

SETTLEMENT AGREEMENT

BETWEEN THE

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS

AND

ADVANCED DIALYSIS CENTER

OCR TRANSACTION NUMBER: 10-119670

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I. Introduction

This Settlement Agreement (Agreement) is entered into by the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), and the Advanced Dialysis Center (ADC). This Agreement resolves OCR transaction number 10-119670, a complaint filed on August 11, 2010 by the sister of a former ADC patient who was deaf. The complainant alleged that ADC discriminated against the patient on the basis of his disability (deafness) when it failed to provide him with adequate sign language interpreter services during his treatment at ADC.

OCR conducted an investigation to determine whether ADC discriminated against the patient. OCR determined that, based on his individual needs, the complainant's brother required a sign language interpreter in order to communicate effectively with his ADC treatment providers. Additionally, OCR found that the evidence demonstrated that ADC failed to communicate effectively with the complainant's brother in the context of his dialysis treatment. OCR concluded that ADC's failure to provide the complainant's brother with a qualified sign language interpreter at any point during his treatment and its failure to ensure effective communication, denied the complainant's brother the opportunity to participate in or benefit from the services ADC offers equal to the opportunity offered to persons who are not deaf or hard of hearing, in violation of 45 C.F.R. §§ 84.4(a) and (b)(1)(ii) and 45 C.F.R. §§ 84.52(a)(2) and (d)(1). OCR also found that ADC has failed to develop or implement any policies or procedures for communicating with patients who are deaf or hard of hearing. OCR concluded that, as a result of this failure, ADC may be not be providing persons who are deaf or hard of hearing with appropriate auxiliary aids and services in order to ensure effective communication in the dialysis treatment setting.

A. Parties to the Agreement

1. United States Department of Health and Human Services, Office for Civil Rights; and
2. Advanced Dialysis Center.¹

B. Jurisdiction

OCR is the HHS office charged with enforcing civil rights laws as they pertain to programs funded by HHS. ADC's facilities, as identified in footnote 1, receive Federal financial assistance through their participation in Medicaid, Title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396 et seq., and are subject to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 45 C.F.R. Part 84 (Section 504). Section 504 prohibits

¹ This Agreement covers all of Advanced Dialysis Center's facilities that provide dialysis treatment services to patients. A list of these facilities can be found in Attachment A.

discrimination on the basis of disability in any program or activity receiving Federal financial assistance. Part 84 prohibits such discrimination in programs and activities receiving Federal financial assistance from HHS.

C. Purpose of this Agreement

The purpose of this Agreement is to ensure ADC's compliance with Section 504 and its implementing regulation. To resolve this matter without further burden or the expense of additional investigation or litigation, ADC agrees to the terms stipulated in this Agreement and affirms its assurance of compliance with all provisions of Section 504. The promises, obligations or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between ADC and OCR.

The actions described in this Agreement fully address the issues described in the complaint. It is understood and agreed by OCR that completion of these actions will ensure that ADC is in compliance with Section 504 as it pertains to the issues specifically addressed during this investigation. The Agreement shall not be deemed or construed to be an admission or evidence of any violation of any law or regulation or of any liability or wrongdoing on the part of ADC or its staff.

II. Definitions

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

A. Appropriate Auxiliary Aids and Services

Include, but are not limited to, qualified sign language, oral, or relay interpreters; qualified note-takers; computer-assisted real time transcription services; written materials; pictographs; telephone handset amplifiers; assistive listening devices and systems; telephone compatible hearing aids; closed caption decoders; open and closed captioning; teletypewriters/telecommunication devices for the deaf (TTYs/TDDs); video interpreting services; and other methods of ensuring effective communication with individuals who are deaf or hard of hearing.

B. Companion

A person who is one of the following: (a) a person whom the Patient designates to communicate with ADC on his or her behalf regarding the Patient's condition or care; (b) a person legally authorized to make health care decisions on behalf of the Patient; or (c) such other person with whom ADC Staff would ordinarily and regularly communicate regarding the Patient's medical condition.

C. Patient

Any individual who is seeking or receiving health care services, including such services as consultations, treatment, or discussion of billing issues.

D. Qualified Interpreter

Includes 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 health care setting to a Patient or a Companion who is deaf or hard of hearing. An interpreter must be able to sign to the person who is deaf what is being said by the hearing person, and to voice to the hearing person what is being signed by the person who is deaf. Because a qualified reader or interpreter must be able to interpret impartially, a Companion of the Patient who requires a communication-related auxiliary aid or service may not be qualified to render the necessary auxiliary aid or service because of factors such as professional or personal involvement. Additionally, although an interpreter may be certified, a certified interpreter is not necessarily “qualified.” Similarly, certification is not required in order for an interpreter to be “qualified.”

Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language is not necessarily qualified as an oral interpreter. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a qualified sign language interpreter. Also, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone signing and translate their signed or finger-spelled communication into spoken words is not a qualified sign language interpreter. A “qualified interpreter” may include a “relay interpreter” who has specific skill and training in acting as an intermediary between a Patient and a Companion and a sign language interpreter in instances when the interpreter cannot otherwise independently understand the consumer’s primary mode of communication.

D. Qualified Note Taker

A note taker who is able to transcribe voice communications competently, accurately, and impartially, using any specialized terminology necessary to effectively communicate in a health care setting to a Patient or a Companion who is deaf or hard of hearing, given that individual’s language skills and history.

F. Section 504 Coordinator

The individual designated to coordinate ADC’s efforts to comply with and carry out its Section 504 responsibilities.

G. Section 504 Grievance Procedure

ADC’s process for addressing complaints of disability discrimination from employees, applicants, Patients, Companions, and other interested parties that incorporate appropriate due process standards and provide for the prompt and equitable resolution of grievances.

