

**VOLUNTARY RESOLUTION AGREEMENT BETWEEN  
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE  
FOR CIVIL RIGHTS AND  
BAYHEALTH MEDICAL CENTER**

**I. Parties to Agreement**

1. The parties to this Voluntary Resolution Agreement ("Agreement") are:
  - a. the U.S. Department of Health and Human Services ("HHS"), Office for Civil Rights ("OCR") pursuant to its jurisdictional authority under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq., and its implementing regulation, 45 C.F.R. Part 84 ("Section 504") and Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 and its implementing regulation, 45 C.F.R. Part 92 ("Section 1557"); and
  - b. Bayhealth Medical Center, Inc., a not-for-profit Delaware corporation ("Bayhealth").

**II. Background**

2. This matter was initiated by a complaint filed with HHS alleging that Bayhealth discriminated against the Complainant, who is deaf and utilizes American Sign Language ("ASL") as his primary means of communication, on the basis of his disability in violation of Section 1557 and Section 504.
3. The Complainant alleged that Bayhealth failed to provide a requested auxiliary aid (qualified sign language interpreter) during his inpatient admission, thereby denying him an equal opportunity to participate in or benefit from Bayhealth's programs and services and denied him communication that was as effective as communication with non-disabled individuals.

**III. Jurisdiction**

As a health program that receives Federal financial assistance (FFA) through its participation in Medicare, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq., and Medicaid, Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., Bayhealth is obligated to comply with Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 and its implementing regulations, 45 C.F.R. Part 92 ("Section 1557"). Section 1557 prohibits health programs and activities that receive FFA from HHS from implementing policies and practices that discriminate, or have the effect of discriminating, against individuals on the grounds of race, color, national origin, age, sex, or disability.

Bayhealth's receipt of FFA also subjects it to non-discrimination requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulations, 45 C.F.R. Part 84 ("Section 504"), which prohibit discrimination on the basis of disability in any program or activity receiving FFA.

#### **IV. Effective Communication Standards of Section 1557 and Section 504**

Title 45 C.F.R. Part 92 states that recipients must take "appropriate steps to ensure that communications with individuals with disabilities (including companions with disabilities), are as effective as communications with non-disabled individuals in its health programs and activities" and provide "appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the health program or activity in question." 45 C.F.R. § 92.202.

Title 45 C.F.R. Part 84 provides that "[a] recipient shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 45 C.F.R. § 84.77(a)(1). "The recipient shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a program or activity of a recipient." 45 C.F.R. § 84.77(b)(1).

#### **V. Purpose of Agreement**

The Parties agree that it is in the Parties' best interest, and HHS believes that it is in the public interest, to resolve this complaint on mutually agreeable terms without enforcement action or litigation and therefore have agreed to the terms of this Agreement.

This Agreement is neither an admission of liability by Bayhealth, nor a concession by HHS that their claims are not well founded. By entering into this Agreement, Bayhealth is not admitting that any action taken with respect to the Complainant was wrongful, unlawful, or in violation of any local, state, or federal act or statute.

In consideration of the terms of this Agreement, HHS agrees to refrain from undertaking further investigation of OCR #24-555416 or filing a civil suit in this matter, except as provided in Paragraph 8 of this Agreement. HHS, however, may review Bayhealth's compliance with this Agreement and/or Section 1557 and Section 504 at any time. Except as related to the facts alleged in the above-mentioned complaint, nothing in this agreement shall be construed as a waiver by HHS of any right to institute enforcement proceedings against Bayhealth for violations of any statutes, regulations, or rules administered by HHS or to prevent or limit the right of HHS to obtain relief under Section 504 or Section 1557.

