

VOLUNTARY RESOLUTION AGREEMENT

Between the

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS, REGION II**

and

CATTARAUGUS COUNTY DEPARTMENT OF AGING

TRANSACTION NUMBER: 11-123500

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I. INTRODUCTION

This Voluntary Resolution Agreement (hereinafter referred to as "Agreement") is entered into by the Office for Civil Rights of the U.S. Department of Health and Human Services, Region II (hereinafter referred to as "OCR") and the Cattaraugus County Department of the Aging (hereinafter referred to as "CCDOA"). This Agreement resolves the issues in OCR transaction number 11-123500, a complaint regarding the provision of auxiliary aids and services, including qualified sign language interpreters, to persons who are deaf or hard of hearing.

A. Parties to the Agreement

1. United States Department of Health and Human Services, Office for Civil Rights; and
2. The Cattaraugus County Department of the Aging

B. Jurisdiction

CCDOA receives Federal financial assistance through participation in the Medicaid and Medicare program and is subject to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (hereinafter referred to as "Section 504") and its implementing regulation at 45 C.F.R. Part 84. As a department of the New York state government, CCDOA is also a public entity as defined by Title II of the Americans with Disabilities Act of 1990 (hereinafter referred to as "ADA"), 42 U.S.C. § 12131, et seq. and its implementing regulation at 28 C.F.R. Part 35.

C. Background

On February 8, 2011, Ms. France Atwater (the complainant) filed a complaint with OCR alleging that CCDOA engaged in unlawful discrimination on the basis of disability (deafness). Specifically, the complainant alleged that from September 2010 to the filing of her complaint with OCR on February 8, 2011, CCDOA failed to provide her with appropriate auxiliary aids and services (sign language interpreter) for meetings with her social worker.

D. Purpose of this Agreement

To resolve these matters expeditiously and without the further burden or expense of administrative action or litigation, CCDOA agrees to the terms stipulated in this Agreement and affirms its assurance of compliance with all provisions of Section 504 and the ADA and their implementing regulations. The promises, obligations, or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between CCDOA and OCR. The actions described in this Agreement fully address the issues described in the complaint.

II. DEFINITIONS

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

- A. **Appropriate Auxiliary Aids and Services** – include, but are not limited to, qualified interpreters; qualified note takers; telephone handset amplifiers; teletypewriters (TTYs, also known as TDDs); and other methods of ensuring effective communication with individuals who are deaf or hard of hearing.
- B. **Companion** - means a person who is one of the following: (a) a person whom the Client designates to communicate with CCDOA personnel on his or her behalf regarding the Client's needs, condition or history; or (b) a person legally authorized to make delivery of service decisions on behalf of the Client; or (c) such other person with whom CCDOA personnel would ordinarily and regularly communicate in relation to the Client's service and treatment.
- C. **Client** - is broadly construed to mean any individual who is seeking or receiving services from CCDOA.
- D. **Qualified Interpreter** - include "sign language interpreters", "oral interpreters" or other "interpreters" who are able to interpret competently, accurately, and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication in a setting with a Client or Companion who is deaf or hard of hearing.

III. GENERAL PROVISIONS

A. **Facilities Covered by Agreement**

This Agreement covers the Cattaraugus County Department of the Aging.

B. **Suspension of Administrative Actions**

Subject to the continued performance by CCDOA of the stated obligations and required actions in the Agreement and in conformity with Section 504 and the ADA and their implementing regulations, OCR shall suspend administrative actions on OCR Transaction Number 11-123500.

C. **Effective Date and Term of The Agreement**

This Agreement shall become effective as of the date that both Parties have signed it (the "Effective Date"). Unless otherwise provided in the Agreement, all provisions of the Agreement shall remain in effect for one year (365 calendar days) following the Effective Date (the Term). At such time, if OCR determines that CCDOA has completed all actions required by the Agreement, OCR's review and monitoring of this Agreement shall terminate. Notwithstanding the Term of this Agreement, CCDOA acknowledges that it will comply with Section 504 and the ADA and their implementing regulations so long as it remains a public entity and continues to receive Federal financial assistance.

