

**SETTLEMENT AGREEMENT BETWEEN**  
**THE UNITED STATES ATTORNEY'S OFFICE**  
**FOR THE WESTERN DISTRICT OF KENTUCKY**

**AND**

**HARDIN COUNTY EMERGENCY MEDICAL SERVICES**  
**UNDER THE AMERICAN WITH DISABILITIES ACT**

**USAO# 2017V00175 / DJ #204-31-96**

**I. PURPOSE**

- A. This Agreement is entered into between the United States Attorney's Office for the Western District of Kentucky ("USAO-WDKY") and the Hardin County Emergency Medical Services ("HCEMS"). It is the Parties' intent that this Settlement Agreement resolve an American with Disabilities Act ("ADA") Complaint regarding the provision of emergency medical services to qualified individuals with disabilities, including individuals using service animals, so that they may participate in or benefit from the HCEMS services.

**II. BACKGROUND**

- A. The USAO-WDKY investigated a complaint filed pursuant to Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12134, alleging, *inter alia*, that HCEMS failed to provide effective emergency medical services to the Complainant. Specifically, the Complainant, who used a service animal and required emergency transportation services, alleged that HCEMS failed to permit his service animal to ride with him to the hospital in the transporting vehicle.
- B. HCEMS is a "public entity" under Title II of the ADA, 42 U.S.C. § 12131. Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability in the "services, programs, or activities of a public entity." 42 U.S.C. § 12132.
- C. The United States Attorney's Office is authorized, under 28 C.F.R. Part 35, Subpart F, to investigate the allegations of the complaint in this matter to determine HCEMS's compliance with Title II of the ADA and the Title II implementing regulation at 28 C.F.R. Part 35. The USAO-WDKY is also authorized to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Further, the United States Attorney's Office is authorized, under 42 U.S.C. § 12133, to bring civil actions enforcing Title II of the ADA should the United States fail to secure voluntary compliance under Subpart F.

- D. In consideration of the terms of this Agreement as set forth below, the USAO-WDKY agrees to refrain from filing a civil suit in this matter except as provided in the paragraph entitled "Notification of Noncompliance and Enforcement" below, and will close its investigation of DJ 204-31-96/USAO2017V00175.
- E. HCEMS conducted an independent investigation of the allegations contained in the complaint and has cooperated fully in the United States' investigation and made clear that it will work cooperatively with the United States to ensure that HCEMS provides effective emergency medical services in full compliance with the requirements of Title II of the ADA. The Parties agree and acknowledge it is in the best interests of Hardin County and the United States to collaborate on implementing policies and procedures for Hardin County designed to protect affected citizens. This Agreement is a negotiated compromise resolution and none of the terms of this Agreement shall be deemed to constitute an admission by HCEMS of any violation or liability under Title II of the ADA or any other law.
- F. The Parties agree that it is in the Parties' interest, and the United States believes that it is in the public interest, to resolve this matter expeditiously and without protracted litigation. Accordingly, the Parties have agreed to resolve this matter as set forth below.

### **III. DEFINITIONS**

- A. "Ambulance" means any type of motorized vehicle utilized by HCEMS to transport an individual from one location to another location.
- B. "Service Animal" means "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability." 28 C.F.R. § 35.104.
- C. "Personnel" means all HCEMS employees and volunteers.

#### IV. TERMS AND CONDITIONS

- A. Nondiscrimination. HCEMS agrees not to engage in any act or practice, directly or through contracting, licensing, or other arrangements, that has the purpose or effect of unlawfully discriminating against any person with a disability in violation of Title II of the ADA. Unless otherwise indicated, within sixty (60) days of the effective date of this Agreement, HCEMS agrees to implement fully the practices and policies set forth below with respect to all emergency medical services, personnel and related programs.
- B. Coverage of Involuntary Participation. Through this Agreement, terms such as “enjoyment,” “benefit,” or “seek” that in other context might imply the voluntary and willing participation of a member of the public in a public entity’s programs, services, or activities, shall also refer to a member of the public’s involuntary participation in HCEMS’s emergency medical services, programs, and activities, such as, inter alia, emergency transportation while unconscious.
- C. ADA Coordinator for HCEMS. Within thirty (30) days of the effective date of this Agreement, HCEMS will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II and this Agreement (ADA Coordinator for HCEMS). The duties of the ADA Coordinator for HCEMS will include investigation of any complaint communicated to HCEMS alleging its noncompliance with, or alleging any actions that would be prohibited by, Title II or this Agreement. HCEMS will post the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph on its website as well as in places open to the public. *See* 28 C.F.R. § 35.107(a). HCEMS will maintain the ADA Coordinator for the term of this Agreement. If HCEMS changes who it appoints as ADA Coordinator, it will notify the United States in writing, and update the name and contact information anywhere it appears, within five (5) days of making such a change.
- D. Reasonable Modifications. HCEMS will make reasonable modifications to policies, practices, or procedures when necessary to avoid discrimination, unless it can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7). HCEMS shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability. 28 C.F.R. § 35.136(a).
- E. Exceptions. HCEMS may properly exclude a service animal if: (1) it is out of control and the animal’s handler does not take effective action to control it; or (2) the animal is not housebroken. 28 C.F.R. § 35.136(b). If HCEMS properly excludes a service animal, it shall give the individuals with a disability the opportunity to participate in the service, program, or activity without having the service animal present. 28 C.F.R. § 35.136(c). A service animal shall be under the control of its handler and shall have a harness, leash, or other tether

unless because of a disability that is not possible, in which case the service animal must otherwise be under the handler's control (e.g., voice control, signals, or other effective means). 28 C.F.R. § 35.136(d). "Other effective means" includes training a service animal to provide services while the handler is unconscious. HCEMS is not responsible for the care or supervision of a service animal 28 C.F.R. § 35.136(e).

