



**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
GENESIS HEALTHCARE SYSTEM
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ# 202-58-112**

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Genesis HealthCare System ("Genesis").
2. This matter is based upon a complaint filed with the United States Department of Justice, in which a Complainant alleged that Genesis discriminated against her on the basis of her disability in violation of title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189. Specifically, the Complainant alleges that Genesis refused to accept her as a new patient based on her HIV.
3. The parties have reached agreement 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, agreeing as follows:

TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the relevant regulation implementing title III, 28 C.F.R. Part 36.
5. The Complainant, an individual with HIV, has a physical impairment that substantially limits one or more major life activities, including the functions of the immune system, which is a major bodily function. Accordingly, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
6. Genesis is an Ohio not-for-profit corporation, with its principal location at 2951 Maple Avenue, Zanesville, OH 43701. Genesis owns and operates an integrated health care system that includes a not-for-profit hospital that operates at two Zanesville sites, a network of more than 300 physicians (of which approximately 120 are employed by Genesis), and multiple outpatient health care centers throughout its six-county region of southeastern Ohio.

7. Among its approximately 47 locations in Ohio, Genesis has a medical facility that provides general family medicine services located at 1 East Main Street, Suite 200A, New Concord, OH 43762, known as the Genesis Health Center – New Concord or New Concord Family Practice (“New Concord”).
8. Genesis owns, leases (or leases to), or operates places of public accommodation within the meaning of 42 U.S.C. § 12182(a); is a private entity within the meaning of 42 U.S.C. § 12181(6); and is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7), because it affects commerce and operates a professional office of a health care provider. *See also* 28 C.F.R. § 36.104.
9. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).
10. Ensuring that medical care providers do not discriminate on the basis of disability is an issue of general public importance. The United States is authorized to investigate alleged violations of title III of the ADA and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises issues of general public importance. 42 U.S.C. § 12188(b).
11. As a result of its investigation, the United States has determined:
 - a. In April 2013, Genesis employed one primary care physician at New Concord.
 - b. On April 10, 2013, the Complainant called New Concord to obtain a primary care physician and spoke with the receptionist.
 - c. During the initial call with the New Concord receptionist, the Complainant stated that she was currently taking medications for anxiety and HIV. The Complainant explained to the receptionist that the HIV medicine was prescribed by her HIV specialist.
 - d. The Complainant was told by the receptionist that the receptionist did not believe that New Concord would accept her as a patient. The receptionist informed the Complainant that she would speak with the New Concord physician and would call her back.
 - e. New Concord confirms that the receptionist recalls speaking with the New Concord physician about treating a patient with HIV, and that the physician indicated that she was not equipped to treat a patient with HIV and the patient should remain with her treating physician in Columbus, Ohio. New Concord

further confirms that it is the physician's practice to refer any patient with HIV to an infectious disease specialist.

- f. In April 2013, the Complainant lived in Cambridge, Ohio. The commute between Cambridge and Columbus is approximately 80 miles. New Concord is approximately 10 miles from the Complainant's Cambridge home.
 - g. The Complainant did not receive a follow-up call after her initial conversation with the New Concord receptionist. On April 11, 2013, the Complainant called New Concord and the receptionist informed her that the physician would not accept her as a patient because of her HIV diagnosis. The Complainant reminded the receptionist that she only needed a general practitioner for medical care unrelated to HIV, and that she would continue to see an infectious disease practice for her HIV treatment. Nonetheless, the receptionist told the Complainant that the New Concord physician would not accept her as a patient because she had HIV.
 - h. In evaluating the Complainant as a potential new patient, the New Concord physician never examined the Complainant, nor did she review any of the Complainant's medical records.
 - i. After New Concord refused to accept her as a new patient in April 2013, the Complainant continued to search for a primary care physician for approximately five months, but was unable to find one who would accept her as a new patient in the local Cambridge area.
 - j. In September 2013, the Complainant finally located a primary care physician at a medical practice over 25 miles away from her Cambridge, Ohio home. In addition to receiving treatment from this primary care physician, the Complainant continues to see her infectious disease doctor in Columbus for treatment of her HIV.
 - k. During this five month period from April 2013, when New Concord refused to accept the Complainant as a new patient because of her HIV, until she located her current primary care physician in September 2013, the Complainant had to seek medical treatment at the local emergency room for non-emergent health issues because she did not have a primary care physician. Because the Complainant reports that she had to wait in the emergency room for several hours on some occasions before seeing a doctor, she would only seek medical treatment from the emergency room when she was very ill or had immediate medical needs.
12. A healthcare provider cannot refer a patient with HIV or AIDS to another provider simply because the patient has HIV or AIDS. The referral must be based on the fact that the treatment the patient is seeking is outside the expertise of the provider, not the patient's HIV status alone. *See Questions and Answers: The Americans with*

Disabilities Act and Persons with HIV/AIDS, available at http://www.ada.gov/aids/ada_q&a_aids.htm.

