

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
CONCENTRA
DJ # 202-14-225**

BACKGROUND AND PARTIES

1. The parties to this Settlement Agreement (the “Agreement”) are the United States of America and Concentra Health Services, Inc., for itself, and on behalf of its managed professional medical entities situated throughout the United States (hereinafter “Concentra” and together with the United States, the “Parties”).
2. The United States is authorized to investigate alleged violations of Title III of the Americans with Disabilities Act (“ADA”), to use alternative means of dispute resolution, where appropriate, including settlement negotiations to resolve disputes, and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises an issue of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 36.503, 36.506.
3. The United States initiated its investigation of Concentra after receiving a complaint alleging that Concentra violated Title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing Title III, 28 C.F.R. Part 36. Specifically, the complainant, who is deaf, alleges that Concentra failed to provide effective communication to him during his course of physical therapy at Concentra. The complainant alleges that a sign language interpreter was needed to allow for effective communication and to afford him an opportunity to derive the same benefits from the appointment as other individuals who are not deaf or hard of hearing. Concentra disputes the allegations of the complaint and maintains that it provided effective communication to the complainant at all times during his course of physical therapy at Concentra.
4. Title III of the ADA prohibits public accommodations from discriminating against an individual on the basis of disability in the full and equal enjoyment of its goods and services. 42 U.S.C. §§ 12182(a). Concentra is a place of public accommodation covered by Title III of the ADA because it is a “professional office of a healthcare provider, hospital, or other service establishment.” 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104.
5. Title III defines discrimination to include “a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.” 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.
6. Title III provides that the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the

individual with a disability; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A public accommodation must consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication. Title III requires that a public accommodation provide auxiliary aids and services in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. 42 U.S.C. §12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.

7. Title III prohibits a place of public accommodation from requiring an individual with a disability to bring another individual to interpret for him or her and from relying on an adult accompanying the individual with a disability to interpret or facilitate communication except in certain circumstances as specified by law. 28 C.F.R. § 36.303
8. The Parties have agreed that it is in the Parties' best interests, and the United States believes that it is in the public interest, to resolve this dispute. The Parties have therefore voluntarily entered into this Agreement.

DEFINITIONS

9. The term "patient" shall be broadly construed to include any individual who is deaf or hard of hearing and who is seeking or receiving health care services from Concentra at any of its facilities, including, but not limited to services for workplace injuries, physical therapy, physicals, tests and screenings, vaccinations and urgent care.
10. The term "companion" means a person who is deaf or hard of hearing and is either (a) a person whom the patient, consistent with privacy regulations, indicates should communicate with Concentra about the patient, participate in any treatment decision, play a role in communicating the patient's needs, condition, history or symptoms to Concentra, or help the patient act on the information, advice or instructions provided by Concentra; (b) a person legally authorized to make health care decisions on behalf of a patient; or (c) such other person with whom Concentra 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.
11. The term "auxiliary aids and services" includes 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 electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing. 28 C.F.R. §36.303.

12. 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. 28 C.F.R. § 36.104.

ACTIONS TO BE TAKEN BY CONCENTRA

13. Consistent with the ADA, Concentra will not discriminate against any individual, including patients and their companions, on the basis of disability, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations available at any facility of Concentra by excluding or providing unequal treatment to persons with disabilities. 42 U.S.C. § 12182.
14. Consistent with the ADA, Concentra will take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless Concentra can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.
15. Immediately as of the effective date of this Agreement, Concentra will designate at least one employee as Concentra’s national ADA Coordinator, who will ensure compliance with this Agreement and who will be the point person for ensuring that Concentra receives and investigates any complaints by patients that Concentra is not in compliance with Title III of the ADA per the policy to be adopted by Concentra pursuant to paragraph 24 of this Agreement.
16. Immediately as of the effective date of this Agreement, Concentra will provide at all of its patient facilities, free of charge, appropriate auxiliary aids and services, including qualified interpreters, to individuals who are deaf or hard of hearing whenever it is necessary to ensure effective communication for those individuals, unless it can be demonstrated that an undue burden or a fundamental alteration would result.
17. If VRI services are used, Concentra will ensure that the service provides (1) 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; (2) 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; (3) a clear, audible transmission of voices; and (4) 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. § 36.303(f). If there are specifications that cannot be met temporarily due to technical difficulties, Concentra

will otherwise ensure effective communication with the Patient or Companion, however, Concentra will at all times comply with 28 C.F.R. § 36.211.