H. ADC Staff

All ADC employees, as well as contractors working with ADC, including, without limitation, nurses, physicians, social workers, technicians, dieticians, and all volunteers, who have or are likely to have direct contact with Patients and Companions as defined herein.

III. General Provisions

A. Facilities Covered by the Agreement

This Agreement covers all ADC facilities that provide patient treatment services and receive Federal financial assistance from HHS, as defined in footnote 1 of this Agreement.

B. Suspension of Administrative Actions

Subject to the continued performance by ADC of the stated obligations and required actions contained in this Agreement and in conformity with Section III-D, Failure to Comply with the Terms of this Agreement, OCR shall suspend administrative action on OCR Transaction Number 10-119670.

C. Effective Date and Term of the Agreement

This Agreement shall become effective on the date it is signed by both parties (the “Effective Date”) and shall remain in effect for twelve (12) months after the Effective Date (the “Term”). At such time, if OCR determines that ADC has completed all actions required by the Agreement, OCR’s review and monitoring of this Agreement shall terminate. Notwithstanding the Term of this Agreement,

ADC acknowledges that it shall comply with Section 504 for so long as it continues to receive Federal financial assistance.

D. Failure to Comply with the Agreement

Throughout the term of this Agreement, if at any time OCR determines that ADC has failed to comply with any provision of this Agreement, OCR shall notify ADC in writing. The notice shall include a statement of the basis for OCR's determination and shall allow ADC fifteen (15) working days to either: (a) explain in writing the reasons for its actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement or (b) dispute the accuracy of OCR's findings. On notice to ADC, OCR may shorten the 15-day period if it determines that a delay would result in irreparable injury to affected parties. If ADC does not respond to the notice, or if, upon review of ADC's response, OCR determines that ADC has not complied with the terms of the Agreement, OCR reserves the right to reopen its investigation of ADC's compliance with Section 504. OCR may incorporate into its reopened investigation any relevant evidence of noncompliance with this Agreement, and any relevant evidence gathered by OCR prior to the signing of this Agreement.

E. Effect on Other Compliance Matters

The terms of this Agreement do not apply to any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be pending before OCR or any other Federal agency. This Agreement does not preclude OCR from conducting future compliance reviews of ADC or from conducting investigations of complaints filed against ADC that are received after the Effective Date of this Agreement. Nothing in this Agreement shall be construed to limit or restrict OCR's statutory and regulatory authority to conduct compliance reviews or complaint investigations.

F. ADC's Continuing Obligations

Nothing in this Agreement is intended to relieve ADC of its continuing obligation to comply with other applicable Federal nondiscrimination statutes and their implementing regulations, including Section 504 and its implementing regulation at 45 C.F.R. Part 84.

G. Prohibition Against Retaliation and Intimidation

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

H. OCR's Review of ADC's Compliance with the Agreement

OCR may, at any time, review ADC's compliance with this Agreement. As part of such review, OCR may interview witnesses, examine and copy documents, and require ADC to provide written reports and permit inspection of ADC facilities and services. Throughout the term of this Agreement, ADC agrees to retain records required by OCR to assess ADC's compliance with the Agreement and to submit the requested records to OCR. OCR will maintain the confidentiality of all documents, files and records received from ADC and will not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.

I. Technical Assistance

OCR agrees to provide appropriate technical assistance to ADC regarding compliance with this Agreement, as requested and as reasonably necessary.

J. 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 any provisions of this Agreement.

K. Entire Agreement

This Agreement constitutes the entire understanding between ADC and OCR in resolution of OCR Transaction Number 10-119670. Any statement, promise or agreement not contained herein shall not be enforceable through this Agreement.

L. Modification of Agreement

This Agreement may be modified by mutual agreement of the parties in writing.

M. Effect of ADC Program Changes

ADC reserves the right to change or modify its programs, so long as ADC ensures compliance with Section 504 and other applicable Federal statutes and the provisions of this Agreement. Significant program changes that may affect compliance with this Agreement or any applicable statutes and regulations within OCR's jurisdiction must be promptly reported to OCR.

N. Publication or Release of Agreement

OCR places no restrictions on the publication of the terms of this Agreement. 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. § 522, and its implementing regulation, 45 C.F.R. Part 5.

O. Authority of Signer

The individual who signs this document on behalf of ADC represents that he or she is authorized to bind ADC to this Agreement.

P. Third Party Rights

This Agreement can only be enforced 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.

Q. Miscellaneous

When OCR verifies that ADC has completed all actions contained in this Agreement, OCR shall consider all matters related to this investigation resolved and so notify ADC in writing.

IV. General Obligations

A. Disability Non-discrimination

ADC shall provide deaf or hard of hearing Patients and Companions with the full and equal enjoyment of the services, privileges, facilities, accommodations, and benefits of ADC, as required by Section 504.

B. Non-discrimination by Association

ADC shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of the individual with someone who is deaf or hard of hearing.

C. Section 504 Coordinator

Within fifteen (15) calendar days of the Effective Date of this Agreement, ADC shall designate an individual to be responsible for coordination of its efforts to comply with Section 504. ADC shall publish, in an appropriate form, the name, title, function, telephone number, email and physical address of the Section 504 Coordinator. The Section 504 Coordinator (and his/her designee(s)) shall be available to answer questions and provide appropriate assistance to ADC Staff and the public regarding immediate access to, and proper use of, the appropriate auxiliary aids and services required by this Agreement. The Section 504 Coordinator shall oversee and ensure the quality of the services provided by the interpreters, readers, and note-takers that ADC uses.

D. Section 504 Grievance Procedures

Within sixty (60) calendar days of the Effective Date of this Agreement, ADC shall develop and submit to OCR the Section 504 Grievance Procedure at Attachment C for addressing complaints of disability discrimination, including complaints regarding the failure to provide appropriate auxiliary aids and services. The Section 504 Grievance Procedure must be consistent with 45 C.F.R. § 84.7. ADC will update the Section 504 Coordinator information contained in the Section 504 Grievance Procedures, as necessary.

