

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
KAISER FOUNDATION HEALTH PLAN OF WASHINGTON
USAO# 2017v00363 / DJ# 202-82-137**

I. BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and Kaiser Foundation Health Plan of Washington (“KFHPW”).

2. KFHPW is an integrated managed care system, headquartered in Seattle, Washington. It operates 41 medical facilities in Northwest Washington, Central Washington, Eastern Washington, the Coastal and Olympic region, and Puget Sound.

3. This matter was initiated by the United States Attorney’s Office for the Western District of Washington (“U.S. Attorney’s Office”), a component of the Department of Justice, after receiving complaints from four individuals who are either deaf or deaf-blind in or around May 2017 alleging that KFHPW (or its predecessor Group Health Cooperative) violated the Americans with Disabilities Act (“ADA”) by failing to provide sign language or tactile interpreters for them during medical appointments at multiple locations. The U.S. Attorney’s Office received an additional complaint in February 2018 from an individual who is deaf also alleging that KFHPW failed to provide a sign language interpreter for her during a pre-surgical consultation at a KFHPW location.

II. INVESTIGATION AND DETERMINATIONS

4. The U.S. Attorney’s Office is authorized to investigate alleged violations of Title III of the ADA. 42 U.S.C. § 12188(b)(1)(A); 28 C.F.R. § 36.502. It also has the authority to, where appropriate, negotiate voluntary settlements, and to bring civil actions enforcing Title III of the ADA. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.

5. Complainants are individuals with a “disability” within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.105.

6. KFHPW is a “public accommodation” within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(F) and its implementing regulations, 28 C.F.R. § 36.104, as it operates hospitals and professional offices of health care providers which are places of public accommodation. The ADA prohibits public accommodations, including hospitals, from discriminating on the basis of disability in the full and equal enjoyment of their goods, services,

facilities, privileges, advantages or accommodations. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Discrimination includes failing to take such steps as necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than any other individual because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the good and services being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.

7. KFHPW fully cooperated with the United States' investigation in this matter. In the course of the investigation, the United States discovered that between May 15, 2014 and May 31, 2018, KFHPW or its predecessor organization, failed to fill a number of requests for sign language interpreters where the use of an interpreter was necessary for effective communication and the lack of a requested interpreter led patients to either need to reschedule and delay receiving medical care or to proceed without the assistance of an interpreter, often relying upon less effective means of communication such as lip reading, note writing, or the assistance of a friend or family member. On the basis of these determinations, the United States concluded that KFHPW engaged in a pattern or practice of violating the ADA, 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. § 36.303. To resolve this issue without resorting to litigation, the Parties have voluntarily agreed to enter this Agreement to identify and compensate individuals aggrieved by this alleged practice and to remedy the underlying issues leading to the practice of failing to provide effective communication.

III. DEFINITIONS

8. The term "KFHPW Location" refers to each of the existing 41 current locations (and all other locations opened by KFHPW during the time period this Agreement is in effect) in Washington in which KFHPW operates facilities providing medical care to patients, including medical centers and urgent care clinics.

9. The term "Auxiliary Aids and Services" includes qualified interpreters provided either 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, 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, deaf-blind, or hard-of-hearing. 28 C.F.R. § 36.303.

10. The term "Medical Personnel" means all KFHPW employees, full-time and part-time, who have, or are likely to have, direct contact with Patients or Companions as defined herein.

11. The term "Active Members of the Medical Staff" means all persons who are credentialed or otherwise permitted to provide medical services involving direct contact with

Patients or Companions at any KFHPW Location, whether or not they are direct employees of KFHPW.

12. The term “Qualified Interpreter” means an interpreter who, via VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. § 36.104. Qualified interpreters include sign language interpreters, tactile interpreters, oral transliterators, and cued-language transliterators. For purposes of this Agreement, a Qualified Interpreter must be knowledgeable about medical terminology.

13. The term “Patient” means any individual who is seeking or receiving health care services (whether inpatient or outpatient, including consultations, treatment, scheduling of appointments, discussion of billing issues, attending health education classes, and other health care services) from KFHPW Hospital.

14. The term “Companion” means a person who is a family member, friend, or associate of a Patient who, along with the Patient, is an appropriate person with whom KFHPW should communicate. 28 C.F.R. § 36.303(c)(1)(i).

IV. EQUITABLE RELIEF

A. Prohibition of Discrimination

15. Nondiscrimination. Consistent with the ADA, KFHPW shall provide appropriate Auxiliary Aids and Services, including Qualified Interpreters, where such aids and services are necessary to ensure effective communication with Patients and Companions who are deaf, deaf-blind, or hard of hearing, unless KFHPW can demonstrate that doing so would fundamentally alter the nature of their goods, services, facilities, privileges, advantages or accommodations or can demonstrate that doing so would result in an undue burden. Pursuant to 42 U.S.C. § 12182(a), KFHPW shall also provide Patients and Companions who are deaf, deaf-blind, or hard of hearing with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of KFHPW as required by this Agreement and the ADA.

16. Discrimination by Association. KFHPW 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, deaf-blind, or hard of hearing. 42 U.S.C. § 12182(b)(1)(E).

17. Retaliation and Coercion. KFHPW shall not retaliate, interfere with or coerce any person who made, or is making, a complaint according to the provisions of this Agreement or exercised, or is exercising, his or her rights under this Agreement or the ADA. 42 U.S.C. § 12203.