13. The United States has determined that Genesis discriminated against the Complainant by denying her the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Genesis on the basis of HIV, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. Genesis disclaims any liability for any wrongdoing against Complainant and denies any wrongdoing against Complainant. Genesis agrees to enter into this Agreement solely in the interest of compromise.
14. The Complainant is an aggrieved person pursuant to 42 U.S.C. § 12188(b)(2)(B).

ACTIONS TO BE TAKEN BY GENESIS

15. Genesis, including its hospitals, employed physicians, outpatient health care centers, and other medical facilities in which Genesis has a controlling interest, will not discriminate against any individual on the basis of disability, including HIV or AIDS, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at any of its current or future locations, in violation of title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.
16. For each person who is not accepted as a patient for any reason, and who (i) discloses to the Genesis provider a diagnosis of, (ii) is regarded by the Genesis provider as having, or (iii) is otherwise identified by the Genesis provider at or before the time of non-acceptance as potentially having HIV or AIDS, Genesis will create an electronic file and will maintain the electronic file for at least two years from the date the final decision is made to not accept the person as a patient. Each file must include, at minimum: (i) the person's name if known or a unique identifier if the person's name is unknown (*i.e.*, date of call, time of call, person receiving call), (ii) the date of initial contact with the person, (iii) the date the final decision is made to not accept the person as a patient, (iv) the names and titles of all persons involved in the decision, (v) the reasons for the decision, and (vi) all written documentation supporting the reasons for the decision. The requirement does not apply if a person was not accepted as a patient because the Genesis provider was not accepting new patients at the time of the non-acceptance. Copies of such files shall be provided to counsel for the United States quarterly (*i.e.*, files created in calendar months January, February and March to be provided by April 30, and so on) throughout the duration of this Agreement and within 21 days of any written request for them.
17. For each person who is discharged from treatment for any reason other than the conclusion of treatment, and who (i) discloses to the Genesis provider a diagnosis of, (ii) is diagnosed by the Genesis provider as having, (iii) is regarded by the Genesis provider as having, or (iv) is otherwise identified by the Genesis provider at or before the time of discharge from treatment as potentially having HIV or AIDS, Genesis will

create an electronic file and will maintain the electronic file for at least two years from the date the final decision is made to discharge the patient from treatment other than at the conclusion of the treatment. Each file must include, at minimum: (i) the patient's name if known or a unique identifier if the patient's name is unknown (*i.e.*, date of call, time of call, person receiving call), (ii) the date of initial contact with the patient, (iii) the date the final decision is made to discharge the patient, (iv) the names and titles of all persons involved in the decision, (v) the reasons for the decision, and (vi) all written documentation supporting the reasons for the decision. Copies of such files shall be provided to counsel for the United States quarterly (*i.e.*, files created in calendar months January, February and March to be provided by April 30, and so on) throughout the duration of this Agreement and within 21 days of any written request for them.

18. Within 21 days of receipt of any written or oral complaint made to Genesis's Patient Experience department (*aka* customer service) or Corporate Integrity hotline related to any alleged violations of title III of the ADA arising from or relating to Genesis's (a) non-acceptance of a person as a patient for which Genesis must create a file under paragraph 16 above or (b) discharge of a patient from treatment other than at the conclusion of the treatment for which Genesis must create a file under paragraph 17 above, Genesis shall send written notification to counsel for the United States with a copy of any such written complaint (or, if an oral complaint was made in the manner described in this paragraph 18, a description of the oral complaint) and a complete copy of Genesis's response.
19. Within 30 days of the effective date of this Agreement, Genesis will submit a draft non-discrimination policy to the United States for its review and approval. The non-discrimination policy will state that it does not discriminate in the provision of services to persons with disabilities, including persons who have HIV or AIDS. The non-discrimination policy will also direct those with questions, concerns, or complaints about the provision of services to contact Genesis's Patient Experience department or Corporate Integrity hotline. Within 21 days of approval by the United States, Genesis will adopt and implement the non-discrimination policy, and Genesis will maintain and enforce the non-discrimination policy for the duration of this Agreement. Genesis will conspicuously post the non-discrimination policy in the reception area of each current and future Genesis hospital, outpatient health care center, and other medical facility in which Genesis has a controlling interest, and as a link on the company's main webpage or "homepage," currently located at <http://www.genesisihcs.org>, as well as on the homepage of any current or future Genesis website, for the duration of this Agreement.
20. Within 120 days of the date Genesis receives written approval by counsel for the United States under paragraph 23 of this Agreement, and in 2016 and 2017, Genesis will provide training on title III of the ADA to all Genesis employees and contractors who are involved with admissions or treatment of patients, including training about HIV/AIDS and discrimination in general. Genesis is required to provide the training required by this Agreement only to such contractors who on the effective date of this Agreement are under a contract by which Genesis may require compliance with this

training obligation. The format of such training may be provided by electronic means and must include an interactive component.