OCR shall review the Section 504 Grievance Procedure within fifteen (15) calendar days of receipt. The Grievance Procedure shall not be implemented by ADC without the approval of OCR.

Within thirty (30) calendar days of approval by OCR, ADC's Section 504 Coordinator's designee(s) shall be available to assist interested persons in filing Section 504 grievances and shall forward all completed grievances to the Section 504 Coordinator for appropriate action.

ADC shall take steps to notify ADC Staff, Applicants, Patients, Companions, and interested persons of the information contained in the Section 504 Grievance Procedure. This information shall be communicated as follows:

1. Within thirty (30) calendar days after approval by OCR, ADC shall post copies of the Section 504 Grievance Procedure of conspicuous size and print in visible locations in ADC facilities and on each such facility's and/or service's website;
2. ADC shall publish the Section 504 Grievance Procedure in patient handbooks or in similar publications within sixty (60) calendar days of approval of the Grievance Procedure by OCR; and

3. ADC shall offer additional assistance, including prominently displayed signage translated into frequently encountered languages, when limited written English proficiency may be a barrier to the Patient's and/or Companion's understanding of the Section 504 Grievance Procedure.
4. ADC's Section 504 Coordinator (and his/her designee(s)) shall be responsible for maintaining and providing copies of the Section 504 Grievance Procedure to interested persons, including in alternative formats such as Braille, large print, and audiotape.

E. Notice of Non-discrimination

Within sixty (60) calendar days of the Effective Date of this Agreement, ADC shall adopt and submit to OCR the Notice of Nondiscrimination at Attachment D, which states that ADC does not discriminate on any ground prohibited by Federal law, including disability, and provides the name, title, and contact information of the ADC Section 504 Coordinator.

OCR shall review the Notice of Nondiscrimination within fifteen (15) calendar days of receipt. The Notice of Nondiscrimination shall not be posted by ADC without the approval of OCR.

ADC shall take steps to notify Patients, Companions, and ADC Staff of the information contained in the Notice of Nondiscrimination. This information shall be communicated:

1. Within sixty (60) calendar days of approval by OCR, by posting signs of conspicuous size and print in visible locations in ADC facilities and on each such facility's or service's website;
2. Within sixty (60) calendar days of approval by OCR, by including this information in ADC patient handbooks or in similar publications; and
3. By offering additional assistance, including prominently displayed signage translated into frequently encountered languages, when limited English proficiency may be a barrier to the Patient's and/or Companion's understanding of the notice.

F. Non-discrimination Statement

Within sixty (60) calendar days of the Effective Date of this Agreement, ADC shall adopt and submit to OCR the Nondiscrimination Statement, which identifies ADC's Section 504 Coordinator, at Attachment E, for inclusion on each ADC facility's and/or service's website and in all major publications.

OCR shall review the Nondiscrimination Statement within fifteen (15) calendar days of receipt. The Nondiscrimination Statement shall not be implemented by ADC without the approval of OCR.

Within sixty (60) calendar days of approval by OCR, ADC shall publish the Nondiscrimination Statement.

V. Provision of Appropriate Auxiliary Aids and Services

A. Recognition

ADC recognizes that deaf or hard of hearing Patients and/or Companions need and have a right to appropriate auxiliary aids and services to access and fully participate in health care provided by ADC. ADC is committed to providing appropriate auxiliary aids and services in a timely manner to deaf or hard of hearing Patients and/or Companions to ensure effective communication and an equal opportunity to participate fully in the benefits, activities, programs and services provided by ADC. This includes ensuring effective communication between ADC's officers, personnel, contractors and subcontractors and deaf or hard of hearing Patients and/or Companions.

B. Revised Policies and Procedures

Within sixty (60) calendar days of the Effective Date of this Agreement, ADC shall adopt and submit to OCR a policy and procedures to ensure effective communication with deaf or hard of hearing Patients and/or Companions, consistent with the requirements of this Agreement and Section 504. The Auxiliary Aids and Services For Persons With Disabilities Policy and Procedures, at Attachment F, has been provided as a reference to ADC in drafting its own policy and procedures. ADC's revised policy and procedures shall include, at a minimum, the following:

1. A section indicating that appropriate auxiliary aids and services shall be provided free of charge to deaf or hard of hearing Patients and/or Companions when such aids or services are necessary to ensure effective communication.
2. A section designating the name and title (e.g., office manager or chief operations officer) of the individual who will make the determination of what auxiliary aid or service ADC will provide to a deaf or hard of hearing Patient and/or Companion who requests one.
3. A section indicating that ADC staff will consider the following factors in reaching the determination referred to in Section V-B.2, above: (a) the nature, length, and importance of the communication at issue; (b) the Patient's and/or Companion's disability and communication skills and knowledge; (c) the

Patient's health status or changes thereto; (d) the Patient's and/or Companion's preference or stated need for an interpreter; and (e) the reasonably foreseeable health care activities of the Patient (e.g., medical tests or procedures, meetings with health care professionals, or discussions concerning billing, insurance, history, diagnosis, prognosis, self care, or discharge). ADC staff, taking into account the preferences of the individual, will decide which auxiliary aid or service to provide, so long as effective communication is provided.

4. A section indicating general circumstances under which auxiliary aids and services, including but not limited to, qualified interpreters, will be provided, when necessary for effective communication. Examples include, but are not limited to: (a) determining a Patient's medical history or obtaining a description of the Patient's ailments or symptoms; (b) explaining and describing inpatient, outpatient, pre-operative, post-operative, and other medical procedures, tests, or treatments; (c) discussing test results; (d) discussing diagnosis, prognosis, and treatment options; (e) obtaining informed consent or permission for procedures, surgery, or other treatment options; (f) explaining reasons for, how to take, and possible side effects of medications; (g) communicating during treatment and testing; (h) communicating during discharge or post-operative planning and instruction; (i) discussing complex financial or insurance matters; and (j) any other circumstances in which auxiliary aids and services are necessary to ensure a Patient's privacy, confidentiality, or other rights provided by Federal, state or local law.