#### **VI. Definitions**

4. For the purposes of this Agreement, the terms listed below shall have the following meaning:
  - a. The term "Patient" shall be broadly construed to include any individual who is seeking or receiving health care services from Bayhealth's facilities;
  - b. The term "Companion" means (a) a person whom the patient, consistent with privacy regulations, indicates should communicate with Bayhealth about the patient,

participate in any treatment decision, play a role in communicating the patient's needs, condition, history or symptoms to Bayhealth, or help the patient act on the information, advice or instructions provided by Bayhealth; (b) a person legally authorized to make health care decisions on behalf of a patient; or (c) such other person with whom Bayhealth would ordinarily and regularly communicate with concerning the patient's medical condition including, but not limited to, the patient's next of kin or health care surrogate. *See* 45 C.F.R. § 92.202(a) (incorporating 28 C.F.R § 35.160(a)(2));

- c. The term "Auxiliary Aids and Services" means (a) Qualified interpreters on-site or through video remote interpreting ("VRI") services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible information and communication technology (ICT); or other effective methods of making aurally delivered information available to persons who are deaf or hard of hearing; (b) Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible information and communication technology; or other effective methods of making visually delivered materials available to persons who are blind or have low vision; (c) Acquisition or modification of equipment or devices; and (d) Other similar services and actions. *See* 45 C.F.R. § 92.4 (incorporating 28 C.F.R § 35.104);
- d. The term "qualified interpreter" means an interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. *See* 45 C.F.R. § 92.4 and 28 C.F.R. § 35.104. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language (ASL) is not necessarily qualified to interpret orally. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a qualified interpreter under this Agreement. Likewise, someone who is fluent in ASL but unable to translate spoken communication into ASL, or to translate signed communication into spoken words is not a qualified interpreter.

## **VII. General Provisions**

- 5. Recipient Covered by the Agreement. This Agreement covers all patient programs, services, and activities which Bayhealth administers or provides directly or through sub-recipients or contractors, throughout the Term (as defined below) of this Agreement.
- 6. Suspension of Administrative Actions. OCR shall suspend administrative action on OCR Transaction Number 24-555416 subject to Bayhealth's continued performance of the stated obligations and required actions contained in this Agreement.

7. Effective Date and Term of the Agreement. This Agreement shall become effective on the date it is signed by all parties (the "Effective Date") and will remain in effect for two (2) years after the Effective Date (the "Term"), at which point if OCR determines that Bayhealth has substantially complied with the stated obligations and required actions contained in this Agreement, then OCR's review and monitoring of this Agreement shall terminate. This Agreement may be executed in counterparts. Notwithstanding the Term of this Agreement, Bayhealth acknowledges that it will comply with relevant provisions of Section 1557 and Section 504, and other applicable Federal nondiscrimination statutes and their implementing regulations, for so long as it continues to receive FFA.
8. Failure to Comply with the Agreement. If OCR determines that Bayhealth has failed to substantially comply with any provision of this Agreement, the parties will confer and attempt to reach agreement as to what steps may be necessary to resolve the compliance issues to both parties' satisfaction. If an agreement is not reached within 60 days of Bayhealth receiving a notice of noncompliance with this Agreement, OCR may revoke its offer to engage in voluntary resolution and take other appropriate measures to effectuate Bayhealth's compliance with Section 1557 and Section 504. Such measures may include OCR reopening its investigation of Bayhealth's compliance with Section 1557 and Section 504. OCR may incorporate into its reopened investigation any relevant evidence of noncompliance with the Agreement and any relevant evidence obtained by OCR prior to signing of the Agreement. OCR may also exercise all rights available under Section 1557 and Section 504, including, but not limited to, issuing noncompliance findings and the initiation of enforcement proceedings to terminate FFA to Bayhealth.
9. Effect on Other Compliance Matters. The terms of this Agreement do not apply to any other issues, reviews, investigations, 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. Any unrelated compliance matter arising from subsequent reviews or investigations shall be addressed and resolved separately. Nothing in this Agreement shall be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to Bayhealth and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action under Federal laws by other Federal Agencies, including any action or investigation under Section 1557 and Section 504.
10. Prohibition Against Retaliation and Coercion. Bayhealth shall not retaliate against or coerce any person who made, or is making, a complaint or exercised, or is exercising, their rights under Section 504 or Section 1557, or who has assisted or participated in the investigation of any matter covered by this Agreement. *See* 45 C.F.R. §§ 84.71 and 92.303 (incorporating 45 C.F.R. §§ 80.6-80.11).
11. OCR's Review of Bayhealth's Compliance with the Agreement. OCR may review Bayhealth's compliance with this Agreement at any time while the Agreement is in effect. As part of such review, with reasonable prior written notice to Bayhealth, OCR may require