21. In addition, Genesis will ensure that all new employees and contractors who are involved with admissions or treatment of patients receive the training referenced in paragraph 20 as a component of new employee training and orientation through the duration of this Agreement. Genesis is required to provide the training required by this Agreement only to such contractors who on the effective date of this Agreement are under a contract by which Genesis may require compliance with this training obligation. Genesis will ensure that any new contracts executed with new contractors while this Agreement is in effect shall give Genesis authority to require all new contractors to comply with this training obligation. Genesis shall provide the training to such new employees and contractors within 45 days of their start date. The format of such training may be provided by electronic means and must include an interactive component.
22. Employees whose duties will involve the record-keeping provisions set forth in paragraphs 16 and 17 shall be trained on how to implement those provisions.
23. All training manuals or written or electronic materials dealing with Genesis's policies and practices used in the trainings required in paragraphs 20 and 21 or created or substantively revised after the effective date of this Agreement shall be consistent with the provisions of this Agreement, and approved in advance by counsel for the United States.
24. Genesis shall create and maintain a log that documents the name of each individual who participates in the trainings required in paragraphs 20 and 21, his or her title, and the date he or she participated in the training(s). This log may be kept in electronic format. Copies of such log shall be provided to the United States within 21 days of any written request for it.
25. Within the later of 30 days of the effective date of this Agreement and the date the Complainant provides Genesis with an IRS Form W-9, Genesis will pay \$25,000 to the Complainant to compensate her for the alleged harm she has endured (including, but not limited to, emotional distress, pain, and suffering) as a result of Genesis's failure to accept her as a new patient. Genesis will issue an IRS Form 1099 to Complainant for this payment. Genesis shall provide written notification to counsel for the United States, including a copy of the check, when it has completed the actions described in this paragraph.
26. Within 30 days of the effective date of this Agreement, Genesis will pay a civil penalty in the amount of \$9,000 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.

27. Genesis will notify the United States in writing when it has completed the actions described in paragraphs 19–22. This notification need only be provided when all of Genesis’s hospitals, employed physicians, outpatient health care centers, and other medical facilities in which Genesis has a controlling interest, have completed the action required in the relevant paragraph(s). Notification of Genesis’s completion of the training described in paragraph 21 will be provided to the United States on an annual basis within 60 days of the end of each calendar year covered by this Agreement. If any issues arise that affect the anticipated completion dates set forth in paragraphs 16–26, Genesis will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

OTHER PROVISIONS

28. In consideration for the Agreement set forth above, the United States will close its investigation of DJ # 202-58-112 and will not institute a civil action at this time alleging discrimination based on the findings set forth in paragraph 11. However, the United States may review Genesis’s compliance with this Agreement or title III of the ADA at any time. If the United States believes that title III of the ADA, this Agreement, or any portion of it has been violated, it may institute a civil action in the appropriate U.S. District Court to enforce this Agreement and/or title III of the ADA.
29. Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce any provision of this Agreement.
30. 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 Genesis 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.
31. This Agreement is binding on Genesis, including all principals, agents, executors, administrators, representatives, employees, and beneficiaries. In the event that Genesis seeks to sell, transfer, or assign substantially all of its assets or a controlling membership position in Genesis during the term of this Agreement, then, as a condition of such sale, transfer, or assignment, Genesis will obtain the written agreement of the successor, buyer, transferee, or assignee to all obligations remaining under this Agreement for the remaining term of this Agreement.
32. The signatory for Genesis represents that he or she is authorized to bind Genesis to this Agreement.
33. This Agreement constitutes the entire agreement between the United States and Genesis on the matters raised herein, and no prior or contemporaneous statement, promise, or

agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.

34. This Agreement does not constitute a finding by the United States that Genesis is in full compliance with the ADA. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of HIV or AIDS. Nothing in this Agreement relieves Genesis of its obligation to fully comply with the requirements of the ADA.
35. The paragraph headings in this Agreement are for convenience only and will not be deemed to affect in any way the language or meaning of the provisions to which they refer.
36. Genesis shall not discriminate or retaliate against any person because of his or her participation in this matter.

EFFECTIVE DATE/TERMINATION DATE

37. The effective date of this Agreement is the date of the last signature below.
38. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:




MATTHEW PERRY
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01/08/15

Date

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