

SETTLEMENT AGREEMENT

I. Introduction

This Settlement Agreement (hereinafter, “the Agreement”) is entered into by the U.S. Department of Health and Human Services (“HHS”), Office for Civil Rights (“OCR”), and the Alaska Department of Health and Social Services (“DHSS”), Anchorage Pioneer Home, to resolve violations identified in the investigation of OCR Complaint No. 03-18154, which was filed on September 5, 2003. DHSS owns and operates the Alaska Pioneer Homes, which include six assisted living facilities: the Anchorage Pioneer Home (“APH”), the Fairbanks Pioneer Home, the Juneau Pioneer Home, the Ketchikan Pioneer Home, the Alaska Veterans and Pioneers Home in Palmer, and the Sitka Pioneer Home. The complaint alleged that DHSS and APH discriminated against the Complainant’s father on the basis of his disability, Alzheimer’s disease, by denying him, and other APH residents with Alzheimer’s disease, equal access to transportation services at its APH facility, in violation of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. In addition, the Complainant later amended her complaint to allege that, as a result of filing a discrimination complaint with OCR, DHSS and APH retaliated against her.

II. Parties to the Agreement

- A. United States Department of Health and Human Services, Office for Civil Rights; and
- B. State of Alaska Department of Health and Social Services, the state agency responsible for the administration of health and social services throughout Alaska, including but not limited to the Alaska Pioneer Homes.

III. Jurisdiction

- A. OCR is the HHS office charged with enforcing civil rights laws as they pertain to programs funded by HHS, and so has jurisdiction over this complaint under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84 (collectively, “Section 504”). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.
- B. OCR also has jurisdiction pursuant to Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35 (collectively, “the ADA”). The ADA prohibits discrimination on the basis of disability in State and local government programs and services.

IV. General Obligations

- A. Pursuant to Section 504 and Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of DHSS, or be subject to discrimination by DHSS. DHSS shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless DHSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, or would result in undue financial or administrative burdens.
- B. DHSS shall not retaliate or discriminate against, or coerce, intimidate, threaten, or interfere with any person on the basis that he or she opposed any act or practice made unlawful by Section 504 or Title II of the ADA, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Section 504 or Title II of the ADA.

V. General Provisions

- A. Non-Admission: DHSS expressly denies that APH's policies, procedures, and practices discriminate on the basis of disability or constitute any other wrongdoing. DHSS' willingness to enter into this Agreement shall not be construed as an admission of fact or evidence that the APH's policies, procedures, or practices are not in compliance with Section 504 or Title II of the ADA.
- B. Compliance with the Agreement: In consideration of DHSS' full implementation of the provisions of this Agreement, OCR agrees not to initiate enforcement proceedings with respect to the violations identified in Complaint No. 03-18154. In the event that DHSS fails to fully implement any provision of this Agreement, the parties will confer and attempt to reach agreement as to what steps may be necessary to resolve the compliance issues to both parties' satisfaction. If an agreement is not reached, OCR may terminate this Agreement within thirty (30) calendar days notice and take appropriate measures to effectuate DHSS' compliance with Section 504 and Title II of the ADA.
- C. Compliance with Applicable Laws: Nothing in this Agreement is intended to relieve DHSS of its obligation to comply with other applicable Federal nondiscrimination statutes and their implementing regulations.
- D. Scope: The terms of this Agreement do not prejudice any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be currently pending before OCR. Any unrelated compliance matters arising from subsequent reviews or investigations may be resolved separately. Nothing in this Agreement will be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to DHSS and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action under Federal laws by other Federal agencies, including any action or investigation under Section 504 or Title II of the ADA.