OCR shall review the revised policy and procedures within fifteen (15) calendar days. The policy and procedures shall not be implemented by ADC without the approval of OCR. Within thirty (30) calendar days of OCR approval, ADC shall implement them and disseminate them to ADC Staff and subcontractors.

C. General Assessment Criteria

ADC shall engage in an interactive process with the deaf or hard of hearing Patient and/or Companion to determine which appropriate auxiliary aids and services are needed to ensure effective communication. As part of this process, ADC shall discuss with the Patient and/or Companion, wherever possible, the type of aids and services needed and the Patient's and/or Companion's preference of auxiliary aids or services. ADC staff, taking into account the preferences of the individual, will decide which auxiliary aid or service to provide, so long as effective communication is provided.

Lip reading, in some instances, may be an effective means of communication; however, it should not be relied upon as the sole or primary means of communication. Relevant factors in determining whether communication using lip reading is appropriate include: (1) the Patient's and/or Companion's fluency in English; (2) the Patient's and/or Companion's competency in lip reading; (3)

whether the Patient and/or Companion have residual hearing; and (4) the nature, length, importance and complexity of the matter being discussed.

In some instances, hand-written notes may be an effective means of communication. Relevant factors in determining whether communication using hand-written notes is appropriate include: (1) the Patient's and/or Companion's fluency in written English, and (2) the nature, length, importance and the complexity of the matter being discussed.

D. General Circumstances When Auxiliary Aids and Services Will Be Provided

The scope of this Agreement is limited to services provided through ADC facilities and services. ADC shall provide auxiliary aids and services, including but not limited to qualified interpreters, to Patients and/or Companions who are deaf or hard of hearing in situations where such provision is necessary for effective communication. Situations in which provision of auxiliary aids and services may be necessary for effective communication include, but are not limited to the items described in Section V-B.4. This list does not imply that a qualified interpreter must always be provided in these circumstances. Nor does it suggest that there are not other circumstances when it may be appropriate to provide qualified interpreters for effective communication.

E. Initial Assessment and Ongoing Assessments

1. Scheduled Appointments: Within sixty (60) calendar days of the Effective Date of this Agreement, ADC will submit to OCR a draft of its proposed assessment process to ensure that deaf or heard of hearing Patients' and/or their Companions' communication needs are evaluated prior to their first appointment at an ADC facility. , As part of this assessment process, trained ADC Staff shall perform an initial communication assessment to determine whether the Patient and/or Companion requires auxiliary aids or services in order to ensure effective communication. The assessment will consider the timing, duration, and frequency for which appropriate auxiliary aids and services will be provided. The Patient and/or Companion will be provided with an appropriate auxiliary aid or service at the time of the scheduled appointment. The results of the assessment and any identified auxiliary aids or services for the Patient and/or Companion will be documented in the Patient's registration or medical records. OCR shall review the proposed assessment process within fifteen (15) calendar days of receipt. The assessment process shall not be implemented by ADC without the approval of OCR. Once OCR has approved the proposed assessment process, ADC shall implement the assessment process within thirty (30) calendar days.
2. Non Scheduled Appointments: OCR recognizes that, due to the nature of dialysis treatment, non-scheduled appointments will be a rare occurrence for ADC. However, in the rare instance that a non scheduled encounter occurs

with a deaf or hard of hearing Patient and/or Companion, ADC shall assess the Patient's and/or Companion's communication needs, and make an appropriate auxiliary aid or service available. If it is determined that a sign language interpreter is necessary for effective communication, ADC shall provide an interpreter to the Patient and/or Companion within two hours.

3. Continuation of Provision of Appropriate Auxiliary Aids and Services: After an ADC facility or service conducts an initial assessment, that facility or service shall continue to provide appropriate auxiliary aids and services to Patients and/or Companions during the entire period of the Patient's course of treatment at ADC, without requiring subsequent requests for the appropriate auxiliary aids and services by the Patient and/or Companion. ADC Staff shall keep records that reflect the ongoing provision of appropriate auxiliary aids and services to Patients and/or Companions.
4. Determination Not to Provide Requested Auxiliary Aid or Service: If, after conducting the assessment as described in Section V of this Agreement, an ADC facility or service decides not to provide a particular auxiliary aid or service requested by a Patient and/or Companion, ADC Staff at the facility or service shall so advise the person requesting the auxiliary aid or service and document the basis for the determination, including the date of the determination, the name and title of the ADC Staff who made the determination, and the alternative auxiliary aid or service, if any, that ADC has decided to provide. Upon request, a copy of this documentation shall be provided to the Patient and/or Companion and retained in the Patient's medical record.

F. Notifying Deaf and Hard of Hearing Patients and/or Companions of the Availability of Auxiliary Aids and Services

Within thirty (30) calendar days of OCR's approval of ADC's revised policies and procedures (see Section V-B), ADC shall provide notice to deaf and hard of hearing individuals of the following: (1) the right to appropriate auxiliary aids and services free of charge; (2) the process for filing and resolving grievances about such services with ADC; and (3) the ADC staff member(s) who have been designated to provide assistance regarding access to appropriate auxiliary aids and services.

The notice shall be readily and routinely available and visible in a conspicuous location on ADC's website and in ADC facilities and services.

Where limited written English proficiency may be a barrier to the Patient and Companion understanding the notice, ADC shall offer assistance, including prominently displayed posters and signs translated into frequently encountered languages, and additional qualified interpreter services, where necessary to ensure effective communication.