B. Effective Communication

18. Policies and Procedures. Within ninety (90) calendar days of the Effective Date of this Agreement, KFHPW shall review its non-discrimination and interpreter services policies and any related procedures, and provide drafts to the United States, of any revisions necessary to ensure that KFHPW is providing for effective communication with Patients and Companions who are deaf, deaf-blind, or hard of hearing, consistent with the requirements of this Agreement and the ADA.

19. Appropriate Auxiliary Aids and Services. Consistent with 42 U.S.C. § 12182(b)(2)(A)(iii), KFHPW will provide to Patients and Companions who are deaf, deaf-blind, or hard of hearing any appropriate Auxiliary Aids and Services necessary for effective communication after making the assessment described in Paragraph 21 of this Agreement. Appropriate Auxiliary Aids and Services will be provided as soon as practicable (without compromising patient care), except that the provision of on-site interpreters must be within the time frame described in Paragraph 29 of this Agreement.

20. Method of Assessment for Effective Communication.

- a. Standard. The determination of appropriate Auxiliary Aids and Services, and the timing, duration, and frequency with which they will be provided, will be made by KFHPW in consultation with the Patient or Companion who is deaf, deaf-blind, or hard of hearing. The determination will take into account all relevant facts and circumstances, including the individual's communication skills and knowledge, and the nature and complexity of the communication at issue.
- b. Initial Assessment. For a Patient's first encounter with KFHPW, KFHPW will inquire of all Patients or Companions who are deaf, deaf-blind, or hard of hearing the information requested in and have available a model communication assessment form substantially similar to the Model Communication Assessment Form attached to this Agreement as Exhibit A. The responses to the communication assessment will be maintained in the Patient's record.

KFHPW will draft a document substantially similar to Exhibit A to serve this purpose and will provide it to the United States for review within fifteen (15) days of this Agreement for approval. Once the document is approved, KFHPW will begin using the assessment with all Patients and Companions who present as deaf, deaf-blind, or hard of hearing at all KFHPW Locations within fifteen (15) days of the document's approval.

- c. On-Going Relationship. For a Patient or Companion who is deaf, deaf-blind, or hard of hearing and has an ongoing relationship with KFHPW, KFHPW will continue to provide appropriate auxiliary aids or services to the Patient or his or her Companion in keeping with the determination made on their initial visit. In addition, KFHPW will continue to address the needs of the Patient or Companion on each visit and will ask the Patient and/or Companion questions related to auxiliary aids or services

needs to ensure that the means of communication in past visits continue to be effective means of communication. Medical Personnel will keep records that reflect the ongoing provision of auxiliary aids and services to Patients and Companions who are deaf, deaf-blind, or hard of hearing, including notations in Patients' records. Medical Personnel shall reference the Patient's prior medical records, where available, as part of their communication assessment.

21. **Timing of Assessment for Effective Communication.**

- a. **Initial Assessment.** The determination of which appropriate Auxiliary Aids and Services are necessary, and the timing, duration, and frequency with which they will be provided, must be made: (i) at the time a Patient's first appointment is scheduled, if KFHPW is aware that the Patient or Companion is deaf, deaf-blind, or hard of hearing, or (ii) on the arrival of the Patient or Companion who is deaf, deaf-blind, or hard of hearing at the KFHPW Location, whichever is earlier.
- b. **Ongoing Relationships/Re-Assessment.** KFHPW will implement policies and procedures to expedite arrangements for the provision of auxiliary aids and interpretive services for Patients or Companions with on-going relationships with KFHPW. These policies and procedures should include a requirement that when a Patient who is deaf, deaf-blind, or hard of hearing (or who has a known Companion who is deaf, deaf-blind, or hard of hearing) makes an appointment at a KFHPW location, Medical Personnel will confirm, as part of the appointment process, what auxiliary aid or service is necessary for effective communication. Further, Medical Personnel will arrange for the provision of the appropriate auxiliary aid or service as soon as is practicable after the appointment is scheduled.

When KFHPW Medical Personnel become aware that a Patient or Companion who is deaf, deaf-blind, or hard of hearing is en route to a KFHPW Urgent Care Clinic, Medical Personnel will make reasonable efforts to conduct a communication assessment and take steps in advance of the Patient or Companion's arrival so that auxiliary aids and services are available as soon as practicable after the Patient or Companion's arrival at the KFHPW Urgent Care Clinic.

22. **Assistive Device Point Persons.** KFHPW will designate an Assistive Device Point Person ("ADPP") for each KFHPW Location. This ADPP or his or her designee(s) will always be on duty and available to KFHPW staff, Patients, and Companions during the same hours of operation and days of week in which the KFHPW Location they are assigned is open to the public. The ADPP's responsibilities include:

- a. Answering questions from staff regarding how to provide appropriate assistance to Patients and Companions who are deaf, deaf-blind, or hard of

hearing, including how to obtain immediate access to, and proper use of, the appropriate Auxiliary Aids and Services;

- b. Knowing where the appropriate auxiliary aids are stored and how to operate them;
- c. Distributing and replacing Auxiliary Aids and Services as appropriate;
- d. Maintaining Auxiliary Aids in good working order;
- e. Knowing when Qualified Interpreters are necessary for effective communication and how to obtain a Qualified Interpreter for a Patient or Companion. If the KFHPW location provides walk-in, urgent care, emergency services, and/or appointments upon short notice, the Assistive Device Point Person must also know how to obtain a Qualified Interpreter upon short notice.