- E. Non-Waiver: OCR's failure to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of OCR's right to enforce other deadlines and provisions of this Agreement.
- F. Effective Date and Term of the Agreement: This Agreement will become effective on the date it is signed by all parties (the "Effective Date") and will remain in effect for eighteen (18) months from the Effective Date, at which point if OCR determines that DHSS has substantially complied with this Agreement, then OCR's review and monitoring of this Agreement will terminate. Notwithstanding the Term of this Agreement, DHSS acknowledges that it will comply with Section 504, the ADA, and other applicable Federal nondiscrimination statutes and their implementing regulations, for so long as it remains a public entity or continues to receive Federal financial assistance.
- G. Review of Compliance: OCR may review DHSS' compliance with this Agreement at any time while the Agreement is in effect. As part of such review, OCR may require written reports, access to witnesses, copies of DHSS and APH documents, and/or inspection of DHSS and APH buildings or facilities. DHSS agrees to retain the records required by OCR to assess DHSS' and APH's compliance with this Agreement throughout the Term of this Agreement. OCR will maintain the confidentiality of all documents, files and records received from DHSS; and will not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.
- H. Technical Assistance: OCR agrees to provide appropriate technical assistance to DHSS regarding compliance with this Agreement, as requested and as reasonably necessary.
- I. Modification of the Entire Agreement: This Agreement may only be modified by mutual agreement of the Parties in writing. This Agreement constitutes the entire agreement by the Parties and no other statement, promise or agreement, either written or oral, made by either Party or any agents of a Party, that is not contained in this written Agreement, including any attachments, shall be enforceable.
- J. Publication or Release of Agreement: OCR places no restrictions on the publication of this Agreement or its terms. In addition, OCR may be required to release this Agreement and all related materials to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 552 and its implementing regulations, 45 C.F.R. Part 5.

VI. Specific Provisions

- A. Designation of an ADA/Section 504 Coordinator: Within ten (10) calendar days of the Effective Date of this Agreement, DHSS will ensure that APH designates a senior staff person as the individual to coordinate its efforts to comply with and carry out its ADA and Section 504 responsibilities and compliance with this Agreement. The ADA/Section 504 Coordinator or his/her designee will be available to answer questions from APH applicants, residents, and their family members and/or guardians and provide appropriate information regarding an individual's rights and DHSS' obligations under the ADA and Section 504. DHSS will disseminate broadly

the name, telephone number, functions, and office address of the ADA/Section 504 Coordinator at APH.

- B. ADA/Section 504 Notice and Grievance Procedures: Within sixty (60) calendar days of the Effective Date of this Agreement, DHSS will ensure that APH notifies applicants, residents, and their family members and/or guardians, as well as commonly utilized health care providers, of their rights and APH's obligations under the ADA and Section 504.
1. APH will publish the ADA/Section 504 Notice (Attachment A) and the ADA/Section 504 Grievance Procedures (Attachment B) in its materials for applicants and residents, including but not limited to the "Anchorage Pioneer Home Services & Information" brochure.
 2. APH will post copies of the ADA/Section 504 Notice and Grievance Procedures in conspicuous locations in its facility; and distribute the ADA/Section 504 Notice and Grievance Procedures to all APH residents and their family members and/or guardians, all APH employees and contractors, the APH Resident Council, the APH Family Council, the APH Foundation, and the APH Volunteer Program, as well as commonly utilized health care providers.
 3. APH will update the ADA/Section 504 Coordinator information contained in the ADA/Section 504 Notice and Grievance Procedures, as necessary.
 4. APH will provide copies of the ADA/Section 504 Notice and Grievance Procedures to any person upon request, including in alternative formats such as Braille, large print and audiotape.
 5. The ADA/Section 504 Grievance Procedures must be consistent with 28 C.F.R. § 35.107 and 45 C.F.R. § 84.7.
 6. The ADA/Section 504 Notice and the ADA/Section 504 Grievance Procedures shall be submitted to OCR within thirty (30) calendar days of the Effective Date of this Agreement. If OCR has concerns regarding these documents, OCR shall so notify DHSS.
- C. Transportation Policy, Individualized Assessment, and Standard Operating Procedures: Within ninety (90) calendar days of the Effective Date of this Agreement, DHSS shall require APH to publish the Transportation Policy (Attachment C) to ensure that APH residents with disabilities who are eligible to receive transportation services are afforded an equal opportunity to participate in, and benefit from, APH's transportation program.
1. As part of the revised Transportation Policy, APH will implement an Individualized Assessment Tool (IAT), and corresponding IAT Standard Operating Procedures, for measuring and documenting the "medical acuity" of APH residents with disabilities who are eligible to receive APH transportation services and choose to access such services.

