



DEPARTMENT OF HEALTH & HUMAN SERVICES
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OFFICE OF THE SECRETARY

Office for Civil Rights, Region VI
1301 Young Street, Suite 1169
Dallas, TX 75202

AUG 23 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Elmer G. Ellis
President/Chief Executive Officer
East Texas Medical Center Regional Healthcare System
1000 South Beckham Avenue
Tyler, TX 75701

Re: Letter of Concern to East Texas Medical Center Regional Healthcare System and ETMC Crockett Hospital, OCR Transaction No. 07-68926

Dear Mr. Ellis:

The U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), has completed its investigation of the disability discrimination complaint filed against ETMC Crockett Hospital, which is a member of the East Texas Medical Center Regional Healthcare System (ETMC).¹ The complaint was filed on June 18, 2007, by Kathy Sigford (the complainant) and Sandra Sigford (the affected party), who is deaf. The complaint alleges that in March and April 2007, Terry Cutler, the Administrator and Chief Executive Officer of ETMC Crockett Hospital, refused to provide a sign language interpreter for the affected party while she was receiving medical care. The purpose of this letter is to outline OCR's deep concern with the policies and procedures of ETMC and ETMC Crockett Hospital; and provide an opportunity to modify your effective communication program to ensure it is in compliance with the applicable statute and regulation.

Legal Authority

Our investigation was conducted under the authority of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulation at 45 C.F.R. Part 84 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of Federal financial assistance through Title XVIII of the Social Security Act of 1965 (Medicare), 42 U.S.C. § 1395 et seq., and Title XIX of the Social Security Act of 1965 (Medicaid), 42 U.S.C. § 1396 et seq., ETMC Crockett Hospital is obligated to comply with Section 504.

¹ We are writing to you in your capacity as: (1) registered agent of East Texas Medical Center Regional Healthcare System; and (2) registered agent of ETMC Crockett Hospital.

Background

According to the complainant, the affected party visited Mary J. Hyde, M.D., for prenatal care during March and April 2007. Although the complainant interpreted for the affected party during a March 2007 medical appointment, the complainant felt uncomfortable interpreting the medical terminology. The complainant and the affected party requested a sign language interpreter, but Dr. Hyde informed them that Mr. Cutler had denied the request.

ETMC Crockett Hospital is located 22 miles from the affected party's house. According to the complaint filed with OCR, Mr. Cutler recommended that the affected party seek medical treatment from another physician who would be able to provide interpreter services. Ultimately, the affected party did receive medical and interpreter services from another physician, whose practice is located 74 miles from the affected party's house. This physician provided interpreter services free of charge during the affected party's prenatal visits and Lamaze classes, as well as during her labor, delivery and discharge planning.

According to ETMC Crockett Hospital, Mr. Cutler spoke with the complainant about the affected party's need for an interpreter on April 27, 2007. On April 28, 2007, the complainant informed Dr. Hyde's office that an interpreter would not be necessary for every appointment, with the exception of the affected party's appointment with a hematologist. The complainant also inquired about referring the affected party to a high risk obstetrician in Bryan, Texas. On May 7, 2007, Mr. Cutler explored options for providing sign language interpreters for the affected party. On the same day, Dr. Hyde's office was notified that the hematologist would provide interpreter services to the affected party. In September 2009, Mr. Cutler reported that the ETMC Crockett Hospital had provided the affected party with an interpreter for her more recent medical appointments.

Finding of Fact

East Texas Medical Center Regional Healthcare System is the largest and most comprehensive health care network in eastern Texas, consisting of 89 facilities, including hospitals, clinics, specialty centers, home health services, fitness centers and rehabilitation facilities located throughout 19 counties. ETMC Crockett Hospital is a full-service, 49-bed acute care hospital and health care complex located in Crockett, Texas. See U.S. Department of Health and Human Services, *Hospital Compare*, (accessed July 14, 2011) (<http://www.hospitalcompare.hhs.gov/>).