KFHPW will include in its intranet on the Assistive Devices Program page the contact information through which the on-duty ADPP can be contacted by Medical Personnel providing services to individuals who are deaf, deaf-blind, or hard of hearing. The ADPP and his or her designees will be designated by KFHPW no later than **thirty (30) days** following execution of this Agreement and notice of such designation for each KFHPW Location will be provided to the U.S. Attorney's Office.

23. Auxiliary Aid and Service Log. KFHPW will maintain logs in which requests for Qualified Interpreters on-site or through video remote services for persons who are deaf, deaf-blind, or hard of hearing will be documented.

The log for Patients coming to an Urgent Care Clinic will indicate:

- a. The name of the Patient who (or whose Companion) is deaf, deaf-blind, or hard of hearing;
- b. The time and date of the Urgent Care Clinic visit;
- c. Whether on-site or video remote interpreter services was requested;
- d. The time and date the request was made by the Patient or Companion (if applicable);
- e. The time and date the request was made by staff after assessing the needs of the Patient or Companion (if applicable);
- f. The name of the staff member making the request;
- g. The time and date the request was fulfilled; and

- h. The nature of the Auxiliary Aid or Service provided.

The log for all other Patients, will indicate:

- a. The name of the Patient or Companion who is deaf, deaf-blind, or hard of hearing;
- b. The date for each appointment for every deaf, deaf/blind, or hard of hearing Patient.
- c. The Auxiliary Aid or Service requested;
- d. When an on-site interpreter is requested and available, the name of the interpreter.
- e. When an on-site interpreter is requested but not available,
 - a. the steps taken to arrange for an on-site interpreter; and
 - b. the nature of the Auxiliary Aid or Service provided.

If the requested Auxiliary Aid or Service was not provided, was not provided in the type requested, or was provided outside of the timeliness provisions contained in Paragraph 29 of this agreement, the log shall contain a statement explaining why. Such logs will be maintained for the duration of the Agreement, and will be incorporated into the semi-annual Compliance Reports as described in Paragraph 42 of this Agreement. KFHPW will implement the Auxiliary Aid and Service Logs no later than **thirty (30) days** following execution of this Agreement.

24. Complaint Resolution. KFHPW will use a grievance resolution mechanism for the investigation of disputes regarding effective communication with Patients and Companions who are deaf, deaf-blind, or hard of hearing. In particular:

- a. KFHPW will maintain records of all grievances regarding effective communication, whether oral or written, made to KFHPW and actions taken with respect thereto.
- b. At the time KFHPW completes its assessment described in Paragraph 21 and advises the Patient and/or Companion of its determination of which Auxiliary Aids and Services are appropriate, KFHPW will notify persons who are deaf, deaf-blind, or hard of hearing of its grievance resolution mechanism, to whom complaints should be made, and of the right to receive a written response to the grievance.
- c. A written response to any grievance filed shall be provided to the complainant as soon as is practicable, but in no event longer than **thirty (30) days** of receipt of the complaint.
- d. Copies of all grievances related to provision of services for Patients and/or Companions who are deaf, deaf-blind, or hard of hearing and the responses thereto

will be maintained by the Grievance Department for the entire duration of this Agreement.

25. Prohibition of Surcharges. All appropriate Auxiliary Aids and Services required by this Agreement will be provided free of charge to the Patient and/or Companion who is deaf, deaf-blind, or hard of hearing.

C. Qualified Interpreters

26. Circumstances Under Which Interpreters May be Required. Although the determination of whether and what Auxiliary Aids and Services are appropriate to a given situation is generally to be made on a case-by-case basis (as informed by its assessment pursuant to Paragraph 21), some circumstances will require that KFHPW provide a Qualified Interpreter to Patients or Companions who rely upon such types of communications. Such circumstances generally arise when the communication is particularly complex or lengthy. The following are examples of circumstances and types of communication when it is likely necessary to provide a Qualified Interpreter:

- a. Discussing a patient's symptoms for diagnostic purposes, and discussing medical condition, medications, and medical history;
- b. Explaining medical conditions, treatment options, tests, medications, surgery, and other procedures;
- c. Providing a diagnosis or recommendation for treatment;
- d. Communications immediately preceding, during, and immediately after surgery or other procedures and during physicians' rounds;
- e. Obtaining informed consent for treatment;
- f. Providing instructions for medications, post-treatment activities, and follow-up treatments;
- g. Providing mental health services, including group or individual counseling for patients and family members;
- h. Providing information about blood or organ donations;
- i. Discussing powers of attorney, living wills and/or complex billing, and insurance matters; or
- j. During educational presentations, such as birthing or new parent classes, nutrition and weight management programs, and CPR and first-aid training.

27. Chosen Method for Obtaining Interpreters. Within **thirty (30) days** after execution of this Agreement, KFHPW will have contracts with two (2) or more sign language interpreter services agencies for the provision of on-site Qualified Interpreters and will provide copies of those contracts to the U.S. Attorney's Office. KFHPW will contract with a sufficient number of agencies with sufficient interpreter capacity to ensure that Qualified Interpreters are available to work in each of the counties in which there are KFHPW Locations. If the agencies used by KFHPW change during the term of this Agreement, KFHPW shall notify the U.S. Attorney's Office of the change within thirty (30) days.

28. Video Remote Interpreting ("VRI"). Within **sixty (60) days** of the execution of this Agreement, KFHPW will have VRI available at all KFHPW Locations. When using VRI services, KFHPW shall ensure that it 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).