2. APH agrees to utilize the IAT and IAT Standard Operating Procedures to assess each APH resident receiving Level II or Level III services on an individualized basis and note the results of the assessment in the APH records of each affected resident.
 3. As part of the revised Transportation Policy, APH will consider, on a case-by-case basis, individual requests for reasonable modifications in its transportation service including, but not limited to, requests for an escort to access and benefit from APH transportation services. If, as a result of the IAT assessment, an APH resident, who is a qualified individual with a disability, is determined to need an escort to access and benefit from APH transportation services, APH will provide an escort at no cost.
 4. APH will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids or program accessibility, that are necessary to provide nondiscriminatory treatment required by Section 504 of the Rehabilitation Act or Title II of the ADA.
 5. The revised Transportation Policy, the IAT and the IAT Standard Operating Procedures shall be submitted to OCR within thirty (30) calendar days of the Effective Date of this Agreement for review and approval, and these policies and procedures shall not be implemented absent such approval.
- D. Transportation Log: Within ninety (90) calendar days of the Effective Date of this Agreement, DHSS will ensure that APH establishes a Transportation Log to memorialize the implementation of the revised Transportation Policy. The Transportation Log will include the following information:
1. the name of the relevant APH resident and the date and time of each instance where access to APH transportation services is sought;
 2. whether or not the APH resident was granted access to APH transportation services;
 3. whether or not the APH resident was granted an escort at no charge; and
 4. if the APH resident was not granted access to APH transportation services, a statement regarding the reasons why access to APH transportation services was not granted (e.g., the resident's medical condition warranted transportation by ambulance).

VII. Training

- A. Training of the ADA/Section 504 Coordinator: Within ninety (90) calendar days of the Effective Date of this Agreement and annually thereafter, DHSS will ensure that APH's ADA/Section 504 Coordinator and his/her designees receive training on their responsibilities under this Agreement and the requirements of the ADA and Section 504, including, but not limited to, the ADA's and Section 504's prohibitions on retaliation and requirements regarding reasonable modification.

- B. Training of the APH Nursing Staff: Within ninety (90) calendar days of the Effective Date of this Agreement and annually thereafter, DHSS will ensure that APH provides training on the policies and procedures, identified in Section VI., to each member of the APH nursing staff involved in assessing the “medical acuity” of residents seeking access to APH transportation services.
- C. Training of the APH General Staff, Contractors and Volunteers: Within one hundred twenty (120) calendar days of the Effective Date of this Agreement and annually thereafter, DHSS will ensure that all APH employees, volunteers and contractors receive training on their responsibilities under this Agreement and the requirements of the ADA and Section 504, including, but not limited to, the ADA’s and Section 504’s prohibitions on retaliation and requirements regarding reasonable modification.

VIII. Reporting Requirements

DHSS agrees to provide OCR with the following:

- A. Within thirty (30) calendar days of the Effective Date of this Agreement, the name, telephone number, functions, and office address of the APH’s ADA/Section 504 coordinator and his/her designees.
- B. Within thirty (30) calendar days of the Effective Date of this Agreement, copies of the:
 - 1. ADA/Section 504 Notice;
 - 2. ADA/Section 504 Grievance Procedure; and the
 - 3. Revised “Anchorage Pioneer Home Services & Information” brochure.
- C. Within thirty (30) calendar days of the Effective Date of this Agreement, copies of the:
 - 1. Revised Transportation Policy;
 - 2. Individualized Assessment Tool; and
 - 3. Individualized Assessment Tool Standard Operating Procedures.

Within thirty (30) calendar days of receiving the revised Transportation Policy, Individualized Assessment Tool, and Individualized Assessment Tool Standard Operating Procedures, OCR will review them. After these policies are approved by OCR and no later than ninety (90) calendar days after the Effective Date of this Agreement, DHSS will ensure that APH implements the policies, referenced in Items C.1 – C.3, above.

- D. Within ninety (90) calendar days of the Effective Date of this Agreement, a written statement indicating the actions DHSS and APH have taken to disseminate Items B.1 – B.3 and Item C.1, above.

- E. At six (6) months and seventeen (17) months after the Effective Date of this Agreement, documentation of the training, referenced above in Section VII, including the training agenda, any instructional materials, and a list of attendees by name and title.
- F. At six (6) months, twelve (12) months, and seventeen (17) months after the Effective Date of this Agreement, copies of the Transportation Log.
- G. At six (6) months, twelve (12) months, and seventeen (17) months after the Effective Date of this Agreement, letters describing the number and type of grievances and/or complaints filed against DHSS and/or APH by individuals with disabilities or their families and/or guardians, which include the status and/or outcome of each grievance and/or complaint.

IX. Signatures

The individuals signing represent that they are authorized to execute this Agreement and legally bind the parties to this Agreement.