The affected party's medical records show that the complainant called Dr. Hyde's office on April 27, 2007, regarding a conversation she had with Mr. Cutler about the need for a sign language interpreter. The complainant stated that their conversation about providing a sign language interpreter for the affected party "went over his [Mr. Cutler's] head." The complainant also asked if Dr. Hyde would refer the affected party to a high risk obstetrician in Bryan, Texas. Dr. Hyde's staff responded that Dr. Hyde felt comfortable with delivering the baby and the complainant agreed. However, the complainant had concerns about the communication between

the affected party and Dr. Hyde. Dr. Hyde's staff recommended that the complainant contact hospitals in Bryan and inquire about their obstetricians and the availability of interpreter services.

The medical records indicate that on the next day, the complainant called Dr. Hyde's office. The complainant expressed her frustration in trying to interpret medical terminology and explain to the affected party how a blood platelet issue was affecting her pregnancy. Dr. Hyde's staff and the complainant agreed that an interpreter was not necessary for every doctor's appointment, but it would be useful for some appointments. The record continues that Dr. Hyde instructed her staff to notify the referral coordinator that the affected party needed a sign language interpreter for her appointment with the hematologist.

On May 1, 2007, the medical record indicates that the complainant provided Dr. Hyde's office with the contact information for a sign language interpreter. Dr. Hyde's staff contacted the interpreter to discuss providing interpreting services during the affected party's appointment with the hematologist. However, neither the interpreter nor her staff was available for the affected party's appointment with the hematologist because of the short notice. Further, the interpreter required a payment agreement and a contract before providing services. Dr. Hyde's staff relayed information about the interpreter's services to Mr. Cutler later that same day.

On May 7, 2007, the complainant confirmed that the hematologist would provide an interpreter during the affected party's office visit. On the same day, the medical record reflects that Mr. Cutler investigated options for providing sign language interpreters for the affected party.² On May 8, 2007, the complainant called to inform Dr. Hyde's staff that the hematologist said everything was "okay" with the affected party. Dr. Hyde's staff noted that she and the complainant discussed the affected party's blood platelets and her pregnancy and decided to wait for recommendations from the hematologist.

The system-wide ETMC Hearing-Impaired Patients Policy and Procedures (effective Feb. 1991; revised Sept. 2009) states that every effort will be made to provide special accommodations to hearing-impaired persons to facilitate excellent communication. The policy includes contact information for eight sign language interpretation and translation organizations, specifically: Deaf Services of East Texas; East Texas Center for Independent Living; Language Services of East Texas; Tyler Junior College; Communication Access Real Time Translation; Deafness Resource Specialist; Deaf Action Center; and the Texas Relay Center. The policy provides instructions on how to use a Telecommunication Device for the Deaf (TDD) and closed captioning televisions. In addition, the policy includes information about the Specialized Telecommunications Assistance Program, a Texas Department of Assistive and Rehabilitative Services program which provides financial assistance to Texas residents with disabilities in order

² According to the affected party's medical records, a member of Dr. Hyde's staff contacted the Baylor College of Medicine, in Houston, Texas, on May 7, 2007, and was informed that the affected party would not receive treatment at Baylor unless she provided her own interpreter. On November 5, 2010, a Baylor staff member denied such a requirement during an OCR interview and described Baylor's process for providing patients with sign language interpreter services.

for them to purchase specialized equipment and services.

ETMC Crockett Hospital provided OCR with copies of its Hearing-Impaired Patients Policy; Non-Discrimination Policy; and contact information for sign language and foreign language services. The ETMC Crockett Hospital Hearing-Impaired Patients Policy, which was developed in November 2007, states that every effort will be made to obtain a sign language interpreter for a hearing-impaired person. The ER Nurse and Charge Nurse have responsibility for contacting the interpreter. Similar to the system-wide ETMC policy, the ETMC Crockett Hospital policy includes telephone numbers for accessing the Texas Relay Center, and instructs staff on how to use the TDD and closed captioning televisions.