G. Interpreter Services

When an interpreter is necessary for effective communication, ADC shall ensure that interpreters are provided in a timely manner. ADC agrees that, between the time an interpreter is requested and the time an interpreter arrives, ADC Staff will continue to try to communicate with the Patient and/or Companion who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with a person who is not deaf or hard of hearing, using all available methods of communication. This section is not intended to delay the provision of appropriate medical care and services.

A staff member authorized to approve and schedule interpreting services shall be available at all times during normal business hours.

Types of Interpreter Services:

1. Qualified interpreters on the ADC staff;
2. Qualified interpreters who are contractors or employees of agencies, nonprofits, or community organizations;
3. Qualified interpreters who work through volunteer programs; or
4. Video Interpretation Services (VIS) that use video conference technology over high-speed internet wires.

If VIS technology is used as one of the resources potentially available to ADC to meet its obligations under this Agreement and Section 504, the VIS technology shall meet the following performance standards:

- a. High quality, clear, delay-free, motion-free video and audio over a dedicated high speed internet connection;
- b. A clear, sufficiently large and sharply delineated picture of the qualified interpreter's and the Patient's/Companion's head, hands, and fingers, regardless of the body position of the Patient/Companion;
- c. Clear and easily understood transmission of voices; and
- d. ADC Staff and/or contractors trained to accomplish efficient set-up and operation.

H. Contract for Provision of Interpreter Services

Within ninety (90) calendar days of the Effective Date of this Agreement, ADC shall enter into a contract(s) with an agency/agencies of its choice for the provision of qualified interpreter services for a period of, at a minimum, one (1) year from the Effective Date of the contract with the agency.

I. Restricted Use of Certain Persons to Facilitate Communication

Due to confidentiality, potential emotional involvement, and other factors that may adversely affect the ability to facilitate communication, ADC shall never permit a family member, advocate, or friend of a Patient and/or Companion who is deaf or hard of hearing to interpret or facilitate communication between ADC Staff and the Patient and/or Companion unless the following four factors are present:

1. Such person wishes to provide such assistance;
2. Such use is necessary or appropriate under the circumstances, giving appropriate consideration to any privacy and confidentiality issues that may arise;
3. The Patient and/or Companion have been made aware of ADC's full range of auxiliary aids and services available free of charge; and
4. The Patient and/or Companion provide written confirmation that they were made aware of relevant auxiliary aids and services available free of charge and agree to the use of such person to interpret or facilitate communication.

In time-sensitive, life-threatening situations, ADC may rely upon communications through a family member, advocate or friend until a qualified interpreter or other appropriate auxiliary aid or service is obtained. In such situations, ADC shall retain the above-required written documentation in the Patient's medical record.

J. Procedures for Obtaining Qualified Interpreters

In the event that a qualified interpreter is required for effective communication with a Patient and/or Companion, ADC shall take the following steps to obtain a qualified interpreter. The steps should be taken in the order in which they are listed:

1. Request a qualified interpreter from a list maintained by ADC, from among any qualified interpreters on the ADC staff or from an agency with whom ADC has an ongoing contract for qualified interpreter services;
2. If ADC is unable to obtain the services of an available qualified interpreter from the resources identified in subparagraph 1, then ADC shall request an interpreter from a secondary list of qualified interpreters (agency or freelance) maintained by ADC.

The preferred and secondary lists of qualified interpreters maintained by ADC shall be updated by ADC regularly, not less than once every twelve (12) months. ADC may select the agencies or individuals on the list based upon such criteria as ADC deems appropriate, so long as ADC provides a qualified interpreter for each instance where the services of such an interpreter is necessary to ensure effective communication.

3. Inform the Patient and/or Companion of the efforts taken to secure a qualified interpreter and the efforts that have failed, and follow up on reasonable suggestions for alternate sources of qualified interpreters, such as a qualified interpreter known to the Patient and/or Companion.

K. Qualified Interpreters on the ADC Staff

At any time, ADC may, but shall have no obligation to, satisfy its obligations under this Agreement by hiring qualified staff interpreters and providing them to Patients and/or Companions when necessary for effective communication. Patients and/or Companions who are provided with qualified interpreters on the ADC staff must have the same level of coverage (for both duration and frequency) as ADC is otherwise obligated to provide under this Agreement. If a qualified interpreter on the ADC staff is not available when needed, ADC shall follow the procedures set forth above to obtain the services of another qualified interpreter.

L. Telephone Communications

ADC shall take the following steps to ensure that Patients and/or Companions can communicate effectively by telephone:

1. Public Telephones: Within sixty (60) calendar days of the Effective Date of this Agreement, ADC shall provide a TTY (also known as TDD) device at each of its locations.
3. Storage and Accessibility of Equipment: Portable TTY devices shall be stored in places that are readily accessible at all times of the day or night to all ADC Staff that have patient contact. ADC shall make reasonable efforts to

provide a TTY to a Patient and Companion within twenty (20) minutes from the time it is requested.

All ADC Staff shall be notified in writing of the storage location of a TTY device that is closest to their work area(s).

VI. Training

A. Training of the Section 504 Coordinator

Within thirty (30) calendar days of the Effective Date of this Agreement, ADC shall ensure that its Section 504 Coordinator and his/her designee(s) receive training on their responsibilities under this Agreement and the requirements of Section 504, including but not limited to, Section 504's prohibition on retaliation; requirements regarding the provision of appropriate auxiliary aids and services; and the proper handling of Section 504 Grievances.

B. Training of ADC Staff

Within one-hundred twenty (120) calendar days of the Effective Date of this Agreement, ADC shall provide training to all available ADC Staff on its revised policies and procedures for ensuring effective communication with deaf or hard of hearing Patients and/or Companions. Such training shall be sufficient in content to train ADC Staff 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. Such training shall include topics such as the various degrees of hearing impairment, sensitivity to the needs of the deaf community, language and cultural diversity in the deaf community, dispelling myths and misconceptions about persons who are deaf or hard of hearing, identification of communication needs of persons who are deaf or hard of hearing, the proper use and role of qualified interpreters, and procedures and methods for accessing qualified interpreters.