<p><i>/s/</i></p> <hr/> <p>William Hogan Commissioner Alaska Department of Health and Social Services</p>	<p>April 13, 2009</p> <hr/> <p>Date</p>
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<p><i>/s/</i></p> <hr/> <p>Linda Yuu Connor Regional Manager Office for Civil Rights, Region X U.S. Department of Health and Human Services</p>	<p>April 23, 2009</p> <hr/> <p>Date</p>
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Attachment A

**NOTICE UNDER THE
AMERICANS WITH DISABILITIES ACT OF 1990
AND SECTION 504 OF THE REHABILITATION ACT OF 1973**

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, the Anchorage Pioneer Home (APH) does not discriminate on the basis of disability in admission to, participation in, or receipt of services and benefits under any APH program or activity. APH does not retaliate or discriminate against, or coerce, intimidate or threaten any individual who (1) opposes any act or practice made unlawful by Section 504 or Title II of the ADA; or (2) files a grievance and/or complaint, testifies, assists, or participates in any investigation, proceeding, or hearing under Section 504 or Title II of the ADA.

Reasonable Modifications in Policies, Practices, or Procedures: APH will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with nondiscriminatory treatment required by Section 504 or Title II of the ADA.

APH will make all reasonable modifications (including the provision of escorts when necessary for a qualified person with a disability to access APH transportation services) to policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless APH can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, or would result in undue financial or administrative burdens.

Effective Communication: APH will generally, upon request, provide appropriate auxiliary aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in APH services, programs or activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Anyone who requires an auxiliary aid or service for effective communication, or reasonable modifications to policies, practices, or procedures to participate in an APH service, program or activity, should contact the office of **[Name and contact info for ADA/Section 504 Coordinator]** as soon as possible but no later than 48 hours before the scheduled event.

Grievances alleging that APH discriminates against persons with disabilities should be directed to **[Name and contact information for ADA/Section 504 Coordinator]**. Filing a grievance with the ADA/Section 504 Coordinator does not prevent the applicant, resident and/or his family member or guardian from filing a complaint with the:

Office for Civil Rights, Region X
U.S. Department of Health and Human Services
2201 Sixth Avenue - M/S: RX-11
Seattle, WA 98121-1831
Voice Phone (206)615-2290 FAX (206)615-2297
Toll Free (800)362-1710 TDD (206)615-2296

Attachment B

GRIEVANCE PROCEDURES UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990 AND SECTION 504 OF THE REHABILITATION ACT OF 1973

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, the Anchorage Pioneer Home (APH) does not discriminate on the basis of disability in admission to, participation in, or receipt of services and benefits under any APH program or activity. APH does not retaliate or discriminate against, or coerce, intimidate or threaten any individual who (1) opposes any act or practice made unlawful by Section 504 or Title II of the ADA; or (2) files a grievance and/or complaint, testifies, assists, or participates in any investigation, proceeding, or hearing under Section 504 or Title II of the ADA.

APH has adopted an internal grievance procedure providing for the prompt and equitable resolution of grievances alleging any action prohibited by the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Federal regulations implementing these laws. The applicable Federal laws and regulations may be examined in the office of **[Name and contact info for ADA/Section 504 Coordinator]**, who has been designated to coordinate the efforts of APH to comply with the ADA and Section 504.

Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for APH to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

Procedure:

- Grievances must be submitted to the ADA/Section 504 Coordinator as soon as possible but no later than sixty (60) calendar days after the date the person filing the grievance becomes aware of the alleged discriminatory action.
- A grievance must be in writing, containing the name and address of the person filing it. The grievance must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- The ADA/Section 504 Coordinator (or his/her designee) will conduct an investigation of the grievance. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the grievance. The ADA/Section 504 Coordinator will maintain the files and records of APH relating to such grievances.
- The ADA/Section 504 Coordinator will issue a written decision on the grievance no later than thirty (30) calendar days after its filing.
- The person filing the grievance may appeal the decision of the ADA/Section 504 Coordinator by writing to the **[Administrator/Chief Executive Officer/Board of Directors/etc.]** within fifteen (15) calendar days of receiving the ADA/Section 504 Coordinator's decision.

- **[Administrator/Chief Executive Officer/Board of Directors/etc.]** will issue a written decision on the appeal no later than thirty (30) calendar days after its filing.
- Filing a grievance with the ADA/Section 504 Coordinator does not prevent the applicant, resident and/or his family member or guardian from filing a complaint with the:

Office for Civil Rights, Region X
U.S. Department of Health and Human Services
2201 Sixth Avenue - M/S: RX-11
Seattle, WA 98121-1831
Voice Phone (206)615-2290
Toll Free (800)362-1710
FAX (206)615-2297
TDD (206)615-2296

The ADA/Section 504 Coordinator will make appropriate arrangements to ensure that individuals with disabilities are provided other reasonable modifications if needed to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings.