written reports, access to witnesses, copies of documents, and/or inspection of Bayhealth's facilities. Throughout the duration of this Agreement, Bayhealth agrees to retain records related to services for deaf individuals; complaints made regarding effective communication made to Bayhealth; all contracts, maintenance reports, and issues regarding services Bayhealth provides to deaf individuals; and related documents. These documents may be used by OCR to assess Bayhealth's compliance. OCR will maintain the confidentiality of all documents, files and records received from Bayhealth; and will not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.

12. Non-Waiver. Failure by HHS to initiate any provision of this Agreement is not a waiver of its right to enforce other provisions of this Agreement.
13. Binding. This Agreement is binding on Bayhealth and its agents, employees, shareholders, partners, and associates as long as those agents, employees, shareholders, partners, and associates are serving in that capacity. In the event Bayhealth seeks to transfer or assign all or part of this interest in any entity covered by this Agreement, and the successor or assignee intends to carry on the same or similar use of the entity, as a condition of sale, Bayhealth shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.
14. Entire Agreement. This Agreement constitutes the entire agreement between HHS and Bayhealth on the matter raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement shall be enforceable. This Agreement does not purport to remedy any other potential violations of Section 1557, Section 504, or any other federal law. This Agreement does not affect the continuing responsibility of Bayhealth to comply with all aspects of Section 1557 and Section 504.
15. Modification of Agreement. This Agreement may be modified by mutual agreement of the parties in writing.
16. Publication or Release of Agreement. OCR places no restrictions on the publication of this Agreement or its terms, which does not include any documents requested by OCR in Section VII.11.
17. 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.
18. Technical Assistance. OCR will provide appropriate technical assistance to Bayhealth regarding compliance with this Agreement, as requested and as reasonably necessary.
19. Miscellaneous. When OCR's review and monitoring of this Agreement terminates pursuant to Section VII.7 above, OCR shall consider all matters related to this investigation resolved and so notify Bayhealth in writing.

20. Successor in Interest. This Agreement is binding on the parties, and their assigns or successors in interest, and Bayhealth shall have a duty to so notify all such assigns or successors in interest of the existence and terms of this Agreement.

## **VIII. Obligations**

### **A. General Non-Discrimination Obligations**

21. Appropriate Auxiliary Aids and Services. Consistent with Section 1557 and Section 504, Bayhealth will furnish appropriate auxiliary aids and services where necessary to ensure effective communication with Patients or Companions with disabilities and take appropriate steps to ensure that communication with Patients, Companions, and members of the public who are deaf or hard of hearing are as effective as communication with others.

Bayhealth will provide appropriate auxiliary aids and services in a timely manner, in accessible formats, and in such a way so as to protect the privacy and independence of the Patient or Companion with a disability consistent with the provisions set forth in this Agreement.

Bayhealth will give primary consideration to the requests of Patients or Companions with disabilities when determining what types of auxiliary aids and services are necessary, but a Patient's need to receive urgent medical care will also be given strong consideration when determining the appropriate auxiliary aids and services. 28 C.F.R. § 35.104; 28 C.F.R. § 35.160(a)(1), (b)(1), (b)(2); 45 C.F.R. § 92.202(a)-(b).