ETMC Crockett Hospital also provided OCR with a sign language interpreting services agreement, effective January 21, 2008, between Mr. Cutler and a Certified Level III Interpreter with the Texas Department of Assistive and Rehabilitative Services, Division for Rehabilitative Services, Office for Deaf and Hard of Hearing Services. In addition, signs notifying patients of the availability of sign language services and the non-discrimination policy are posted in ETMC Crockett Hospital's ER and cafeteria hallway.

Applicable Provisions of the Law and Regulation

The Rehabilitation Act of 1973 (29 U.S.C. § 705), as amended by the Americans with Disabilities Act Amendments Act of 2008 (PL 110-325) (Sept. 25, 2008), incorporates the definition of disability found in 42 U.S.C. § 12102:

(1) Disability

The term "disability" means, with respect to an individual—

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

...

The regulation implementing Section 504 of the Rehabilitation Act of 1973 provides that a qualified person with a disability, with respect to the provision of health, welfare, and social services, is a person “who meets the essential eligibility requirements for the receipt of such services.” 45 C.F.R. §84.3(k)(4).

The Section 504 regulation provides, at 45 C.F.R. §84.4(a) and (b)(1), that:

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others . . .

Further, 45 C.F.R. §84.52(d) provides that:

(1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Director [of the HHS Office for Civil Rights] may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purposes of this paragraph, auxiliary aids may include brailed and taped material, interpreters, and other aids for persons with impaired hearing or vision.

ISSUE

Whether East Texas Medical Center Regional Healthcare System and ETMC Crockett Hospital discriminated against the affected party on the basis of her disability by failing to provide sign language interpreter services during her medical appointments in violation of 45 C.F.R. § 84.4(a) and (b)(1)(i), and § 84.52(d)(1) and (2).

Discussion and Analysis

Pursuant to Section 504, recipients of Federal financial assistance must have policies and procedures to effectively communicate with persons who are deaf or hard of hearing. Recipients must be prepared to draw upon a full range of communication options or auxiliary aids in order to ensure that persons who are deaf or hard of hearing are provided access to health care services. The range of options, which must be provided at no cost to the person who is deaf or hard of hearing, may include: formal arrangements with interpreters who can accurately and fluently express and receive in sign language; supplemental hearing devices; written communication; flash cards; staff available to provide basic sign language expressions relevant to emergency treatment; and at least one telecommunication device for the deaf or teletypewriter (TDD/TTY) or arrangement to share a TDD/TTY line with another healthcare facility.

The method of communication and the auxiliary aids that the recipient must provide will vary depending upon the abilities of the person receiving services and the complexity and nature of the communications that are required. See U.S. Department of Justice, *ADA Business Brief: Communicating with Persons Who Are Deaf or Hard of Hearing in Hospital Settings* (Oct. 2003) (<http://www.ada.gov/hospcombr.htm>). As a result, the recipient should consult with each deaf or hard of hearing person to determine what auxiliary aids are necessary to provide effective communication in his or her particular situation. This decision should be based on an individualized assessment of the person's communication needs and a determination regarding what is necessary to ensure effective communication, such that an otherwise qualified person with a disability is not denied benefits or services.

In emergency treatment settings, the immediate availability of the recipient's full range of communication options may not always be feasible for persons who are deaf or hard of hearing. In any period before the full range of options — including interpreters — becomes available, recipients must provide the most effective form of communication possible in light of the time constraints of the emergency situation. In addition, persons who are deaf or hard of hearing seeking treatment must be given timely notice about the communication options which are available and should be able to request the available communication option which they believe will be most effective.

