraph (a)(i) above; (ii) Exert reasonable efforts to contact any interpreters or other interpreting agencies who are qualified under the ADA standards to provide medical translating services and request their services; (iii) inform the ADA Coordinator of the efforts made to locate an interpreter and solicit any additional assistance in obtaining an interpreter; (iv) inform the Patient or Companion (or a family member or friend, if the Patient or Companion is unavailable) of the efforts taken to secure a qualified interpreter and follow up on reasonable suggestions for alternate means to secure effective communication; and (v) document all of the above efforts in the Patient's chart and in the Auxiliary Aid and Service Log.

v) If it is not practicable to provide VRI, ARMC Personnel will take the following steps: (i) Provide the best auxiliary aid available under the circumstances; (ii) Exert reasonable efforts to contact any interpreters or other interpreting agencies who are qualified under the ADA standards to provide medical translating services and request their services, as described in subparagraph (a)(iii) above; (iii) inform the ADA Coordinator of the efforts made to locate an interpreter and solicit any additional assistance in obtaining an interpreter; (iv) inform the Patient or Companion (or a family member or friend, if the Patient or Companion is unavailable) of the efforts taken to secure a qualified interpreter and/or VRI and follow up on reasonable suggestions for alternate means to secure effective communication; and (v) document all of the above efforts in the Patient's chart and in the Auxiliary Aid and Service Log.

- b) Scheduled Incidents: For Scheduled Incidents, ARMC Personnel will complete the assessment described in paragraphs 35-38 in advance. If the Patient or Companion requests an on-site interpreter or expresses a preference for one over VRI service, ARMC Personnel will make a qualified interpreter available at the time of the scheduled appointment. ARMC Personnel will request an interpreter within 15 minutes after completing the assessment absent Exigent Circumstances affecting patient care, and will document the request in the Patient's chart. If an interpreter fails to arrive for the scheduled appointment, upon notice that the interpreter failed to arrive, ARMC will immediately call the interpreter service for another qualified interpreter, or otherwise arrange for another qualified interpreter. For Scheduled Incidents in which a Patient or Companion does not express a preference for VRI service or on-site interpreting, ARMC Personnel shall ask the Patient or Companion for a preference. If there is still no preference, ARMC Personnel shall provide the Patient or Companion, at a minimum, with VRI at the scheduled time of the incident or appointment and for the duration of such incident or appointment, subject to the limitations contained in paragraph 48.

48. If, based on the circumstances, VRI is not providing effective communication, ARMC shall secure an on-site interpreter in accordance with the timetable set forth in paragraph 47. ARMC shall document its efforts on the steps taken to secure an on-site interpreter in

the Patient's medical chart and report any delays or technical problems in the Auxiliary Aid and Service Log.

49. Provision of Qualified Interpreters Throughout a Patient's Hospitalization. ARMC will develop a policy and implement procedures to ensure that, once a Patient has been admitted to the hospital and the determination described in paragraphs 35-38 of this Agreement has determined that a qualified sign language interpreter is necessary to achieve effective communication during that hospitalization of the Patient, qualified interpreters are made available at all events described in paragraph 46 of this Agreement involving Patient and/or Companion communications. A Patient will not be required to renew requests for a qualified interpreter for these events. In the case of Companions, ARMC will provide a qualified interpreter for any event involving those communications, provided that ARMC Personnel are advised in a reasonably timely fashion that the Companion will be present at the event.
50. Video Remote Interpreting.
- a) Whenever VRI is provided or used, ARMC shall comply with 28 C.F.R. § 35.160(d). Once per week, ARMC shall check the VRI software to ensure that the latest updates have been properly installed and test the VRI equipment to make sure that it is working properly.
 - b) If there is any indication that a Patient or Companion is having difficulty with VRI due to the size of the VRI equipment's screen, ARMC Personnel shall immediately connect the VRI service to a large-screen television or a larger computer monitor for the Patient or Companion. ARMC shall be trained on how to set up the VRI on larger television screens or computer monitors in a quick manner.
 - c) VRI shall not be used when it is not effective due, for example, to a Patient's limited ability to move his or her head, hands or arms; vision or cognitive issues; significant pain; or due to the space limitations of the room.
51. Data Collection on Interpreter Response Time and Effectiveness. ARMC will monitor the performance of each qualified interpreter service it uses to provide communication to deaf or hard of hearing Patients or Companions through its established process of monitoring outside vendors. As part of the Auxiliary Aid and Service Log, described in paragraph 44 of this Agreement, the ADA Coordinator shall collect information regarding response times for each request for an interpreter and provide the information to the U.S. Attorney's Office every six months for the duration of this Agreement.
52. Notice to Deaf or Hard of Hearing Patients and Companions. As soon as ARMC Personnel have determined that a qualified interpreter is necessary for effective communication with a deaf or hard of hearing Patient or Companion, ARMC will inform the Patient or Companion (or a family member or friend, if the Patient or Companion is not available) of the current status of efforts being taken to secure a qualified interpreter on his or her behalf. ARMC Personnel will provide additional updates to the Patient or Companion as necessary until an interpreter is secured. Notification of efforts to secure a

qualified interpreter does not lessen ARMC's obligation to provide qualified interpreters in a timely manner as required by paragraph 47 of this Agreement.