22. Prohibition of Surcharges. All appropriate auxiliary aids and/or services required by this Agreement will be provided free of charge to Patients and Companions who are deaf or hard of hearing. 45 C.F.R. § 92.202(b).
23. Timing of Communication Assessment and Determination. Subject to the provisions and exceptions provided in Paragraph 27 for returning Patients, Bayhealth staff will perform and document a communication assessment as part of each initial Patient assessment and reasonably reassess communication effectiveness. If there is any indication from an initial assessment, inquiry, request, Bayhealth's observations that a Patient or Companion is deaf or hard of hearing and auxiliary aids and services are necessary, Bayhealth staff who are primarily responsible for coordinating and/or providing patient care services, in consultation with the Patient or Companion wherever possible, will determine which appropriate auxiliary aids and services are necessary and document the patient's consent to those aids and services.
24. Communication Assessment Criteria. In determining which type of auxiliary aids or services are needed to ensure effective communication, Bayhealth shall give primary consideration to the requests of a Patient or Companion who is disabled. The determination made by Bayhealth staff will take into account all relevant facts and circumstances, including without limitation the following:

- a. the method of communication used by the Patient or Companion, giving primary consideration to the Patient's or Companion's request for or statement of need for a particular auxiliary aid or service;
  - b. the nature and type of healthcare services that will be delivered;
  - c. the nature, length, and complexity of communication at issue;
  - d. the context in which communication is taking place, including the reasonably foreseeable health care activities of the Patient and the Patient's health status or changes thereto; and
  - e. with regard to the provision of Qualified interpreters, the circumstances described in Paragraphs 28, 29, and 30. 28 C.F.R. § 35.160(b)(2); 45 C.F.R. § 92.4.
25. Documentation of Communication Assessment Relating to Provision of Auxiliary Aids and Services. Documentation of any assessment and determination as to the provision of auxiliary aids and services will be consistently maintained in the Patient's medical record (e.g., in the "Clinical List Update") and include the elements contained in the Auxiliary Aid and Service Log(s), as set forth in Paragraph 25. During the Tenn, documentation of any assessment and determination as to the provision of auxiliary aids and services will also be maintained in the Auxiliary Aid and Service Log(s), as set forth in Paragraph 34. Consistent with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. Parts 160 and 164, Bayhealth shall label or make a notation in the Patient's medical record to alert Bayhealth staff to the fact that the Patient or Companion is deaf or hard of hearing and will take appropriate steps to ensure that all Bayhealth staff who are reasonably likely to have contact with a Patient or a Companion are made aware of the auxiliary aid or service(s) that have been identified as necessary to communicate effectively with the Patient or Companion.
26. Determination Not to Provide Requested Auxiliary Aid or Service. If, after conducting the assessment as described in Paragraph 24 of this Agreement, Bayhealth determines that it will not provide a particular auxiliary aid or service requested by a Patient or Companion who is deaf or hard of hearing based on undue financial or administrative burden, that it would fundamentally alter the medical care or services provided by Bayhealth, or because an equally effective auxiliary aid or service is available, Bayhealth staff shall so advise the individual requesting the auxiliary aid or service, provide a copy of Bayhealth's "Grievance Procedure," and secure a means of effective communication in a timely manner. Bayhealth shall document the basis for the determination, including the date of the determination, the name and title of the Bayhealth staff member who made the determination, and the alternative auxiliary aid or service, if any, that Bayhealth decided to provide, in the Patient's medical record, as set forth in Paragraph 25, and in the Auxiliary Aid and Service Log, as set forth in Paragraph 34. A copy of this documentation in the Patient's medical record shall be provided to the Patient or Companion upon request in accordance with Bayhealth's policies and procedures in requesting copies of the Patient's medical record.