D. Effect on Other Compliance Matters

The terms of this Agreement do not apply to any other issues, investigations, reviews, or complaints of discrimination against any person who has filed a complaint or assisted or participated in any manner in the investigation of matters addressed in this Agreement.

E. Failure to Comply with the Terms of Agreement

During the duration of this Agreement, if at any time OCR determines that the CCDOA has failed to comply with any provision of this Agreement, OCR shall notify CCDOA in writing. The notice shall allow CCDOA ten (10) working days to explain the reasons for the noncompliance and describe the actions that have been taken to achieve compliance or dispute OCR's findings. If CCDOA does not respond to the notice, or if, upon review of CCDOA's response, OCR determines that CCDOA has not complied with the terms of the Agreement, OCR reserves the right to take any action authorized by law to secure compliance with Section 504 and the ADA and their implementing regulations.

F. Prohibition Against Retaliation and Intimidation

CCDOA shall not retaliate against, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint or assisted or participated in any manner in the investigation of matters addressed in this Agreement.

G. Technical Assistance

OCR will provide appropriate technical assistance to CCDOA regarding compliance with this Agreement as requested and as reasonably necessary.

H. Publication or Release of Agreement

OCR places no restrictions on the publication of the terms this Agreement. OCR may be required to release this Agreement and all related materials to any person upon request, consistent with the Freedom of Information Act, 5 U.S.C. §552, and its implementing regulation at 45 C.F.R. Part 5.

I. Non-Waiver Provision

Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as a waiver of OCR's right to enforce other deadlines or provisions of this Agreement.

J. Third Party Rights

This Agreement can be enforced only by the Parties specified in this Agreement, their legal representatives, and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.

K. OCR's Review of CCDOA Compliance with the Agreement

OCR may review CCDOA's 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 documents, and/or inspection of CCDOA's facilities

IV. GENERAL OBLIGATIONS

A. Disability Non-Discrimination

CCDOA shall provide deaf or hard of hearing Clients and/or Companions with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of CCDOA as required by Section 504 and the ADA.

B. Nondiscrimination by Association

CCDOA shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of the individual with someone who has a disability.

V. PROVISION OF APPROPRIATE AUXILIARY AIDS AND SERVICES

A. General Assessment Criteria

CCDOA shall consult with the deaf or hard of hearing Client and/or Companion to determine which auxiliary aids and services are needed to ensure effective communication. The assessment made by CCDOA shall take into account all relevant facts and circumstances, including without limitation the following:

- i. The nature, length, and importance of the communication at issue;
- ii. The individual's disability and communication skills and knowledge;
- iii. The individual's health status or changes thereto;
- iv. The individual's request for or statement of the need for an auxiliary aid or service and type of auxiliary aid or service requested by the deaf or hard of hearing person; and
- v. The reasonably foreseeable activities of the Client (e.g. meetings with social workers, discussions concerning billing or insurance, etc.)

In the event that communication is not effective after the initial provision of auxiliary aids or services, CCDOA shall reassess which auxiliary aids and services are necessary, in consultation with the person with a disability.

B. General Circumstances When Qualified Interpreters Will Be Provided

CCDOA shall provide appropriate qualified interpreters to Clients and/or Companions who are deaf or hard of hearing in any situations where such provision is necessary for effective communication. Such situations may include, but are not limited to:

1. Accepting and discussing applications for services and benefits;
2. Providing case management services;
3. Determining the level of or services or benefits to be provided to a Client;
4. Obtaining consent or permission for service or benefit options;
5. Communicating during counseling sessions;
6. Discussing financial or insurance matters; and
7. Any other circumstances in which qualified interpreters are necessary to ensure a Client's privacy, confidentiality or other rights provided by Federal, state or local law.

The forgoing list is not exhaustive and does not imply that there are not other circumstances when it may be appropriate to provide qualified interpreters for effective communication.

C. Initial Assessment

CCDOA personnel shall consult with the deaf or hard of hearing Client and/or Companion to determine which appropriate auxiliary aids or services are needed for effective communication, consistent with the General Assessment Criteria set forth above, at the time an appointment is scheduled or prior to the first appointment. If a Client and/or Companion who is deaf or hard of hearing has an ongoing relationship with CCDOA and an Initial assessment indicates that auxiliary aids and services are necessary for effective communication, CCDOA shall provide appropriate auxiliary aids and services during subsequent Client visits, without requiring subsequent requests by the Client and/or Companion.