Attachment C

ANCHORAGE PIONEER HOME **TRANSPORTATION POLICY**

PURPOSE

To provide guidelines for the transportation of residents to medical appointments. To assure residents maintain the highest level of independence by participation in the transportation process, promoting family involvement, and supporting the development and maintenance of resident skills.

POLICY

Residents and/or family members are primarily responsible for scheduling and providing transportation for medical appointments. Anchorage Pioneer Home (APH) transportation may be available for residents in Levels II and III of care. Availability is dependent on multiple factors including but not limited to, bus schedule, weather, medical acuity, and equipment.

Residents are not charged when APH vehicles are used for transportation. When a resident on payment assistance requires the use of commercial transportation for medical services, etc., they are responsible for paying this expense. Residents who are unable to pay may apply for grant assistance, which is considered on a case-by-case, basis.

APH will consider, on a case-by-case basis, individual requests for reasonable modifications in its transportation service.

PROCEDURE

1. Procedure for Payment of Resident Transportation Expenses Charged to an APH Account

When an invoice from an outside commercial transportation provider is received, Business Office personnel verify whether the resident or their responsible party has designated transportation expenses as an authorized automatic deduction from their Resident Trust Fund Account.

If transportation expenses have been authorized, accounting personnel deduct the amount from the resident's account.

A copy of the invoice and the transaction receipt is either put in the resident's inside mailbox and given to the resident with their regular mail, or sent to their responsible party with the following month's Resident Trust Fund Account statement.

If the resident does not have a Resident Trust Fund Account or transportation expenses have not been authorized, and the resident handles their own finances, the invoice is put in the resident's inside mailbox and given to the resident with their regular mail.

If the resident does not handle their own finances, the invoice is put in the resident's inside mailbox and sent to their responsible party with the resident's mail in the following month's mailing.

2. Appointments/Scheduling

Transportation for medical appointments for residents in Levels II and III will be scheduled through the medical records/scheduler in the Business Office. Nursing staff will notify the medical records/scheduler which residents in Levels II and III require an escort on the APH vehicle. Staff will also indicate whether the resident will need an escort to be provided by APH or the resident will be accompanied by a family member/guardian.

Transportation will be provided during posted hours of operations.

Residents in Level I will schedule their own appointments and transportation.

Transportation for scheduled activities will be coordinated through the Activity Department.

3. Safety

Nursing staff will individually assess the resident's need for an escort by using the Individualized Assessment Tool (IAT), and following the IAT Standard Operating Procedures, to measure and document the medical acuity of the resident. If nursing staff determines that a resident, who is a qualified individual with a disability, needs an escort to ride on the APH vehicle, then staff will also determine if APH needs to provide an escort.

Wheelchairs must be properly equipped, i.e. footrests, oxygen bottles, etc.

Residents going to the emergency room or hospital in an APH wheelchair must be transferred out of the APH chair and the wheelchair returned to APH.

No resident will be left on the bus unattended.

Nursing staff is responsible for reviewing the readiness and preparation of residents prior to sending them to be transported to appointments.

Transportation driver has the final authority to decide whether residents will be transported.

4. Preparation of Residents for Appointments

Staff is responsible for preparing the residents to leave for appointments on time.

Residents need to be taken to the restroom and/or have clean incontinence products available to go with the resident.

Nursing staff will ensure residents have all of their Personal Adaptive Equipment (PAE), such as hearing aids, glasses, and dentures.

Nursing staff is to ensure that the resident is clean and properly groomed.

Coats must be on or next to the resident.

Paperwork should be given to the resident, the driver, or escort after the resident has been checked and is ready for departure.

Failure to properly prepare the resident for their appointment will prohibit the driver from taking the resident to their appointment. This will result in the need to reschedule the appointment by the appropriate person in charge.

5. Residents Needing an Escort

Family members/guardians are encouraged to serve as escorts on the APH vehicle. If it has been determined through the IAT assessment that a resident, who is a qualified individual with a disability, needs an escort, APH will provide an escort on the APH vehicle at no cost. If APH provides an escort on the APH vehicle, and a family member/guardian does not arrive at the destination, or the family member/guardian has not made an acceptable alternative arrangement with the receiving facility, the driver will return the resident to APH.

Family members/guardians are responsible for pre-registering residents prior to test, x-rays and certain procedures.

Family members/guardians are responsible for ensuring new patient registration forms are filled out prior to a "first" appointment with the new physician or caretaker.

Family members/guardians serving as escorts must contact the driver, on the day of the appointment, prior to the resident being loaded into the APH vehicle.