27. Redetermination and Subsequent Visits. Once a plan for accommodation has been established, Bayhealth shall not modify said plan without consulting the Patient and/or Companion. Bayhealth shall reassess its determination of which appropriate auxiliary aids and services are necessary, in consultation with the Patient or Companion, regularly throughout the visit to ensure effective communication, and promptly after a Patient or Companion indicates that communication is not currently or has not been effective. Bayhealth will document in the Patient's medical record and in the Auxiliary Aid and Service Log, as set forth in Paragraphs 25 and 34, any instance where a Patient or Companion indicates that the auxiliary aids and services provided by Bayhealth have not been effective; any reassessment; and the results of any redetermination. With respect to any subsequent visits, Bayhealth will consult the Patient's records and confirm with the Patient or Companion if any, auxiliary aids, or services may be necessary.
28. Circumstances When Qualified Interpreters Will Be Provided. Bayhealth shall provide Qualified Interpreters, on-site or through a VRI service, to Patients and Companions as necessary to ensure effective communication. The following are examples of circumstances and types of communication when it is likely necessary to provide a Qualified Interpreter:
- a. obtaining a Patient's medical history or description of symptoms and medical condition;
  - b. discussing or explaining a Patient's diagnosis, current condition, prognosis, treatment options or recommendation for treatment;
  - c. discussing or explaining procedures, tests, or treatments;
  - d. discussing or explaining test results;
  - e. discussing or explaining prescribed medications, instructions for how and when medication is to be taken, and possible side effects and interactions of medications;
  - f. obtaining informed consent or permission for procedures, surgery, or other treatment options;
  - g. communicating during treatment and testing;
  - h. communicating during discharge or post-operative planning and instruction;
  - i. communicating during physical and occupational therapy sessions;
  - j. explaining living wills or powers of attorney (or their availability);
  - k. discussing complex financial or insurance matters; and
  - l. any other circumstance in which a Qualified interpreter is necessary to ensure a Patient's rights are protected under applicable laws.



29. Video Remote Interpreting (VRI) Services Assessment Criteria. In determining whether a Qualified Interpreter via VRI is appropriate to provide effective communication, relevant factors that Bayhealth may be required to consider include the following:

- a. the need for medical or surgical care and the requisite urgency;
- b. the Patient or Companion is limited in his or her ability to see the video screen, either due to limited vision or the physical positioning of the Patient (e.g., lying in a prone position or moving frequently during a physical or occupational therapy session);
- c. the Patient or Companion has limited ability to move his or her head, hands, or arms;
- d. the Patient has cognitive limitations and or pain issues;
- e. there are multiple people in a room and the information exchanged is highly complex or fast-paced;
- f. the Patient or Companion may move repeatedly to areas of Bayhealth that do not have a designated high-speed internet line;
- g. the Patient will be treated in a room where there are space restrictions; and
- h. whether the VRI can be provided in accordance with the performance standards described in Paragraph 30.

30. Standards for Providing Video Remote Interpreting (VRI). Whenever a Qualified Interpreter via VRI is provided or used, Bayhealth shall ensure that it provides VRI in accordance with the following standards:

- a. Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- b. A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
- c. A clean, audible transmission of voices; and
- d. Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI. 28 C.F.R. § 35.160(d).

Once the VRI system is operating, Bayhealth staff shall ask the deaf Patient or Companion whether the VRI is meeting his or her communication needs and make a record of his or her response, consistent with Paragraph 25. In the event that the deaf Patient or Companion cannot communicate effectively using any VRI service Bayhealth elects to acquire and offer,

Bayhealth shall make all reasonable efforts to locate an on-site Qualified Interpreter or other auxiliary aid or service that will provide effective communication; periodically inform the deaf Patient or Companion of the status of those efforts; and document the concern and the steps taken to locate an on-site Qualified Interpreter or other auxiliary aid or service that will provide effective communication.

31. Restricted Use of Adults Accompanying a Patient or Companion to Interpret or Facilitate Communication. Bayhealth shall not require a Patient or Companion who is deaf or hard of hearing to bring another individual to interpret for him or her. Bayhealth shall not rely on an adult accompanying a Patient or Companion who is deaf or hard of hearing to facilitate communication except -
  - a. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
  - b. Where the Patient or Companion who is deaf or hard of hearing 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. 28 C.F.R. § 35.160(c)(1), (2).
32. Restricted Use of Minors to Interpret or Facilitate Communication. Bayhealth shall not rely on a minor accompanying a Patient or Companion to interpret or facilitate communications between Bayhealth staff and a Patient or Companion except in an emergency involving an imminent threat to the safety or welfare of an individual or the public, or where there is no Qualified Interpreter available. 28 C.F.R. § 35.160(c)(3).
33. Timeframe for Providing Qualified Interpreters. Bayhealth shall ensure that it provides Qualified Interpreters in a timely manner, as set forth below. 28 C.F.R. § 35.160(b)(2); 45 C.F.R. § 92.202(b).
  - a. Request for Qualified Interpreter for a non-scheduled incident. For all non-scheduled incidents, Bayhealth will provide a Qualified Interpreter, via an on-site appearance or VRI, as soon as practicable after a request or determination that a Qualified Interpreter is necessary. Between the time when a Qualified Interpreter is requested and when a Qualified Interpreter is made available, Bayhealth staff will inform the Patient or Companion of the current efforts being taken to secure a Qualified Interpreter and continue to communicate with the Patient or Companion who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with the person but for the disability, using the most effective means of communication available where appropriate. Notification of the efforts to secure a Qualified Interpreter does not lessen Bayhealth's obligation to provide a Qualified Interpreter as required by this Agreement. Efforts to communicate with the Patient or Companion in the interim shall not involve the use of accompanying adults or minors to interpret or facilitate communication, except under the limited circumstances specified in Paragraphs 31 and 32.