D. Documentation

The fact of the assessment and the need for and provision of any auxiliary aids or services shall be documented in a conspicuous location in the Client's record to alert staff that auxiliary aids and services must be provided.

E. Determination Not to Provide Requested Auxiliary Aids or Services

If, after conducting the assessment of a deaf or hard of hearing Client and/or Companion as described above, CCDOA decides not to provide a particular auxiliary aid or service requested by the deaf or hard of hearing individual, CCDOA staff shall so advise the individual and document the basis for the determination, including the date of the determination, the name and title of the staff member who made the determination, and the alternative auxiliary aid or service, if any, that CCDOA has decided to provide.

F. Interpreter Services

When a qualified interpreter is necessary for effective communication, CCDOA shall ensure that a qualified interpreter is provided in a timely manner, consistent with the following standards:

Scheduled Appointments:

For scheduled appointments (appointments scheduled twenty four hours in advance), CCDOA shall make a qualified interpreter available at the time of the appointment.

Non-Scheduled Incidents:

Non-scheduled incidents refer to all situations not covered by the definition of "scheduled appointments." For non-scheduled incidents, CCDOA shall use reasonable efforts to make a qualified interpreter available as soon as practicable. "Reasonable efforts" means making every reasonable effort to secure the services of a qualified interpreter, within 15 minutes of an individual's request, consistent with Section VI.H below.

Interim Services:

Between the time that an interpreter is requested and the time an interpreter arrives, CCDOA shall continue to try to communicate with the Client and/or Companion who is deaf or hard of hearing for such purposes and to the same extent as it would have communicated with the person but for the hearing impairment.

G. Restricted Use of Certain Persons to Facilitate Communication

Due to privacy and confidentiality concerns, potential emotional involvement, and other factors that may adversely affect the ability to facilitate communication, CCDOA shall never require or coerce a family member, advocate or friend of a deaf or hard of hearing Client and/or Companion to interpret or facilitate communication between CCDOA personnel and the Client and/or Companion. CCDOA may rely on an adult accompanying a Client and/or Companion who is deaf or hard of hearing if:

1. The Client and/or Companion specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances;
2. The Client and/or Companion has been made aware of the availability of qualified interpreters free of charge;
3. The availability of qualified interpreters has been effectively communicated to the Patient and/or Companion using the necessary auxiliary aids or services or language assistance services; and

4. The Client and/or Companion provides written confirmation that he or she was made aware of the availability of qualified interpreters free of charge and agrees to the use of such person to interpret.

If use of the family member, advocate, or friend is not necessary or appropriate under the circumstances, or if the family member or friend is unable to provide competent interpretation under the given circumstances, CCDOA shall provide interpreter services in place of or, if appropriate, in addition to the person selected by the person with a disability. CCDOA shall inform the individual who is deaf or hard of hearing who has declined the offer for CCDOA to provide an interpreter free of charge that he or she may reconsider and request an interpreter at any time.

H. Procedures for Obtaining Qualified Interpreters

In the event that a qualified interpreter is required for effective communication with a Client and/or Companion, CCDOA shall request a qualified interpreter from a list of qualified interpreters maintained by CCDOA or from an agency with whom CCDOA has an ongoing contract or other arrangement for qualified interpreter services.

I. Prohibition of Surcharges

All appropriate auxiliary aids and services required by this Agreement shall be provided free of charge to the deaf or hard of hearing Client and/or Companion.

VI. POLICIES AND PROCEDURES FOR ENSURING EFFECTIVE COMMUNICATION WITH DEAF OR HARD OF HEARING CLIENTS AND/OR COMPANIONS

A. Creation of Policies and Procedure

Within sixty (60) calendar days after the Effective Date of this Agreement, CCDOA shall develop and submit to OCR policies and procedures to ensure effective communication with deaf or hard of hearing Clients and/or Companions, consistent with the requirements of this Agreement and Section 504 and the ADA. The policies and procedures shall include, at a minimum, the following:

1. A provision indicating that appropriate auxiliary aids and services shall be provided free of charge to deaf or hard of hearing Clients and/or Companions when such aids or services are necessary to ensure effective communication;
2. A provision indicating CCDOA personnel will consider the relevant facts and circumstances in reaching the determination concerning appropriate auxiliary aids and services referenced in Section V, above;
3. A list of auxiliary aids and services available;
4. A provision indicating general circumstances under which qualified interpreters will be provided, when necessary for effective communication, including those referenced in Section V. B; and

- 5. A process for obtaining and providing auxiliary aids and services, including qualified interpreter services and contact information for available qualified interpreters.