VRI shall not be used when it is not likely to ensure effective communication. In determining whether a VRI is appropriate to provide effective communication, relevant factors include the following:

- (a) 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);
- (b) the Patient or Companion has limited ability to move his or her head, hands, or arms;
- (c) the Patient has cognitive limitations, loss of consciousness, or pain issues;
- (d) there are multiple people in a room and the information exchanged is highly complex or fast-paced;
- (e) the Patient or Companion may move repeatedly to areas of the medical center that do not have a designated high-speed internet line;

(f) the Patient will be treated in a room where there are space restrictions; and

(g) whether the VRI can be provided in accordance with the performance standards set forth in (1) to (4) above.

Whenever, based on the circumstances, VRI does not provide effective communication with a Patient or Companion who is deaf, deaf-blind, hard of hearing, VRI shall not be used as a substitute for an on-site Qualified Interpreter, and an on-site Qualified Interpreter shall be requested and provided. The on-site Qualified Interpreter shall be requested and provided in a timely manner as required by Paragraph 29 of this Agreement. In such instance, the two hours begins when it becomes evident that VRI cannot provide effective communication for that interaction.

29. Provision of Interpreters in a Timely Manner.

a. For Patient visits to an Urgent Care Clinic or when there are less than 4 hours before the time an interpreter may be required: For interpreter requests for Patient visits to an Urgent Care Clinic and visits when there are less than 4 hours before the time an interpreter may be required, Medical Personnel will inquire of all Patients the information requested in the assessment described in Paragraph 21 above.

- When an interpreter is appropriate, a Qualified Interpreter (**via VRI**) will be provided as soon as practicable, but no more than **30 minutes** from the time the Patient arrives (absent exigent circumstances affecting patient care which may extend the time for providing such service).
- In the event that an **on-site** Qualified Interpreter is required, an interpreter will be provided as soon as practicable, but no more than **two (2) hours** from the time it becomes clear that an on-site interpreter is necessary for effective communication, For same day office (non-Urgent Care Clinic) appointments, if the first available appointment is within two (2) hours, and an on-site interpreter is not available, Kaiser will coordinate with the Patient to identify the next available appointment at a time an on-site interpreter is available, but in no circumstances will the appointment be more than two hours later than would have been otherwise available if there were not a need for an interpreter.

As described below in Section (c) of this Paragraph, KFHPW will document the on-site interpreter service's response time, including the time of contact and the time of arrival. Deviations from this response time will be addressed with the interpreting service provider, and performance goals will be reviewed with the U.S. Attorney's Office **every six (6) months**, pursuant to Paragraph 42. KFHPW shall not be held responsible for circumstances beyond its control in obtaining on-site interpreter services, such as delays due to weather or interpreter service response, as long as KFHPW makes reasonable, good faith efforts to obtain on-site interpreter services in a timely manner and documents those efforts.

b. *For all Patient visits when there are 4 or more hours before the time an interpreter may be required:* For all Patient visits when there are 4 or more hours before the time an interpreter may be required, KFHPW Personnel will verify whether the Patient uses an Auxiliary Aid to communicate, and, when a Qualified Interpreter is appropriate, KFHPW will make a Qualified Interpreter available at the time of the scheduled appointment. If a Qualified Interpreter fails to arrive for the scheduled appointment, upon notice that the Qualified Interpreter failed to arrive, KFHPW will immediately call the interpreter service for another Qualified Interpreter and comply with the timeframes set forth in Paragraph 29(a).

c. *Data Collection on Interpreter Response Time.* KFHPW will monitor and document in the Auxiliary Aid and Service Logs, described in Paragraph 23, the attendance or response time, as appropriate, of each Qualified Interpreter service it uses to provide communication to Patients or Companions who are deaf, deaf-blind, or hard of hearing through its established process of monitoring outside vendors. KFHPW will document and investigate, per the complaint resolution process identified in Paragraph 24, any complaints by the Patients or Companions who are deaf, deaf-blind, or hard of hearing regarding the quality and/or effectiveness of services provided by the interpreter service.

30. Notice to Patients and Companions Who are Deaf, deaf-blind, or Hard of Hearing. KFHPW will keep the Patient or Companion (or a family member or friend, if the Patient or Companion is not available) informed of the status of efforts being taken to secure a Qualified Interpreter on his or her behalf. For Urgent Care Clinic visits and Patient visits when there are 4 or less hours before the time an interpreter may be required, KFHPW will provide additional updates to the Patient or Companion as necessary until an interpreter is secured. Notification of efforts to secure a Qualified Interpreter does not lessen KFHPW's obligation to provide Qualified Interpreters in a timely manner as required by Paragraph 29 of this Agreement.

31. Other Means of Communication. KFHPW agrees that between the time an interpreter is requested and the interpreter is provided, Medical Personnel will continue to try to communicate with the Patient or Companion who is deaf, deaf-blind, 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 all available methods of communication, for example, using sign language pictographs. This provision in no way lessens KFHPW's obligation to provide Qualified Interpreters in a timely manner as required by Paragraph 29 of this Agreement.

32. Restricted Use of Certain Persons to Facilitate Communication. KFHPW will not rely on an adult friend or family member of the Patient or Companion who is deaf, deaf-blind, or hard of hearing to interpret except:

- a. In an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter available; or

- b. Where the Patient or Companion who is deaf, deaf-blind, or hard of hearing specifically requests that the adult friend or adult family member interpret, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. At any time, KFHPW may also provide a Qualified Interpreter at no cost to the Patient or Companion. The adult friend or adult family member will not be compensated by KFHPW.