53. Other Means of Communication. ARMC agrees that between the time an interpreter is requested and the interpreter is provided, ARMC Personnel will continue to try to communicate with the deaf or hard of hearing Patient or Companion 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 and the exchange of written notes. This provision in no way lessens ARMC's obligation to provide qualified interpreters in a timely manner as required by paragraph 47 of this Agreement.
54. Restricted Use of Minors to Facilitate Communication. ARMC shall not rely on a minor accompanying a Patient or Companion to interpret or facilitate communications between ARMC 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.
55. Limited Use of Adults to Facilitate Communication. ARMC shall never require or coerce an adult family member, companion, case manager, advocate, or friend of a Patient or Companion to interpret or facilitate communications between ARMC Personnel and such Patient or Companion. ARMC may not rely upon such a person to interpret or facilitate communications between ARMC 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 or unless the following four factors are present:
 - a) where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication and such person agrees to provide such assistance;
 - b) such use is necessary or appropriate under the circumstances, giving appropriate consideration to any privacy and confidentiality issues that may arise;
 - c) the Patient or Companion has been made aware of ARMC's full range of auxiliary aids and services available free of charge; and
 - d) ARMC provides full documentation of this decision in the Patient's chart.

This provision in no way lessens ARMC's obligation to provide an auxiliary aid or service as required under the ADA or this Agreement.

D. Notice to the Community

56. Policy Statement. Within sixty (60) days of the Effective Date of this Agreement, ARMC shall provide notice of the availability of auxiliary aids and services free of

charge. ARMC shall post and maintain signs of conspicuous size and print at all ARMC admitting stations, the emergency department, and wherever a Patient's Bill of Rights is required by law to be posted. Such signs shall state, to the following effect:

Sign language and oral interpreters, TTYs, and other auxiliary aids and services are available free of charge to persons who are deaf or hard of hearing. For assistance, please contact any ARMC Personnel or the ADA Coordinator _____ (voice/TTY), room _____.

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

57. Website. ARMC will include on its website the policy statement described above.
58. Patient Handbook. ARMC will include in all future printings of its Patient handbook (or equivalent) and all similar publications a statement to the following effect:

To ensure effective communication with Patients 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, computer-assisted real time transcription services, 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 most ARMC programs. Services are available twenty-four (24) hours a day, seven days a week.

Please ask your nurse or other ARMC Personnel for assistance, or contact the ADA Coordinator at _____ (voice or TTY), room _____.

ARMC will also include in its Patient handbook a description of its complaint resolution mechanism.

E. Notice to ARMC Personnel

59. Within sixty (60) days of the Effective Date of this Agreement, ARMC shall publish, in an appropriate form, a written policy statement regarding ARMC's policy for effective communication with Patients or Companions for use by persons working at the hospital. This policy statement shall include, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a Patient or a relative, close friend, or Companion of a Patient is deaf or hard of hearing, you must advise the person that appropriate auxiliary aids and services, such as sign language and oral interpreters, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with captioning or closed caption decoders, and open and closed captioning of most ARMC programs, will be provided free of charge if such aids are needed to achieve effective communication. If you are the responsible health care provider, you must ensure that such aids and services are provided when appropriate. All other personnel should direct that person to the appropriate ADA Coordinator at _____ and reachable at _____.

ARMC will distribute this policy statement, via e-mail, hard-copy, or the Intranet to all ARMC Personnel (including physicians with practicing or admitting privileges). ARMC will distribute the policy statement to all new ARMC Personnel within thirty (30) days of employment or affiliation. In addition, ARMC will distribute the statement to all ARMC Personnel on an annual basis. The statement shall be accompanied by a form acknowledgement of receipt, which all recipients shall return to the attention of the ADA Coordinator within thirty (30) days of receipt. The ADA Coordinator shall retain at least one signed acknowledgment, in hard copy or electronic form, from every ARMC Personnel (including affiliated physicians).

60. Communication with Patients and Companions. ARMC will take appropriate steps to ensure that all ARMC Personnel having contact with a Patient or Companion are aware of: (a) the hospital's policies and procedures implementing this Agreement and the ADA; (b) the hospital's policies and procedures governing requests for an auxiliary aid or service by Patients and Companions; and (c) the role of the ADA Coordinator.