- b. Request for Qualified Interpreter for scheduled events. For all scheduled events when there is at least twenty-four (24) hours' notice in advance of the time when an interpreter is required, Bayhealth shall make a Qualified Interpreter available at the time of the scheduled event. Even when there are fewer than twenty-four (24) hours from the request to the scheduled event, Bayhealth will make reasonable efforts to provide an on-site Qualified Interpreter for the scheduled event. If an on-site Qualified Interpreter is necessary, but not available, and it is medically appropriate to do so, Bayhealth may make arrangements, with the Patient's agreement, to reschedule the appointment within forty-eight (48) hours of the request to a time when an on-site Qualified Interpreter can be appropriately scheduled. If an on-site Qualified Interpreter fails to arrive for the appointment, Bayhealth shall immediately arrange for another Qualified Interpreter within the timeframes specified in this Section.

Any deviations from the applicable response times will be documented in the Auxiliary Aid and Service Log, as described in Paragraph 34, and then addressed with the interpreting service provider, as appropriate.

- 34. Auxiliary and Service Log(s). Within one hundred and twenty (120) calendar days of the Effective Date of this Agreement, Bayhealth shall document and maintain a log, or logs, of each request for an auxiliary aid or service by a Patient or Companion who is deaf or hard of hearing, recording: the time and date of the request; the name of such individual who made the request; the name of such individual for whom the auxiliary aid or service is being requested (if different from the requester); the specific auxiliary aid or service requested; the time and date of the request and, if applicable, the scheduled event; the time and date the auxiliary aid or service was provided; the type of auxiliary aid or service provided, if different from what was requested; any deviations from the response times specified in Paragraph 33, and, if applicable, a statement and explanation as to why the requested auxiliary aid or service was not provided, including a description of any alternative auxiliary aid or service provided by Bayhealth. Such logs will be maintained during the Term of this Agreement.
- 35. Nondiscrimination. Bayhealth, (with respect to any individual who has a disability, any individual who has a record of a disability, or any individual regarded as having a disability), agrees to comply with the requirements of Section 1557 and Section 504, and their implementing regulations, including the following requirements:
  - a. Bayhealth shall not exclude or discriminate against any individual with a disability in the full and equal enjoyment of any aid, benefit, or services it provides. *See* 29 U.S.C. § 794(a) and 42 U.S.C. § 18116;
  - b. Bayhealth shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of that person with someone who is deaf or hard of hearing. *See* 45 C.F.R. § 84.68(g) and 45 C.F.R. § 92.101(b).