ADC shall provide the aforementioned training to all new hires within thirty (30) calendar days of employment.

VII. Reporting

A. Compliance Reports

On the dates detailed in Section VII-B of this Agreement, ADC shall provide a written report ("Compliance Report") to OCR regarding the status of its compliance with this Agreement. The Compliance Report shall include appropriate documentation of the steps taken to comply with each portion of this

Agreement. The “Settlement Agreement Compliance Timeline” at Attachment B has been provided for your reference.

B. Submission of Compliance Reports

ADC shall submit the aforementioned Compliance Reports to OCR within thirty (30) calendar days of the end of each of the following periods: (1) six (6) months of the Effective Date of this Agreement (covering the preceding six-month period) and (2) nine (9) months of the Effective Date of this Agreement (covering the preceding nine-month period).

C. Additional Documentation

1. Within one hundred eighty (180) calendar days of the Effective Date of this Agreement, ADC shall provide a letter certifying that the distribution of materials required by Sections IV and V of this Agreement has occurred. The letter shall specify the date(s) that such distribution occurred, and the persons to whom the materials were provided. ADC shall also provide OCR with copies of these materials at this time;
2. Within one hundred eighty (180) calendar days of the Effective Date of this Agreement, ADC shall provide documentation that the actions required in Paragraphs B through L of Section V of this Agreement have been completed;
3. Within one hundred fifty (150) calendar days of the Effective Date of this Agreement, ADC shall provide documentation and a letter certifying that the training described in Section VI 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. As part of this documentation, ADC shall provide a copy of the staff training information or materials provided, training sign-in sheets, and any other training documentation on its revised policy and procedures for effective communication;
4. Within one hundred thirty-five (135) calendar days of the Effective Date of this Agreement, ADC shall provide OCR with documentation and photographs of posted notices; and
5. Within three hundred (300) calendar days of the Effective Date of this Agreement, ADC shall provide OCR with a letter certifying that it has completed all the actions required by this Agreement.

D. Summary of Section 504 Grievances

At six (6), eight (8) and ten (10) months of the Effective Date of this Agreement, ADC shall provide OCR with letters describing the number and type of Section

504 Grievances filed against ADC and the status and outcome of each grievance. Each report shall cover the months not previously covered by the preceding report.

E. Maintenance of Records

ADC shall maintain appropriate records to document the information required by this Agreement and shall make them available, upon request, to OCR and shall retain those records throughout the Term of this Agreement.

VIII. Signatures

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

/s/

2/8/12

Terri Jenkins
CEO & Director of Nursing
Advanced Dialysis Center

Date

/s/

1/18/12

Marlene L. Rey
Acting Regional Manager, Region III
U.S. Department of Health and Human Services
Office for Civil Rights

Date

Attachment A

ADC Facilities Covered by the Agreement

Advanced Dialysis Center
9109 Liberty Road
Randallstown, MD 21133
Phone: 410-496-0077
Fax: 410-496-6677

Advanced Dialysis Center
1785 South Hayes Street
Arlington, VA 22202
Phone: 703-521-1056
Fax: 703-521-1058

Advanced Dialysis Center
610 Dutchman Lane
Easton, MD 21601
Phone: 410-820-9873
Fax: 410-820-9875

Advanced Dialysis Center
299 Hurley Avenue
Rockville, MD 20850
Phone: 301-838-9119
Fax: 301-838-9117

Attachment B

SETTLEMENT AGREEMENT COMPLIANCE TIMELINE

DUE DATE	ACTION REQUIRED	DATE COMPLETED
15 Days	1. ADC shall designate a Section 504 Coordinator.	
30 Days	1. ADC shall complete training to Section 504 Coordinator and his/her designee(s).	
60 Days	1. ADC shall adopt and submit to OCR the following: <ul style="list-style-type: none"> • A Section 504 Grievance Procedures; • A Notice of Nondiscrimination; • A Nondiscrimination Statement; • A draft of its proposed assessment process for ensuring effective communication with deaf or hard of hearing Patients and/or Companions; • A Policy and Procedures on Auxiliary Aids and Services for Persons with Disabilities; 2. ADC shall provide a TTY device at each of its locations.	
75 Days	1. OCR shall complete review of the following: <ul style="list-style-type: none"> • ADC Section 504 Grievance Procedures; • ADC Notice of Nondiscrimination; • ADC Nondiscrimination Statement; • ADC proposed assessment process; • ADC Policy and Procedures on Auxiliary Aids and Services for Persons with Disabilities. 	
90 Days	1. ADC shall contract with an agency for the provision of qualified interpreter services.	
105 Days	1. ADC shall implement and disseminate to staff and subcontractors its Policy and Procedures on Auxiliary Aids and Services for Persons with Disabilities; 2. ADC Section 504 Coordinator’s designee(s) shall be available to assist interested persons in filing Section 504 grievances. 3. ADC shall post Section 504 Grievance Procedures; 4. ADC shall implement its process for assessing the communication needs of the deaf or hard of hearing persons; 5. ADC shall provide notice to deaf or hard of hearing	