F. Complaint Resolution Procedure

61. Grievance Procedure. Within sixty (60) calendar days of the Effective Date of this Agreement, ARMC shall take steps to notify ARMC Personnel and interested persons of the information contained in the grievance procedure. A written response to any complaint or grievance shall be completed within no more than thirty (30) days of receipt of the complaint, absent exigent circumstances.
62. Publication of Grievance Procedure. Within sixty (60) calendar days of the Effective Date of this Agreement, ARMC shall take steps to notify ARMC Personnel and interested persons of the information contained in the grievance procedure. ARMC shall post notice of the grievance procedure in conspicuous size and print in visible locations in ARMC facilities and on its website, and publish the grievance procedure in its Patient handbooks and in similar publications.

63. Records. ARMC will maintain records of all grievances regarding effective communication, whether oral or written, made to ARMC, and actions taken with respect thereto. Copies of all grievances related to provision of services for deaf or hard of hearing Patients and/or Companions and the responses thereto will be maintained by the ADA Coordinator for the entire duration of the Agreement.

G. Training

64. Training of the ADA Coordinator. To the extent not previously provided, ARMC will provide mandatory, specialized training for its ADA Coordinator within sixty (60) days of designation as provided in paragraph 33 of this Agreement. All future ADA coordinators shall receive the same training within sixty (60) days of designation. Such training will be sufficient in duration and content to train the ADA Coordinator in the following areas:
- a) Basic laws and principles of Title II of the ADA;
 - b) identification of the communication needs of Patients and Companions who are deaf or hard of hearing;
 - c) the various degrees of hearing impairment, language, and cultural diversity in the deaf community;
 - d) identification of communication needs of persons who are deaf;
 - e) types of auxiliary aids or services available in the community and ARMC, and how to secure them;
 - f) the proper use and role of qualified sign language interpreters;
 - g) recommended and required charting procedures governing requests for an auxiliary aid or service as set forth in this Agreement;
 - h) making and receiving calls through TTYs and the relay service;
 - i) how to use VRI service, including how to operate and connect the system quickly and efficiently;
 - j) the hospital's complaint resolution procedure described in Section F of this Agreement; and
 - k) any other applicable requirements of this Agreement.
65. Training of ARMC Personnel. Except for affiliated physicians, who are governed by paragraph 67 of this Agreement, ARMC will provide mandatory in-service training to all ARMC Personnel.

- a. The training will address the needs of deaf and hard of hearing Patients and Companions and will include the following objectives:
 - (i) to promptly identify communication needs and preferences of deaf or hard-of-hearing persons;
 - (ii) to conduct the determination required by paragraph 38 of this Agreement;
 - (iii) to meet all of the documentation obligations set forth in this Agreement;
 - (iv) to secure qualified interpreter services as quickly as possible when necessary; and
 - (v) to use, when appropriate, flash cards, pictographs, and VRI (in conjunction with any other available means of communication that will augment the effectiveness of the communication).
 - b. Such training shall be completed for all ARMC personnel within one hundred and fifty (150) days of the Effective Date of this Agreement. ARMC agrees to use good faith efforts to complete the training as quickly as possible, with the goal of doing so within ninety (90) days of the Effective Date of this Agreement.
 - c. New employees must be trained within thirty (30) days of their hire. A screening of a video of the original training will suffice to meet this obligation, as long as the substance of the video is in accordance with provisions of the ADA then in effect.
66. Training of Telephone Operators. In addition to the training described in paragraph 65, all ARMC Personnel who receive incoming telephone calls from the public will receive special instructions by ARMC on using TTYs or relay services to make, receive, and transfer telephone calls. They also will receive training generally on the existence of the ADA Coordinator, and the complaint resolution process set forth in this Agreement. Such specialized training must be provided within sixty (60) days of the Effective Date of this Agreement and shall be conducted annually thereafter.
67. Training of Affiliated Physicians. ARMC will ensure that all affiliated physicians who do not receive the training discussed in paragraph 65 of this Agreement are provided with information that covers the following topics:
- a) prompt identification of the communication needs and preferences of Patients and Companions;
 - b) how to secure auxiliary aids or services as quickly as possible when necessary; and
 - c) ensure that their staff members notify the hospital and the ADA Coordinator about Patients and Companions as soon as possible after scheduling admissions, tests, surgeries, or other health care services at ARMC.

68. Training Attendance Sheets. ARMC will maintain, for the duration of this agreement, in hard copy or electronic form the attendance sheets of all training conducted pursuant to paragraphs 64-67, which will include the names and respective job titles of the attendees, the date, time, and location of the training session, and a descriptive title of the training session.