The affected party meets the definition of a person with a disability and the definition of a qualified person with a disability because she is deaf and was qualified to receive healthcare services at ETMC Crockett Hospital. According to the affected party's medical records, Dr. Hyde was willing and able to provide medical services to the affected party; and the complainant notified staff that they "felt comfortable" with Dr. Hyde delivering the baby. The complainant discussed her effective communication concerns with Mr. Cutler and provided contact information for a sign language interpreter. The medical record reflects that Mr. Cutler researched the availability of sign language interpretation services. However, there was no evidence that the affected party was offered, or that she received interpreter services (or any other auxiliary aids) during her treatment at ETMC Crockett Hospital in 2007. Pursuant to Section 504, when a recipient knows or determines that a person requires a sign language interpreter for

effective communication, it is incumbent on the recipient to make arrangements for and provide interpreter assistance. The fact that the affected party's medical care was subsequently transferred to a physician located 74 miles away from her home, although ETMC Crockett Hospital is located only 22 miles away, lends further support to the complainant's allegations that ETMC Crockett Hospital did not provide the affected party with sign language interpreter services.³

Although ETMC had developed a system-wide policy for providing effective communication services to patients who are deaf or hard of hearing, ETMC Crockett Hospital had not implemented the policy or procedures when the affected party was seeking medical services in 2007. During OCR's investigation, ETMC Crockett Hospital developed an effective communication policy and obtained a contract with a sign language interpreter. However, the policy and procedures of ETMC system-wide, as well as those of ETMC Crockett Hospital, do not address a number of issues, including but not limited to: (1) requiring staff to inform the public of the availability of free auxiliary aids and services, including sign language interpreter services; (2) requiring staff to document requests for and the provision of auxiliary aids and services; (3) prohibiting the use of family members or friends as interpreters unless staff have first notified and offered sign language interpreter services at no additional cost; and (4) prohibiting the use of children and other clients as interpreters. Additionally, ETMC Crockett Hospital's Hearing-Impaired Patients Policy did not identify or include contact information for the sign language interpreter with whom ETMC Crockett Hospital had contracted. As a result of these policy deficiencies, ETMC and ETMC Crockett Hospital may provide persons who are deaf or hard of hearing with auxiliary aids and services in an arbitrary or inconsistent manner.

Conclusion and Remedy

OCR is deeply concerned that the policies and procedures that East Texas Medical Center Regional Healthcare System and ETMC Crockett Hospital have employed with respect to the provision of auxiliary aids and services to persons who are deaf or hard of hearing may result in the lack of effective communication between these individuals and their health professionals. Some of the problems posed by such policies and procedures were documented in the medical record of the affected party. Rather than make a final determination at this time with respect to the affected party's complaint, OCR is affording ETMC and ETMC Crockett Hospital an opportunity to make changes that will help ensure that ETMC facilities do not discriminate on the basis of disability. We have therefore attached a proposed Resolution Agreement, which outlines a series of steps that ETMC and ETMC Crockett Hospital should take to ensure that ETMC

³ When the complainant requested a sign language interpreter for the affected party, ETMC Crockett Hospital had a duty to engage in an interactive process with the affected party to assess the nature of her disability, determine whether an auxiliary aid was necessary in order to give the affected party an equal opportunity to participate in its program and, if so, determine an appropriate auxiliary aid. ETMC Crockett Hospital also had a duty to provide an appropriate auxiliary aid where necessary to provide the affected party with an opportunity to participate in and benefit from its programs that was equal to the opportunity provided to persons without hearing disabilities. See 45 C.F.R. §84.4(a) and (b)(1); and 45 C.F.R. §84.52(d).

basis of disability. We have therefore attached a proposed Resolution Agreement, which outlines a series of steps that ETMC and ETMC Crockett Hospital should take to ensure that ETMC facilities are in full compliance with Section 504 of the Rehabilitation Act of 1973.

We request that ETMC and ETMC Crockett Hospital review the enclosed Resolution Agreement and contact George Bennett, Deputy Regional Manager at (214) 767-4056 **within 15 days** of receipt of this letter to discuss the proposed compliance measures.

We wish to advise you that, under the Freedom of Information Act, it may be necessary to release this document and related records in response to any inquiry. In the event we receive such a request, we will make every effort to protect information which identifies individuals or that, if released, would constitute an unwarranted invasion of privacy. We appreciate your cooperation regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. D. Rouse', with a stylized, cursive script.

Ralph D. Rouse
Regional Manager

Enclosure: Resolution Agreement

cc: Terry Cutler, Administrator/CEO
ETMC Crocket Hospital
(w/ enclosure)