KFHPW will not rely on a minor child of Patient to interpret except in the limited circumstances described in (a) above.

D. Notice to the Community

33. Policy Statement. Within **ninety (90) days** of the entry of this Agreement, KFHPW shall post and maintain conspicuous signs at all KFHPW admitting stations and wherever a Patient’s Bill of Rights is required by law to be posted, with substantially similar language to that provided in the **Sample Posting** attached as **Exhibit B** notifying the public of the availability of Auxiliary Aids and Services and their related rights. These signs will include the international symbol for “interpreter.”

34. Website. KFHPW will include on its website (currently located at <https://wa.kaiserpermanente.org/>) the same or substantially similar policy statement and information regarding how to request Auxiliary Aids or Services and information regarding how to file a complaint with KFHPW and through ada.gov. This information will be posted through a conspicuous link on the Washington related home page.

35. Patient Handbook. KFHPW will include in all future printings of its Patient Handbook (or equivalent) and all similar publications a statement to the following effect:

To ensure effective communication with Patients and their Companions who are deaf, deaf-blind, or hard-of-hearing, we provide appropriate auxiliary aids and services free of charge to the Patient or Companion, such as: sign language and oral interpreters, video remote interpreting services, TTYs, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with caption capability or closed caption decoders, and open and closed captioning of most Hospital programs.

Please ask your nurse or other Medical Personnel for assistance, or contact the Information Office at _____ (voice or TTY), room _____.

KFHPW will also include in its Patient Handbook a description of its complaint resolution mechanism.

E. Notice to KFHPW Personnel and Physicians

36. Intranet. KFHPW shall publish on its intranet a policy statement regarding KFHPW's policy for effective communication with persons who are deaf, deaf-blind, or hard of hearing. This policy statement includes, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a Patient or a relative, close friend, or Companion of a Patient is deaf, deaf-blind, or hard-of-hearing, you must advise the person that appropriate auxiliary aids and services, such as sign language and oral interpreters, video remote interpreting services, TTYs, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with captioning or closed caption decoders, and open and closed captioning of most hospital programs, will be provided free of charge to the Patient or Companion when necessary to ensure effective communication. If you are the responsible health care provider, you must ensure that such aids and services are provided when necessary to ensure effective communication. All other personnel should direct that person to the appropriate ADA Administrator(s) at _____ and reachable at _____.

37. Notice to Personnel. KFHPW's policy for effective communication with persons who are deaf, deaf-blind, or hard of hearing will be accessible to all Medical Personnel and Active Members of the Medical Staff. The policy will also be provided to all newly hired Medical Personnel and all Active Members of the Medical Staff upon their affiliation or employment with KFHPW.

F. Training

38. Training of the Assistive Device Point Person and His or Her Designees. KFHPW will provide mandatory training for the Assistive Device Point Person and his or her designees as set forth in Paragraph 22 of this Agreement. Such training curricula and related material must be provided to the United States within **thirty (30) days** of this Agreement for review. Once approved by the United States, which approval shall not be unreasonably withheld, the training will occur within **forty-five (45) days**. Such training will be sufficient in duration and content to train the Assistive Device Point Person and his or her designees in the following areas:

- a. to promptly identify communication needs of Patients and Companions who are deaf, deaf-blind, or hard of hearing, including when a Qualified Interpreter (on-site or by VRI) is necessary;
- b. to secure a Qualified Interpreter as quickly as possible when necessary;
- c. to use, when appropriate, flash cards and/or pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication);
- d. how and when to use VRI services, including how to make and receive calls;

- e. to encourage Active Members of KFHPW's Medical Staff to notify the Assistive Device Point Person or his or her designee of Patients and Companions who are deaf, deaf-blind, or hard of hearing as soon as a Patient schedules admissions or other health care services at KFHPW; and
- f. KFHPW's complaint resolution procedure described in Paragraph 24 of this Agreement.

39. Training of Medical Personnel. Except for Active Members of the Medical Staff, who are governed by Paragraph 40 of this Agreement, KFHPW will provide mandatory in-service training to all Medical Personnel who have contact with Patients.

- a. The training will address the needs of Patients and Companions who are deaf, deaf-blind, and hard of hearing and will include the following objectives:
 - i. to promptly identify communication needs of Patients and Companions who are deaf, deaf-blind, or hard of hearing, including when an in-person Qualified Interpreter is necessary;
 - ii. to secure Qualified Interpreter services or VRI services as quickly as possible when necessary;
 - iii. to use, when appropriate, flash cards and/or pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication); and
 - iv. how and when to use VRI services, including how to make and receive calls.
- b. Such training curricula and related material must be provided to the United States within **ninety (90) days** of this Agreement for review. Once approved by the United States, the training will occur within **one hundred twenty (120) days**.
- c. New employees hired after this training is approved, must receive this training within ninety (90) days of their hire.

40. Training of Active Members of the Medical Staff. KFHPW will provide Active Members of the Medical Staff an electronic copy of its policy/ies on the communication needs of Patients or Companions who are deaf, deaf-blind, or hard of hearing by e-mailing it to their office e-mail addresses. The policy shall be accompanied by a cover letter that:

- a. indicates the additional availability of the policy on the intranet,
- b. invites the recipient to reach out to the Assistive Device Point Person if they have questions about the policy; and

- c. requests that, if and when they become aware that a Patient or Companion who is deaf, deaf-blind, or hard of hearing will be visiting KFHPW for health care services, they promptly notify the Assistive Device Point Person of the expected visit.