H. Reporting, Monitoring, and Violations

69. Compliance Reports. Beginning six months after the Effective Date of this Agreement and every six months thereafter for the entire duration of the Agreement, ARMC will provide a written report ("Compliance Report") to the U.S. Attorney's Office regarding the status of its compliance with this Agreement. This Compliance Report will be based upon the biannually submitted log and will be submitted concurrently with the log. The Compliance Report will include data relevant to the Agreement, including but not limited to:

- a) the number of requests for an auxiliary aid or service received by ARMC from a Patient or Companion;
- b) the number of times an auxiliary aid or service was provided by the hospital, a description of the auxiliary aid or service provided, and the amount of time it took for ARMC to provide the aid or service;
- c) the number of times, if any, ARMC denied a request for an auxiliary aid or service and the reason for each denial;
- d) the number of times a request for a qualified sign language interpreter was granted by ARMC, but the interpreter failed to appear, and the reason(s) for the failure;
- e) any explanation of the reasons for the delays in obtaining qualified sign language interpreters in those cases where the response times failed to comply with the time frames described in paragraph 47 of this Agreement;
- f) the number of complaints, if any, received by ARMC from Patients and Companions regarding any auxiliary aid or service, and the resolution of such complaints including any supporting documents;
- g) documentation of compliance with all of the training provisions of this Agreement; and
- h) relevant data or summaries from all other documents referenced for retention in this Agreement.

ARMC will maintain records to document the information contained in the Compliance Reports if summaries are provided, and will make them available, upon request, to the U.S. Attorney's Office.

A version of the data described above, redacted to protect the privacy of Patients, will also be provided to: Elizabeth Eubanks, Regional Director, Inland Empire Program Disability Rights Legal Center, University of La Verne College of Law, 320 East D. Street, Ontario, CA 91764.

70. Complaints. During the term of this Agreement, ARMC will notify the U.S. Attorney's Office if any person files a lawsuit, complaint, grievance or formal charge with a state or federal agency, alleging that ARMC failed to provide an auxiliary aid or and service to deaf or hard of hearing Patients or Companions or otherwise failed to provide effective communication with such Patients or Companions. Such notification must be provided in writing via certified mail within twenty (20) days of the date ARMC received notice of the allegation and will include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation possessed by ARMC relevant to the allegation. ARMC will reference this provision of the Agreement in the notification to the U.S. Attorney's Office.

REMUNERATION AND RELEASES

71. Specific Relief to Complainants. Complainants are receiving remuneration pursuant to the terms of the federal court settlement agreement in T.B. v. San Bernardino County, et al., Case No. CV 13-01058 JGB (SPx). Complainants will receive no other amounts except those specified in the federal court settlement. The releases executed with the settlement of the federal court lawsuit are deemed releases of all claims arising out of this Department of Justice investigation.

ENFORCEMENT AND MISCELLANEOUS

72. Duration of the Agreement. This Agreement will be in effect for four years from the Effective Date of this Agreement.
73. Enforcement. In consideration of the terms of this Agreement as set forth above, the Attorney General agrees to refrain from undertaking further investigation or from filing a civil suit under Title II in this matter, except as provided in paragraph 74 of this Agreement. Subject to the provisions of paragraph 74, 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 ARMC 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.
74. 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 ARMC, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow ARMC thirty (30)

days from the date it notifies ARMC 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.

75. 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.
76. 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.
77. 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.

For the United States of America:

EILEEN M. DECKER

United States Attorney

LEON W. WEIDMAN

Assistant United States Attorney

Chief, Civil Division

By: 

ROBYN-MARIE LYON MONTELEONE

Assistant United States Attorney

Assistant Division Chief

Civil Rights Chief, Civil Division

MONICA L. MILLER

Assistant United States Attorney

Date: 8/25/15

For Arrowhead Regional Medical Center:

By: 

GEOFFREY SPELLBERG

Meyers, Nave

Date: 8/18/15

Deaf or Hard of Hearing Communication Request Form

<input type="checkbox"/> Telephone compatible with hearing aid			
<input type="checkbox"/> Flasher for incoming calls (in patient's room)			
<input type="checkbox"/> Other. Explain: _____			

☐ No. I do not use sign language and/or do not use interpreters.

☐ No. I prefer to have only family members/friends help with communication.

Name of family member/friend: _____.

☐ No. Please state other reason: _____.

If you requested both an interpreter on-site and a video remote interpreter above, do you have a preference between the two?

☐ Yes, I prefer an interpreter on-site

☐ Yes, I prefer video remote interpreter

☐ No, I do not have a preference between the two

If you have any questions, please call _____ (voice), _____ (TTY),
or Email at:

Completed by: _____
(Please print name)

Signature: _____

Date: _____ Time: _____

Home phone: _____ Cell phone: _____ Email: _____

**** If at any point during your Hospital visit, you wish to change any of the answers to the questions on this form, please notify _____.**