**B. Policies and Procedures for Providing Effective Communication to Individuals with Disabilities**

36. Within ninety (90) calendar days of the Effective Date of this Agreement, Bayhealth shall modify its policies and procedures regarding the treatment of all individuals with disabilities, including Patients and Companions. The modified policies and procedures shall include, but shall not be limited to, the following:
- a. To the extent not already present, Bayhealth shall incorporate policies and procedures concerning the obligations detailed in Paragraphs 21-35;
  - b. A qualified interpreter must be able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary;
  - c. If a patient chooses to use an adult accompanying them as an interpreter, issues of competency of interpretation, confidentiality, privacy, and conflict of interest must be considered and assessed, and if the adult accompanying the patient is not competent or appropriate to interpret under the circumstances, competent interpreter services will be provided to the patient.
37. Approval by HHS. Within ninety (90) calendar days of the Effective Date of this Agreement, Bayhealth will submit copies of all policies and procedures that are created and/or modified in order to comply with this Agreement for review and approval to HHS prior to their implementation. HHS shall review policies and procedures for consistency with Section 1557 and Section 504. Bayhealth will adjust its proposed policies and procedures to reflect any reasonable comments or concerns identified by HHS. HHS will not unreasonably withhold its approval of proposed policies and procedures.

### **C. Training**

38. Within one hundred twenty (120) calendar days of the approval of policies referenced in Paragraphs 36-37, or within 120 calendar days of hiring, and annually thereafter, Bayhealth will provide mandatory Section 1557 and Section 504 training for all doctors, employees, staff members, and other individuals, including contractors, who might interact with Patients and/or Companions. The trainer and training materials must be approved by HHS prior to Bayhealth administering the training. Such training, which can be provided by a third party, will be sufficient in duration and content to train the individual in:
- a. Identification of communication needs of persons who are deaf or hard of hearing;
  - b. Bayhealth's auxiliary aids and services policy;
  - c. Recommended and required charting procedures governing requests for auxiliary aids and services;
  - d. Types of auxiliary aids and services available;
  - e. The proper use and role of qualified interpreters;

- f. The proper use and role of VRI services:
- g. The policies for use of a family member or friend as an interpreter
- h. Any other applicable requirements of this Agreement.

## **IX. Reporting and Monitoring**

- 39. Notices to HHS. Unless otherwise provided, all notices, reports, or other such documents required by this Agreement shall be submitted to HHS by email to the Office for Civil Rights.
- 40. Records. Bayhealth shall maintain appropriate records to document the information required by this Agreement, and shall make them available, upon request, to HHS, throughout the duration of this Agreement.
- 41. Complaints. During the term of this Agreement, Bayhealth will immediately notify HHS if any individual submits a complaint, charge, or grievance, or files a lawsuit, alleging that Bayhealth failed to provide any auxiliary aids or services to any individual with a disability. Such notification must be provided in writing within fifteen (15) calendar days of receipt and will include, at a minimum, the nature of the allegation, the name of the individual making the allegation, and any documentation possessed by Bayhealth or any of its agents or representatives relevant to the allegation.
- 42. Compliance Report. Bayhealth shall provide an initial written report ("Compliance Report") to HHS regarding the status of its compliance with this Agreement within six months of the Effective Date of this Agreement and a new Compliance Report at each subsequent six-month interval for the Duration of this Agreement i.e., a second Compliance Report within 12 months of the Effective Date of this Agreement (covering the preceding six-month period); a third Compliance Report 18 months after the Effective Date of this Agreement (covering the preceding six-month period), etc.
- 43. Required Content for Compliance Reports. Each Compliance Report shall include appropriate documentation of the steps Bayhealth has taken to comply with each term of this Agreement, including:
  - a. Any revised policies and procedures;
  - b. The distribution of policies and procedures;
  - c. The distribution of the materials;
  - d. The training required by this Agreement, including the training materials and attendance records; and

- e. The list of any complaint submitted by Patient, Companion or those acting on their behalf regarding allegation of discrimination on the basis of disability including a description of the allegation the date submitted, the status and/or outcome of each complaint and a copy of the complaint itself.

**Agreed and consented to:**

For the UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
OFFICE FOR CIVIL RIGHTS

\_\_\_\_\_/s/\_\_\_\_\_  
Jamie Rahn Ballay  
Regional Manager  
Office for Civil Rights

Date: 9/30/2025

For BAYHEALTH MEDICAL CENTER, INC.

\_\_\_\_\_/s/\_\_\_\_\_  
Gary Siegelman, MD, MSc  
Bayhealth Medical Center, Inc.  
640 South State Street  
Dover, DE 19901

Date: 9/30/2025