41. Training Attendance Records. KFHPW will maintain, for the duration of this Agreement, confirmation of training conducted pursuant to Paragraphs 39-40 this Agreement, which will include the names and respective job titles of the attendees, as well as the date and time of the training session.

G. Reporting, Monitoring, and Violations

42. Compliance Reports. Beginning **six (6) months** after the Effective Date of this Agreement and every six (6) months thereafter for the entire duration of the Agreement, KFHPW will provide a written report (“Compliance Report”) to the U.S. Attorney’s Office regarding the status of its compliance with this Agreement. The Compliance Report will include data relevant to the Agreement, including:

- a. the information required in the Auxiliary Aid and Service Log described in Paragraph 23.
- b. the information maintained in the complaint records described in Paragraph 24, including the number of complaints received by KFHPW from Patients and Companions who are deaf, deaf-blind, or hard of hearing regarding Auxiliary Aids and Services and/or effective communication, and the resolution of such complaints including any supporting documents.
- c. any other relevant information that the USAO requests from KFHPW.

KFHPW will maintain records to document the information contained in the Compliance Reports and will make them available, upon request, to the U.S. Attorney’s Office.

43. Complaints. During the term of this Agreement, KFHPW will notify the U.S. Attorney’s Office if any person files a lawsuit, complaint, or formal charge with a state or federal agency, alleging that KFHPW failed to provide Auxiliary Aids and Services to Patients or Companions who are deaf, deaf-blind, or hard of hearing or otherwise failed to provide effective communication with such Patients or Companions. Such notification must be provided in writing via certified mail or email within twenty (20) days of the date KFHPW received notice of the allegation and will include the nature of the allegation, the name of the person making the allegation, and any documentation of the allegation provided by the complainant. KFHPW will reference this provision of the Agreement in the notification to the U.S. Attorney’s Office.

V. MONETARY RELIEF

44. Payment to the United States to Vindicate the Public Interest. Within **thirty (30) days** of the Effective Date of this Agreement, KFHPW will pay the United States eight-five

thousand dollars (\$85,000) to vindicate the public interest pursuant to 42 U.S.C. § 12188(b)(2)(C). Full payment will be made by electronic funds transfer pursuant to instructions to be provided by the United States Attorney's Office for the Western District of Washington.

45. Compensation for Aggrieved Individuals Fund.

a. *Compensation Fund.* Within **forty-five (45) days** of the Effective Date of this Agreement, KFHPW shall deposit the sum of one million dollars (\$1,000,000) in an interest-bearing settlement account for Eligible Persons under this Agreement ("Compensation Fund") as compensatory damages to be apportioned as detailed herein. This account shall be established, maintained, and administered by the Claims Administrator (described in Paragraph 45(b)), and shall be identified on payment checks using the short-hand title, "KFHPW Compensation Fund." Title to this account shall be in the name of "KFHPW for the benefit of aggrieved individuals pursuant to the DOJ investigation 202-82-137." KFHPW shall submit written verification to the United States that the funds have been deposited. The initial deposit, and all interest accrued on that amount, shall make up the Compensation Fund and be available solely for compensation of Eligible Persons under this Agreement with the limited exception of "residual amounts" addressed in Paragraph 45(o). KFHPW shall bear all costs of administering the Compensation Fund, including costs associated with establishing the account, maintaining it, and issuing payments. Copies of account statements shall be provided within **seven (7) days** of their issuance to the United States and the Claims Administrator.

b. *Retention Of Claims Administrator.* Within **twenty (20) days** of the Effective Date, KFHPW and the United States will agree upon a third-party organization to serve as claims administrator for the purposes of compensating persons harmed through the conduct described above from the Compensation Fund ("Claims Administrator"). The Claims Administrator must have the ability to communicate with persons who are deaf, deaf-blind, or hard of hearing through sign language interpretation services, if appropriate, and must commit to using such services, when appropriate, for all substantive communications with Potential Eligible Persons and Eligible Persons, as defined below. Within **thirty (30) days** of the Effective Date, KFHPW will contract to retain the Claims Administrator to conduct the activities set forth in this Agreement ("Retention Date"). KFHPW will obtain the United States' consent to the contract prior to its execution. KFHPW will bear all costs associated with the claims administration. KFHPW's contract with the Claims Administrator will require that the Claims Administrator comply with the provisions of this Agreement, as applicable to the Claims Administrator. The Claims Administrator's contract will also require the Claims Administrator to work cooperatively with the United States in the conduct of the Claims Administrator's activities, including reporting regularly to and providing all requested information to the United States. All information and data provided to the Claims Administrator pursuant to this Agreement shall be used by the Parties and the Claims Administrator only for the purposes of implementing this Agreement and shall be kept confidential.

c. *Potential Eligible Persons.* "Potential Eligible Persons" are individuals who either requested a Qualified Interpreter or for whom a Qualified Interpreter was requested at any KFHPW Location between May 15, 2014 and March 31, 2018 ("Claims Period") and who are associated with the documents produced by KFHPW so far in DOJ's investigation; namely:

- The 343 instances of “unfilled” requests for sign language interpreters made to KFHPW’s contracted agency during the Claims Period;
- The 53 putative effective communication related complaints sent to KFHPW in the Claims Period; and
- The five DOJ Complainants (associated with 23 putative effective communication violations).