	<p>persons of:</p> <ul style="list-style-type: none"> • their right to appropriate auxiliary aids and services free of charge; • the process for filing and resolving grievances about such services with ADC; • the ADC staff member(s) who have been designated to provide assistance in this area. 	
120 days	<ol style="list-style-type: none"> 1. ADC shall provide training to all ADC staff on its revised policies and procedures for ensuring effective communication with deaf or hard of hearing Patients and/or Companions. Please provide the following as documentation: A copy of staff training information, sign-in sheets, and other training documentation on revised policy and procedures for effective communication. 	
135 Days	<ol style="list-style-type: none"> 1. ADC shall publish the following: <ul style="list-style-type: none"> • Section 504 Grievance Procedures in patient’s handbook; • Nondiscrimination Statement 2. ADC shall include its Notice of Nondiscrimination in patient’s handbook. 3. ADC shall post its Notice of Nondiscrimination; 4. ADC shall provide to OCR documentation and photographs of posted notices. 	
150 Days	<ol style="list-style-type: none"> 1. ADC shall provide to OCR documentation of and a letter certifying that the training described in Section VI of the Agreement has been completed. 	
180 Days	<ol style="list-style-type: none"> 1. ADC shall submit to OCR a letter certifying that the distribution of materials required by Section IV and V of this Agreement has occurred. ADC shall also submit copies of these materials at this time. 2. ADC to provide documentation to OCR that the actions required in Paragraphs B through L of Section V of this Agreement have been completed. 	
6 Months	<ol style="list-style-type: none"> 1. ADC shall provide OCR with a letter describing the number and type of Section 504 grievances filed against ADC and the status and outcome of each grievance during the last 6 months. 	
7 Months	<ol style="list-style-type: none"> 1. ADC to submit to OCR the 1st Compliance Report. 	
8 Months	<ol style="list-style-type: none"> 1. ADC shall provide OCR with a letter describing the number and type of Section 504 grievances filed against ADC and the status and outcome of each grievance during the last 2 months. 	
10 Months	<ol style="list-style-type: none"> 1. ADC to submit to OCR the 2nd Compliance Report. 2. ADC shall provide OCR with a letter describing the number and type of Section 504 grievances filed 	

	<p>against ADC and the status and outcome of each grievance during the last 2 months.</p> <p>3. ADC to submit to OCR a letter certifying that it has completed all the actions required by this Agreement.</p>	
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Attachment C

Example of a Section 504 Grievance Procedure that Incorporates Due Process Standards

SECTION 504 GRIEVANCE PROCEDURE

It is the policy of **[insert name of ADC facility or service]** not to discriminate on the basis of disability. **[Insert name of ADC facility or service]** has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The Law and Regulation, 45 C.F.R. Part 84, may be examined in the office of **[insert name, title, tel. no. of Section 504 Coordinator]**, who has been designated to coordinate the efforts of **[insert name of ADC facility or service]** to comply with 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 **[insert name of ADC facility or service]** to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

PROCEDURE:

- Grievances must be submitted to the Section 504 Coordinator within forty-five (45) calendar days of the date the person filing the grievance becomes aware of the alleged discriminatory action.
- A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- The Section 504 Coordinator (or his/her designee) shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The Section 504 Coordinator will maintain the files and records of **[insert name of ADC facility or service]** relating to such grievances.
- The 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 Section 504 Coordinator by writing to the **[insert Administrator/Chief Executive Officer/Board of Directors/etc.]** within fifteen (15) calendar days of receiving the Section 504 Coordinator's decision. The **[insert Administrator/Chief**

Executive Officer/Board of Directors/etc.] shall issue a written decision in response to the appeal no later than thirty (30) calendar days after its filing.

- The availability and use of this grievance procedure does not prevent a person from filing a complaint of discrimination on the basis of disability with the:

Office for Civil Rights, Region III
U. S. Department of Health and Human Services
150 S. Independence Mall West, Suite 372
Philadelphia, PA 19106
Phone: (215) 861-4441
FAX: (215) 861-4431
TDD: (215) 861-4440

[Insert name of ADC facility or service] will make appropriate arrangements to ensure that disabled persons are provided other accommodations, 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. The Section 504 Coordinator will be responsible for such arrangements.

Attachment D

*Example of a Notice of Nondiscrimination
(for posting in the facility and inserting in advertising or admissions packages)*

NOTICE OF NONDISCRIMINATION

[insert name of ADC facility or service] does not exclude, deny benefits to, or otherwise discriminate against any person on the basis of race, color, national origin, creed, religion, disability, sex, or age in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by **[insert name of ADC facility or service]** directly or through a contractor or any other entity with which **[insert name of ADC facility or service]** arranges to carry out its programs and activities.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, other applicable Federal civil rights statutes, and Regulations of the U.S. Department of Health and Human Services, at Title 45 Code of Federal Regulations Parts 80, 84, and 91.

In case of questions, please contact:

Facility or Service:

Contact Person/Section 504 Coordinator:

Title:

Telephone number:

TDD or State Relay number:

Address:

Attachment E

*Example of a Nondiscrimination Statement
(for use in brochures, pamphlets, publications, etc.)*

NONDISCRIMINATION STATEMENT

[Insert name of ADC facility or service] does not discriminate against any person on the basis of race, color, national origin, creed, religion, disability, sex, or age in admission, treatment, or participation in its programs, services and activities, or in employment. For further information about this policy, contact: **[insert name of Section 504 Coordinator, title, telephone number, TDD/State Relay, fax number]**.

Attachment F

Example of a Policy and Procedures for Providing Auxiliary Aids for Persons with Disabilities

AUXILIARY AIDS AND SERVICES FOR PERSONS WITH DISABILITIES POLICY

[Insert name of ADC facility or service] will take appropriate steps to ensure that persons with disabilities, including persons who are deaf, hard of hearing, or blind, or who have other sensory or manual impairments, have an equal opportunity to participate in our services, activities, programs and other benefits. The procedures outlined below are intended to ensure effective communication with patients/clients involving their medical conditions, treatment, services and benefits. The procedures also apply to, among other types of communication, communication of information contained in important documents, including waivers of rights, consent to treatment forms, financial and insurance benefits forms, etc. **[include those documents applicable to the ADC facility or service]**. All necessary auxiliary aids and services shall be provided without cost to the person being served.