OCR shall review the proposed policies and procedures. Within fifteen (15) calendar days of OCR approval, CCDOA shall implement them and disseminate them to staff. CCDOA shall not implement the policies and procedures without the approval of OCR.

B. Notifying Deaf or Hard of Hearing Clients and/or Companions of the Availability of Auxiliary Aids and Services

Within fifteen (15) calendar days of OCR's approval of CCDOA's policies and procedures referenced above, CCDOA shall provide notice to deaf and hard of hearing individuals of the right to appropriate auxiliary aids and services free of charge and information about how to obtain them. This notice shall be readily and routinely available and visible in conspicuous locations in CCDOA offices and CCDOA shall disseminate such notice to all known deaf or hard of hearing Clients and include such notice in major CCDOA brochures and forms and on the CCDOA website.

VII. TRAINING

Within sixty (60) calendar days after OCR's approval of the policies and procedures referenced above, CCDOA shall provide training to all available CCDOA personnel on its policies and procedures for ensuring effective communication with deaf or hard of hearing Clients and/or Companions, as well as its obligations consistent with Sections IV and V of this Agreement. Such training shall be sufficient in content to train CCDOA personnel to promptly identify communication needs and preferences of persons who are deaf or hard of hearing, and to secure appropriate, effective auxiliary aids and services, including qualified interpreter services, as quickly as possible when necessary. CCDOA personnel shall receive copies of the policies and procedures referenced above.

VIII. REPORTING

A. Compliance Reports

Within sixty (60) calendar days after OCR's approval of the policies and procedures referenced in Section VI above, CCDOA shall provide OCR with the following:

- 1. Copies of the adopted policies and procedures;
- 2. A letter certifying that the distribution of materials and notice required by Section VI has occurred. The letter shall specify the date(s) that such distribution/notice occurred, how the distribution/notice occurred, and the persons to whom the materials were distributed;
- 3. A copy of the notice referenced in Section VI;

4. A letter certifying that the training described in Section VII has been completed. The letter shall specify the date(s), time(s), and location(s) of the training, the person(s) conducting the training, the content of the training, and the names and titles of those participating in the training;
5. Documentation of the contracts or other arrangements that CCDOA has in place to ensure provision of qualified interpreters, when necessary for effective communication; and
6. A letter certifying that CCDOA is in compliance with Section V.

B. Reports on the Provision of Interpreter Services

At ninety (90) calendar days; one hundred eighty (180) calendar days; two hundred seventy (270) calendar days and three hundred thirty (330) calendar days after the Effective Date of this Agreement, CCDOA shall provide for the previous ninety (90) calendar day period (except for the final report, which shall cover the previous sixty (60) calendar day period), data on:

1. The total number of requests for interpreter services received by CCDOA;
2. The total number of qualified interpreters provided;
3. The sources of the qualified interpreter provided;
4. The number of denials of requests for interpreter services and the reason for each denial;
5. For each occasion on which a qualified interpreter was not provided, whether another auxiliary aid or service was provided and, if so, what auxiliary aid or service was provided;
6. The number of untimely responses for requests for qualified interpreters and reasons for the untimeliness; and

C. Maintenance of Records

CCDOA shall maintain appropriate records to document the information contained in the Compliance Reports and, upon request, shall make them available to OCR, upon request.

D. Signatures

The individuals signing this document represent that they are authorized to bind the undersigned entities to this Agreement.

/s/

12/12/12

Norman L. Marsh
Chairman, Cattaraugus County Legislature
*Pursuant to Act 665-2012 of the
Cattaraugus County Legislature*

Date

/s/

2/1/13

Linda C. Colón, Regional Manager
Office for Civil Rights, Region II
U.S. Department of Health and Human Services

Date