Within **forty-five (45) days** of the Effective Date of this Agreement, KFHPW shall deliver to the Claims Administrator a “Potential Eligible Persons List” that includes the following information, if known to KFHPW, in electronic format for each of the individuals associated with these documents and putative violations:

- i. Name;
- ii. KFHPW identification number;
- iii. Exhibit 58 (unfilled orders) provided during the investigation, for the Claims Period, with patient identifying information included;
- iv. Exhibits. 37, 38, 52 and 57 (eWatson and ADA complaints) provided during the investigation, for the Claims Period, with patient identifying information included; and
- v. Contact information, including permanent address, last known addresses, phone numbers, and email addresses.

KFHPW will provide the Claims Administrator any additional information reasonably requested by the Administrator in furtherance of any aspect of the claims process pursuant to this Agreement.

d. *Initial Notice By Claims Administrator.* Within **ten (10) days** after the Claims Administrator receives the Potential Eligible Persons List from KFHPW, the Claims Administrator shall send the Notice of Agreement and Claim Form (attached as **Exhibit C**) (amended with appropriate information and on the Claims Administrator’s letterhead), via first-class (with a postage pre-paid return envelope) and via electronic mail, if possible, to each Potential Eligible Person listed.

e. *Locating Potential Eligible Persons.* The Claims Administrator will utilize all reasonable methods routinely used by companies that administer litigation and government enforcement compensation funds to locate each Potential Eligible Person. For every individual on the Potential Eligible Person List whose Notice of Agreement and Claims Form is returned to the Claims Administrator as undeliverable, the Administrator will conduct a trace and search for additional contact information using reasonably available methods and technology. Within **fifteen (15) days** of receiving a returned Notice of Agreement and Claims Form as undeliverable, the Claims Administrator shall mail the Notice of Agreement and Claims Form via first class to all additional addresses generated for the individual from the Administrator’s database search, and also attempt to reach the individual by phone and electronic mail if possible. Further, for any person who has not responded to the Notice of Agreement and Claims Form within **sixty (60) days** of its mailing, the Claims Administrator shall follow up within **fifteen (15) days** by phone and electronic mail (if possible) to ascertain the individual’s interest

in making a potential claim. The efforts described in this Paragraph shall be considered “Good Faith Efforts” for purposes of this Agreement.

f. *Contact Reporting.* After **seventy-five (75)** days have passed since the mailing of the Notice of Agreement and Claims Form, the Claims Administrator shall send the United States a list containing: (1) the names of all Potential Eligible Persons who responded affirmatively to the notice; (2) identification of all Eligible Persons (defined in Paragraph 45(g)); (3) if applicable, a brief description of why any Potential Eligible Person was deemed not eligible; and (4) the efforts the Claims Administrator took to reach Potential Eligible Persons who did not respond.

g. *Eligible Persons.* An Eligible Person shall be any person from the Potential Eligible Persons List who timely responds affirmatively, either through mail, e-mail, or phone, to the Claims Administrator confirming that they: (a) are interested in being considered for compensation under the Compensation Fund from this Agreement, and (b) are either deaf, hard of hearing, or deaf-blind. Timeliness shall be measured as a response received prior to **120 days** of the initial mailing of the Notice of Agreement and Claims Form. In all communications between the Claims Administrator and Potential Eligible Persons, the Claims Administrator shall advise the Potential Eligible Person regarding the deadline for response.

h. *Eligible Persons Records.* The Claims Administrator shall provide KFHPW with the names of each Eligible Person. KFHPW shall provide the Claims Administrator with the KFHPW patient record for each Eligible Person for the period of May 15, 2014 and March 31, 2018 within 30 days of receipt of the name of the Eligible Person, with the understanding that for every 50 names, KFHPW will have an additional 15 days to provide the patient records in a rolling production.

i. *Harm Assessment.* The Claims Administrator shall contact each Eligible Person who responds to the Notice of Agreement and Claim Form (or who is on the Potential Eligible Persons list and otherwise contacts the Claims Administrator), using Good Faith Efforts, within **thirty (30) days** of receiving their records (referenced in paragraph h above) and shall attempt to ascertain further information about the Eligible Person’s experience with KFHPW related to the Harm Criteria listed in Paragraph 45(i) using either email, relay calls, or in-person interpreter meetings according to the preference of the Eligible Person at no expense to the Eligible Person. The Claims Administrator shall also review all documents and information provided by KFHPW pursuant to Paragraph 45(c), as well as any additional information provided by the U.S. Attorney’s Office and shall compare the information regarding each Eligible Person against the Harm Criteria set forth in Paragraph 45(i) in order to make a recommendation regarding the amount of compensation to be paid to each Eligible Person. If the Claims Administrator is unable to interview the Eligible Person, the Claims Administrator shall make the assessment purely on the basis of the information that is otherwise available.

j. *Harm Criteria.* The following criteria shall be considered in determining the amount of compensation paid to each Eligible Person under this Agreement:

- i. The number of appointments in which the Eligible Person requested a sign language interpreter or had one requested for them but did not receive them (“Unfilled Appointment”);
- ii. The degree of medical exigency, seriousness, complexity, or sensitivity involved in the Unfilled Appointment;
- iii. The consequences of the Unfilled Appointment, including whether the Eligible Person was forced to rely upon family members, friends, or unqualified interpreters during the Unfilled Appointment; whether the Eligible Person was forced to reschedule or cancel the appointment and any consequences of that rescheduling (including inconvenience, missed work or pay, travel and parking expenses, medical consequence, etc.); and misunderstandings, misdiagnosis, or miscommunications associate with the Eligible Person’s healthcare needs.