All staff will be provided written notice of this policy and procedure, and staff that may have direct contact with individuals with disabilities will be trained in effective communication techniques, including the effective use of interpreters.

PROCEDURES:

1. Identification and Assessment of Need:

[Insert name of ADC facility or service] provides notice of the availability of and procedure for requesting auxiliary aids and services through notices in our **[website, brochures, handbooks, letters, print/radio /television advertisements, etc.]** and through notices posted **[in waiting rooms, lobbies, etc.]**. When an individual self-identifies as a person with a disability that affects the ability to communicate or to access or manipulate written materials or requests an auxiliary aid or service, staff will consult with the individual to determine what aids or services are necessary to provide effective communication in particular situations.

2. Provision of Auxiliary Aids and Services:

[Insert name of ADC facility or service] shall provide the following auxiliary aids and services to achieve effective communication with persons with disabilities:

A. For Persons Who Are Deaf or Hard of Hearing

(i) For persons who are deaf or hard of hearing and who use sign language as their primary means of communication, the **[insert responsible staff person/position/department and a telephone number]** is responsible for providing effective interpretation or arranging for a qualified interpreter when needed.

In the event that an interpreter is needed, the **[insert responsible staff person/position/department]** is responsible for:

- Maintaining a list of qualified interpreters on staff showing their names, phone numbers, qualifications and hours of availability **[attach or insert the list]**;
- Contacting the appropriate interpreter on staff to interpret, if one is available and qualified to interpret; or
- Obtaining an outside interpreter if a qualified interpreter on staff is not available. **[Identify the agency(s) name with whom the ADC facility or service has contracted]** has agreed to provide interpreter services. The agency's/agencies' telephone number(s) is/are **[insert telephone number(s) and the hours of availability]**.

[Note: If video interpreter services are provided via computer, the procedures for accessing the service must be included in the policy.]

(ii) Communicating by Telephone with Persons Who Are Deaf or Hard of Hearing

[Listed below are three methods for communicating over the telephone with persons who are deaf or hard of hearing. Select the method(s) to incorporate in the policy that best applies/apply to the ADC facility or service.]

[Insert name of ADC facility or service] utilizes a teletypewriter/telecommunication device for the deaf (TTYs/TDDs) for external communication. The telephone number for the TTY/TDD is **[insert number]**. The TTY/TDD and instructions on how to operate it are located **[insert location]** in the facility; OR

[Insert name of ADC facility or service] has made arrangements to share a teletypewriter/telecommunication device for the deaf (TTYs/TDDs). When it is determined by staff that a TTY/TDD is needed, we contact **[identify the entity e.g., library, school or university, provide address and telephone numbers]**; OR

[Insert name of ADC facility or service] utilizes relay services for external telephone communication with teletypewriter/telecommunication device for

the deaf (TTYs/TDDs) users. We accept and make calls through a relay service. The state relay service number is **[insert telephone for your State Relay]**.

(iii) For the following auxiliary aids and services, staff will contact **[insert responsible staff person or position and a telephone number]**, who is responsible for providing the following auxiliary aids and services in a timely manner:

[Include those aids applicable to the facility or service, e.g., note-takers; computer-aided transcription services; telephone handset amplifiers; written copies of oral announcements; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning; videotext displays; or other effective methods that help make orally delivered materials available to individuals who are deaf or hard of hearing.]

(iv) Some persons who are deaf or hard of hearing may prefer or request to use a family member or friend as an interpreter. However, family members or friends of the person will not be used as interpreters unless specifically requested by that individual and after an offer of an interpreter at no charge to the person has been made by the ADC facility or service. Such an offer and the response will be documented in the person's file. If the person chooses to use a family member or friend as an interpreter, issues of competency of interpretation, confidentiality, privacy and conflict of interest will be considered. If the family member or friend is not competent or appropriate for any of these reasons, competent interpreter services will be provided by the ADC facility or service.

NOTE: Children and other individuals will not be used to interpret, in order to ensure confidentiality of information and accurate communication.

B. For Persons Who Are Blind or Who Have Low Vision

(i) Staff will communicate information contained in written materials concerning consent, treatment, benefits, services, and waivers of rights by reading forms out loud and explaining these forms to persons who are blind or who have low vision **[in addition to reading, this section should describe the other aids that are available, where they are located, and how they are used]**.

The following types of large print, taped, Braille, and electronically formatted materials are available: **[identify the materials available]**. These materials may be obtained by calling **[insert responsible staff person/position/department and telephone number]**.

(ii) Staff will contact **[insert responsible staff person/position/department and a telephone number]**, who is responsible for providing the following aids and services in a timely manner:

[Include those aids applicable to the ADC facility or service, e.g., qualified readers; reformatting into large print; taping or recording of print materials not available in alternate format; or other effective methods that help make visually delivered materials available to individuals who are blind or who have low vision.] In addition, staff members are available to assist persons who are blind or who have low vision in filling out forms and in otherwise providing information in a written format.

C. For Persons with Speech Impairments

To ensure effective communication with persons with speech impairments, staff will contact **[insert responsible staff person/position/department and telephone number]**, who is responsible to provide the aids and services in a timely manner:

[Include those aids applicable to the ADC facility or service, e.g., writing materials; typewriters; TDDs; computers; flashcards; alphabet boards; communication boards; and other communication aids.]

D. For Persons with Manual Impairments

Staff will assist those who have difficulty in manipulating print materials by holding the materials and turning pages as needed, or by providing one or more of the following:

[Include those aids applicable to the ADC facility or service, e.g., note-takers; computer-aided transcription services; speaker phones; or other effective methods that help to ensure effective communication by individuals with manual impairments.] For these and other auxiliary aids and services, staff will contact **[insert responsible staff person/position/department and telephone number]** who is responsible to provide the aids and services in a timely manner.