18. The determination of appropriate auxiliary aids and services, and the timing, duration, and frequency with which they will be provided, must be made in consultation with the person with a disability at the time Concentra becomes aware that the patient requires auxiliary aids and services, whether at the time a patient schedules an appointment, or upon the arrival of the patient or companion at Concentra, whichever is earlier. Concentra's staff will provide a communication assessment form, consulting with the patient, and documenting the results in the patient's medical chart. A Model Communication Assessment Form is attached to this Agreement as Exhibit A, and will be used by Concentra at the time of implementing the electronic tracking system required by this Agreement and described in paragraph 23. Concentra may develop a more comprehensive form similar to Exhibit A. This new form will be subject to approval by the United States prior to implementation.
19. In making determinations about appropriate auxiliary aids and services, Concentra and/or its staff will take into account all relevant facts and circumstances, including, but not limited to, the following:
 - a. the patients' and/or companions' request for, or statement of need for, an interpreter or other auxiliary aid or service;
 - b. the nature, length, complexity, and importance of the communication at issue;
 - c. the individual's communication skills and knowledge; and
 - d. the patients' health status or changes thereto.

Examples of circumstances when it may be necessary to provide interpreters include, but are not limited to, obtaining a patient's medical history or description of ailment; explaining or discussing a patient's diagnosis or prognosis; explaining or discussing follow-up care, including a patient's or companion's questions regarding the patient's condition and/or previous or future procedures, tests, and/or treatment; and medications prescribed.

20. In the event that communication is not effective, Concentra's staff will reassess, in consultation with the patient or companion, as applicable, which auxiliary aids and services are needed to ensure effective communication, and will document the results accordingly.
21. If a patient or companion has an ongoing relationship with Concentra, with respect to subsequent visits, Concentra will continue to provide the appropriate auxiliary aids or services to the patient or companion without requiring a new or subsequent request for the appropriate auxiliary aids or services by the patient or companion for each visit. Concentra will document the ongoing provision of auxiliary aids and services to patients and companions in patients' medical charts.

22. If a patient and/or companion does not request auxiliary aids or services, but Concentra has reason to believe that such person would benefit from auxiliary aids or services, Concentra will specifically inform the patient and/or companion that auxiliary aids and services are available free of charge.
23. Within one hundred and twenty (120) days of the Effective Date of this Agreement, Concentra will ensure that it has an electronic method of retrieving information related to the provision of auxiliary aids and services at its patient-facing facilities. The information that must be capable of being retrieved includes the name of individuals who have requested auxiliary aids and/or services, the name of the individual for whom the auxiliary aid or service is being requested (if different than the requestor), the time and date of the request, the specific auxiliary aid or service requested, the time and date of the scheduled appointment (if a scheduled appointment was made), the time and date the auxiliary service was provided, the type of auxiliary aid or service provided, if different than what was requested, and, if applicable, a statement that the requested auxiliary aid or service was not provided, along with the reason it was not provided.
24. Within thirty (30) days of the effective date of this Agreement, Concentra will submit for approval to the United States an Effective Communication Policy, which codifies the requirements of this Agreement, outlines a grievance process, and provides contact information for the ADA Coordinator. Within thirty (30) days of approval of the Effective Communication Policy by the United States, Concentra shall adopt the Effective Communication Policy and shall make it available on Concentra's intranet. At the time of the training required by this Agreement and described in paragraph 25, Concentra shall distribute the Effective Communication Policy to employees at all patient-facing facilities nationwide. Concentra shall provide a copy of the Effective Communication Policy to each newly hired employee at the time of hire.
25. Within one hundred and twenty (120) days of the effective date of this Agreement, and annually thereafter, Concentra will provide mandatory ADA training for all employees, staff members, and other individuals who might interact with patients and/or companions at any Concentra patient-facing facility. Such training, which can be provided by a third-party and may be pre-recorded or electronic in nature, will be sufficient in duration and content to train the individual in:
 - a. the various degrees to which a patient may be deaf or hard of hearing and the language and cultural diversity in the deaf community;
 - b. identification of communication needs of persons who are deaf or hard of hearing;
 - 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. making and receiving calls through TTYs and the relay service; and
 - h. any other applicable requirements of this Agreement.
26. Within sixty (60) days of the effective date of this Agreement, Concentra shall post at all of its patient-facing facilities in the reception or waiting area, examination rooms, and wherever a Patient's Bill of Rights is required by law to be posted, signs of conspicuous size and print stating:
- In compliance with the Americans with Disabilities Act (ADA), qualified interpreters and other auxiliary aids and services are available free of charge to people who are deaf or hard-of-hearing.
- These signs will include the international symbols for "interpreters," and list the name and contact information for the person(s) to whom a patient or companion should speak in order to request auxiliary aids or services. The signs shall also contain the following statement: "For more information about the Americans with Disabilities Act (ADA), contact the Concentra ADA Coordinator or call the Department of Justice's toll-free ADA Information Line at 1-800-514-0301 (voice), 1-800-514-0383 (TTY), or visit the ADA Home Page at www.ada.gov."
27. Within thirty (30) days of approval of the Effective Communication Policy by the United States, Concentra will include on its website the Effective Communication Policy and notice language similar to that in Paragraph 26, conspicuously linked from the main patient section of the website, currently available by clicking the "Patients" link at <https://www.concentra.com>.
28. Within thirty (30) days of the effective date of this Agreement, Concentra will ensure that it has the ability to provide live qualified interpreter services at all patient-facing facilities whenever such services are necessary to provide effective communication.
29. Concentra will maintain its existing or enter into additional vendor service agreements with qualified interpreter agencies to provide VRI services for all Concentra patient locations where such services are necessary to provide effective communication.
30. Concentra will notify the United States in writing when it has completed the actions described in paragraphs 24-29. If any issues arise that affect the anticipated completion dates set for such actions, Concentra will immediately notify the United States of the issue(s). All information provided pursuant to the above reporting requirements under this Agreement should be provided to the United States at the following address:

Jessica Soufer
Assistant U.S. Attorney
United States Attorney's Office
157 Church Street
New Haven, CT 06510

MONETARY RELIEF

31. Within fourteen (14) days of Concentra's receipt of an executed release of the complainant's claims against Concentra, Concentra agrees to make a payment of \$7,500 to the complainant. Concentra will make the payment by check payable to the complainant and will mail the payment to the address listed in Paragraph 30 of this Agreement.

ENFORCEMENT

32. In consideration of the Terms set forth above, the United States will not institute a civil action alleging discrimination under the ADA based on the allegations raised in DJ # 202-14-225, except as provided in Paragraph 33 of this Agreement.
33. The United States may review compliance with this Agreement at any time. If the United States believes that Concentra has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the United States for a modification of the relevant terms, the United States will so notify Concentra in writing, and will attempt to resolve the issue or issues in good faith. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date it provides notice to Concentra, it may institute a civil action in federal district court to enforce the terms of this Agreement or Title III and may, in such action, seek any relief available under law.
34. Failure by the United States to enforce this Agreement with respect to any deadline or other provision herein will not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
35. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, the United States and Concentra shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the initially agreed upon relative rights and obligations.
36. This Agreement constitutes the entire agreement between the United States and Concentra 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 the ADA or any other federal law. This Agreement does not affect the continuing responsibility of Concentra to comply with all aspects of the ADA.

37. Concentra shall not discriminate or retaliate against any person because of his or her participation in this matter.
38. A signatory to this document in a representative capacity for Concentra represents that he or she is authorized to bind Concentra to this Agreement.
39. This Agreement shall be binding on Concentra, its agents and employees.
40. This Agreement will remain in effect for two years following the effective date of this agreement. Notwithstanding the term of this Agreement, Concentra acknowledges it has ongoing obligations to comply with Title III.
41. The effective date of this Agreement is the date of the last signature below.

[SIGNATURE PAGE TO FOLLOW]

ON BEHALF OF THE UNITED STATES OF AMERICA

DATED: 11/19/19

JOHN H. DURHAM
UNITED STATES ATTORNEY
By:

/s/

Jessica H. Soufer
Assistant United States Attorney
United States Attorney's Office
157 Church Street, 25th Floor
New Haven, CT 06510
Tel. (203) 821-3700
jessica.soufer@usdoj.gov

ON BEHALF OF CONCENTRA

DATED: 10/28/19

/s/

Keith Newton
Chairman, President and CEO

Exhibit A

We ask this information so we can communicate effectively with Patients and/or Companions. All communication aids and services are provided FREE OF CHARGE. If you need further assistance, please ask your Concentra health care provider.

Time and Date of Request: _____

Name of Patient Requiring Assistance: _____

Nature of Disability:

Deaf
Hard of Hearing
Other: _____

Name of Requestor (if different from patient): _____

Relationship to Patient:

Self
Family member
Friend
Other: _____

Does the person with a disability want an onsite professional sign language or oral interpreter?

Yes. Choose one (free of charge):

American Sign Language (ASL)
Signed English
Oral interpreter
Other. Explain: _____

No.

Which of the following would be helpful for the person with a disability? (free of charge)

Video remote interpreting (VRI)	Assistive listening device (sound amplifier)
Qualified live interpreter	Qualified note-takers
TTY/TDD (text telephone)	Writing back and forth
Video phone	Other. Explain: _____

Any Questions?