k. *Distribution Amounts.* On the basis of the Harm Assessment described in Paragraph 45(h), the Claims Administrator shall make a written recommendation within **sixty (60) days** of the provision of the Eligible Persons List to the United States regarding the Eligible Persons who should receive compensation from the Compensation Fund and the recommended amounts of each Eligible Person’s compensation (“Proposed Fund Distribution”). The Proposed Fund Distribution shall include a brief description for each Eligible Person explaining which Harm Criteria qualified them for the amount proposed and why. The Proposed Fund Distribution should also include an allocation of a reasonable sum to be paid to the five original Complainants identified to the Claims Administrator by DOJ to be paid in addition to the amount they would have received under the Harm Criteria. The Proposed Fund Distribution should account for a full distribution of the \$1,000,000 in the Compensation Fund. The United States shall then have **thirty (30) days** after receiving the Proposed Fund Distribution from the Administrator to submit any changes. The Claims Administrator shall make any changes submitted by the United States within **ten (10) days** and shall then issue to the United States and KFHPW the final list containing the names of Eligible Persons and amounts to be paid (“Final Distribution List”). The determination of Eligible Persons and the amount awarded as contained in the Final Distribution List are final and non-appealable. No individual or Party may request a review or modification of these determinations in any venue.

1. *Distribution of the Compensation Fund.* The Claims Administrator shall use the same Good Faith Efforts to notify Eligible Persons of the proposed amount of compensation they are to be paid under the Agreement within **thirty (30) days** of the Final Distribution List, along with a Release of Claims (**Exhibit D**). Within **thirty (30) days** of receiving an executed Release of Claims, the Claims Administrator shall issue a check from the Compensation Fund in the amount set forth in the Final Distribution List. All such payments shall be void if not cashed or deposited within **ninety (90) days** after the date of issue. If a check is returned as undeliverable and/or goes uncashed after **ninety (90) days** from the date of issue, the Claims Administrator shall make reasonable attempts to contact and reissue checks to such individuals for the next **thirty (30) days**.

m. *Opt Out.* Any Potential Eligible Person may decline all monetary benefits from this Agreement by not returning a signed Release. The Agreement does not limit the legal rights

of any Potential Eligible Person who does not return a signed Release within the Claims Period or any individual who is not a Potential Eligible Person under this Agreement.

n. *Payment. No Set-Off.* KFHPW will not be entitled to a set-off, or any other reduction, of the amount of payments to Eligible Persons, resulting from unpaid debts or otherwise, except as expressly provided herein.

o. *Notification Of Final Payment.* The Claims Administrator will notify KFHPW and the United States in writing on the day when all payments of monetary relief to Eligible Persons required by this Agreement have been sent.

p. *Residual Amount In Compensation Fund.* The Claims Administrator will distribute the full amount of the Compensation Fund as set forth in Paragraphs 45(j) and (k). However, payments made to Eligible Persons that are returned or not cashed or deposited within the applicable **ninety (90) day period** (subject to the procedures set forth in Paragraph 45(k) for reissuing checks) will be considered the “Residual Amount,” as will any remaining interest accrued on the Compensation Fund. Within **thirty (30) days** after the mailing of the last payment to an individual on the Final Distribution List, the Claims Administrator shall notify the United States and KFHPW in writing of the balance of the total of the Residual Amount. The entire Residual Amount shall be returned to KFHPW to be used solely for purposes of implementing this Agreement.

q. *Taxes.* Eligible Persons shall be solely responsible for paying any taxes they owe resulting from payments they receive under this Agreement. KFHPW shall be solely responsible for paying any applicable federal, state, and/or local taxes owed by the Compensation Fund, if any (*i.e.*, any such tax payments shall not be deducted from the Compensation Fund or from any monetary award to Eligible Persons).

r. *Dispute Resolution.* In the event the United States has reason to believe that the Claims Administrator is not materially complying with the terms of its contract with KFHPW, the United States and KFHPW will meet and confer for the purpose of agreeing on a course of action to effect the Claims Administrator’s material compliance with its contract. In the event that the United States and KFHPW are unable to so agree, the United States and KFHPW will present the matter to a mutually agreed upon mediator.

VI. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

46. Duration of the Agreement. This Agreement will be in effect for **two (2) years** from the Effective Date.

47. Enforcement. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from undertaking further investigation or from filing a civil suit under Title III in this matter, except as provided in Paragraph 48. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against KFHPW for violations of any statutes, regulations, or rules

administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA for violations unrelated to this matter.

48. Compliance Review and Enforcement. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or any requirement thereof has been violated by instituting a civil action in U.S. District Court. If the United States believes that this Agreement or any portion of it has been violated, it will raise its claim(s) in writing with KFHPW, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow KFHPW thirty (30) days from the date it notifies KFHPW of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.

49. Entire Agreement. This Agreement and the attachments hereto constitute the entire agreement between the parties on the matters raised herein, and no other previous 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 is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other federal law.

50. Binding. This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. Each party has a duty to so inform any such successor in interest.

51. Non-Waiver. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to any instance or provision.

52. Execution. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES:

_____/s/_____
Christina Fogg
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
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_____/10/15/21_____
Date

FOR KAISER FOUNDATION HEALTH PLAN OF WASHINGTON:



Regional President
Kaiser Foundation Health Plan of
Washington
Renton, WA 98057
Phone: 425.630.1330
1300 SW 27th St.

10/14/21
Date



*on behalf of M. Re Knack
per email authorization*

M. Re Knack
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of Washington
Ogden Murphy Wallace
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10/15/21
Date