- F. Inquiries. HCEMS shall not ask about the nature or extent of a person's disability but may make two inquiries to determine whether an animal qualifies as a service animal. HCEMS may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. HCEMS shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, HCEMS shall not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the animal is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
- G. Access to Ambulatory Services. Individuals with disabilities shall be permitted to be accompanied by their service animals in all HCEMS ambulances where members of the public, participants in the emergency medical services, programs, or activities, or invitees, as relevant, are permitted to be.
- H. Surcharges. HCEMS shall not ask or require an individual with a disability to pay a surcharge or to comply with other requirements.
- I. Training.
  - a. Within four (4) months after receiving approval of HCEMS's training program, in accordance with paragraph I. subpart b. below, and at least once annually throughout the term of this Agreement, HCEMS will train all who have contact with members of the public on this Agreement and on the requirements of the ADA, including reasonable modifications for people with disabilities who use a service animal. The training will be sufficiently detailed to enable personnel to effectively implement all provisions of this Agreement and all policies and procedures developed pursuant to this Agreement.
  - b. Within sixty (60) days of the effective date of this Agreement, HCEMS will submit for pre-approval by the USAO-WDKY a proposed training program, lasting at least two hours, on the requirements of the ADA including reasonable modifications for

people with disabilities who use a service animal. The submission will include a description of the training, the agenda, any handouts, and the name, title, address, and curriculum vitae of the trainer.

c. HCEMS will ensure that all new personnel who will have contact with members of the public will receive the training as a component of pre-service training and orientation.

J. Grievance Procedures. Within sixty (60) days of the effective date of this Agreement, HCEMS will adopt and publish grievance procedures providing for prompt and equitable resolution of complaints against HCEMS alleging any action that would be prohibited by Title II or this Agreement. *See* 28 C.F.R. § 35.107 (b).

K. Prohibition of Retaliation or Coercion. HCEMS will not discriminate against an individual because that individual has opposed any act or practice made unlawful by Title II or this Agreement, or because the individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under Title II or this Agreement. HCEMS will not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any individual in the exercise or enjoyment of, any right granted or protected by Title II or this Agreement. *See* 28 C.F.R. § 35.134.

## V. IMPLEMENTATION AND ENFORCEMENT

A. Annual Reports; Compliance Review. HCEMS will report annually, by January 31st of each year, to the USAO-WDKY as to its compliance with this Agreement. All reports should be provided to the United States via U.S. mail to: Jessica R. C. Malloy, AUSA, USAO# 2017V00175, DJ #204-31-96, United States Attorney's Office for the Western District of Kentucky, 717 West Broadway, Louisville, KY 40202. The USAO-WDKY may review compliance with this Agreement at any time.

B. Notification of Noncompliance and Enforcement. If the USAO-WDKY believes that this Agreement or any portion of it has been violated, it will notify HCEMS in writing and the parties will attempt to resolve the concerns in good faith. If the USAO-WDKY is unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that it provides notice to HCEMS, the USAO-WDKY may proceed with enforcement of this Agreement or of the ADA pursuant to 28 C.F.R. Part 35, Subpart F.

- C. Lack of Waiver. Failure by the USAO-WDKY to enforce any provision or deadline of this Agreement will not be construed as a waiver of its right to enforce any provisions or deadlines of this Agreement.
- D. Term of Agreement. The effective date of this Agreement is the date of the last signature below. This Agreement will remain in effect for three (3) years from the effective date of this Agreement.
- E. Headings. The paragraph headings in this Agreement are for convenience only and will not be deemed to affect in any way the language of the provisions to which they refer.
- F. Signatories Bind Parties. The persons signing for the Parties represent that they are authorized to bind their respective Parties to this Agreement.
- G. Entire Agreement. This Settlement Agreement constitutes the entire agreement between the parties relating to USAO #/2017V00175 / DJ #204-31-96. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Settlement Agreement will be enforceable.
- H. Parameters of Agreement. This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law not specifically referenced herein. This Agreement does not affect HCEMS's continuing responsibility to comply with all aspects of the ADA.

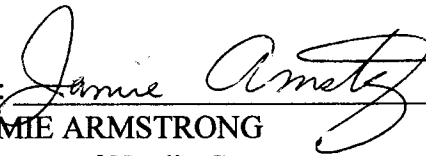
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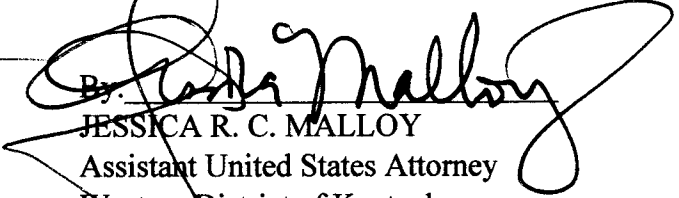
- I. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, the USAOWDKY and HCEMS shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

For Hardin County  
Emergency Medical Services

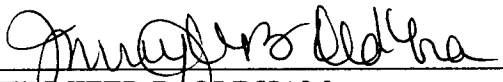
For United States Attorney's Office  
for the Western District of Kentucky

RUSSELL M. COLEMAN  
United States Attorney

By:   
JAMIE ARMSTRONG  
Director of Hardin County  
Emergency Medical Services  
Date: 3-26-18

By:   
JESSICA R. C. MALLOY  
Assistant United States Attorney  
Western District of Kentucky  
Date: March 28, 2018

Have seen:

  
JENNIFER B. OLDHAM  
Hardin County Attorney