

Settlement Agreement
Under the Americans with Disabilities Act of 1990
Between the United States of America and
St. Luke's Hospital and Health Network,
Department of Justice Complaint Number DJ 202-62-70

1. This action was initiated by a complaint filed with the United States Department of Justice ("the Department") against St. Luke's Hospital and Health Network. The complaint was investigated by the Department under the authority granted by section 308(b) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12188.
2. St. Luke's Hospital and Health Network is an acute care hospital system, operating primarily in the Eastern region of Pennsylvania.
3. To address the interests of the public and of the individual complainants, the United States, acting through the Attorney General, who has statutory authority to enforce titles II and III of the ADA, 42 U.S.C. §§ 12101 *et seq.*, investigated St. Luke's Hospital and Healthcare Network, hereinafter referred to as "St. Luke's" or "the Hospital."
4. The United States alleges that St. Luke's discriminated against persons who are deaf or hard of hearing or who have speech impairments as well as others associated with them by failing to provide them with the full and equal enjoyment of St. Luke's goods, services, programs, and activities, and by failing to provide appropriate auxiliary aids and services when necessary for effective communication.
5. The complainants in this matter are individuals who are deaf and who are individuals with disabilities within the meaning of the ADA, 42 U.S.C. § 12102(2) and its implementing regulation at 28 C.F.R. Part 36, and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (the "Rehabilitation Act") and its implementing regulation at 45 C.F.R. Part 84.
6. The Hospital is a "public accommodation" as defined in section 301(7)(e) of the ADA, 42 U.S.C. § 12181, and its implementing regulation, 28 C.F.R. § 36.104.
7. The Hospital receives Federal funds in the form of Medicaid and Medicare payments and is thus a federally assisted program within the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.
8. St. Luke's does not admit any liability or responsibility for the facts detailed in the complaint.

9. This Agreement defines the obligations under the ADA of St. Luke's with respect to:
- a. persons who are deaf or hard of hearing or who have speech impairments and who are:
 - i. patients of the Hospital ("Patients," see definition, below); or
 - ii. persons who will be consulted or would otherwise reasonably be expected to communicate with Hospital Personnel regarding health care issues of Patients ("Companions"), and
 - b. persons who are not deaf or hard of hearing and who do not have speech impairments and who are:
 - i. Patients with Companions who are deaf or hard of hearing or who have speech impairments;
 - ii. Companions of Patients who are deaf or hard of hearing or who have speech impairments; or
 - iii. associated with Companions who are deaf or hard of hearing or who have speech impairments.
10. Without conceding the allegations of the United States, or the possible defenses of St. Luke's, all parties agree that it is in their best interests to resolve this matter promptly and without protracted litigation.

11. The parties hereby agree to the following:

CERTAIN DEFINITIONS

12. The term "appropriate auxiliary aids and services" includes, but is not limited to: qualified sign language or oral interpreters, qualified note-takers, computer-assisted real time transcription services, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, and TTY's. 28 C.F.R. § 36.303.
13. The term "Patient" shall be broadly construed to include any individual who is seeking or receiving health care services from St. Luke's, including such services as the opportunity to donate blood, attend health education classes, discuss billing, etc.
14. The term "Hospital Personnel" shall mean: all employees and independent contractors with contracts to work on a substantially full-time basis for St. Luke's (or on a part-time basis exclusively for St. Luke's), including, without limitation, nurses, physicians, social workers, technicians, admitting personnel, security staff, therapists, and all volunteers, who have or are likely to have direct contact with Patients or Companions.

15. The term “Parties” shall mean: St. Luke’s Hospital and the United States, acting by and through the Department of Justice.
16. The term "qualified sign language interpreter," "oral interpreter," or "interpreter" shall mean: an interpreter who is able to interpret competently, accurately, and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication in a hospital setting to a Patient or a Companion who is deaf or hard of hearing or who has a speech impairment, given that individual’s language skills and history. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a "qualified sign language interpreter" under this Agreement. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone else signing and change his or her signed or fingerspelled communication into spoken words is not a qualified sign language interpreter. 28 C.F.R. § 36.104. Someone who is a qualified interpreter for a person who uses American Sign Language may not be a qualified interpreter for an individual who uses a different sign language, such as one based on Spanish rather than English. Likewise, an interpreter who knows tactile interpreting may be the only interpreter who is qualified to interpret for someone who is both deaf and blind.
17. The term "Standards" shall mean: the ADA Standards for Accessible Design, as set forth at 28 C.F.R. Part 36, App. A.
18. The term "TTY's" or "TDD's" shall mean: devices that are used with a telephone to communicate with persons who are deaf or hard of hearing or who have speech impairments by typing and reading communications.
19. The term “undue burden” shall mean: significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include:
 - a. The nature and cost of the action needed;
 - b. The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
 - c. The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
 - d. If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

- e. If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity. 28 C.F.R. § 36.104.

PROHIBITION OF DISCRIMINATION

- 20. Non-Discrimination. St. Luke's shall not deny its goods or services to anyone based on the fact that the person is deaf or hard of hearing or is associated with someone known to be deaf or hard of hearing.
- 21. Discrimination by Association. St. Luke's will not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of the person with someone who is deaf or hard of hearing or who has a speech impairment.
- 22. Retaliation and Coercion. St. Luke's agrees not to retaliate against or coerce in any way any person who is trying to exercise his or her rights under this Agreement or the ADA.

EFFECTIVE COMMUNICATION

GENERAL OBLIGATIONS

- 23. Establishment of Program to Provide Appropriate Auxiliary Aids and Services. Within 60 days of the effective date of this Agreement, St. Luke's Hospital will design and institute a program to effectively implement the provisions of this Agreement, including without limitation:
 - a. developing, coordinating, and overseeing the development of specific procedures to implement fully this Agreement;
 - b. scheduling, announcing, and promoting all training required by this Agreement;
 - c. coordinating the community outreach required by this Agreement; and
 - d. drafting, maintaining, and providing all reports required by this Agreement.
- 24. Simultaneously with the establishment of the program, St. Luke's shall designate one or more individuals ("Program Administrators"), who shall be available twenty-four (24) hours a day, seven (7) days a week, to answer questions and provide appropriate assistance regarding immediate access to and proper use of appropriate auxiliary aids and services required by this Agreement. Such Program Administrators shall know where the appropriate auxiliary aids are stored and how to operate them and will be responsible for their maintenance, repair, replacement, and distribution. St. Luke's will circulate broadly within the Hospital the names, telephone numbers, functions, and office locations of such Program Administrators, including a TTY telephone number that may be called by deaf or hard of hearing Patients and Companions in order to obtain the assistance of such Program

Administrators. Program Administrators will respond to telephone inquiries during normal business hours and maintain a recording system for inquiries received after normal business hours.

Provision of Appropriate Auxiliary Aids and Services
Under the Program

25. Immediate Aids and Services. Within sixty (60) days of the effective date of this Agreement, St. Luke's shall provide, to Patients and Companions who are deaf or hard of hearing or who have speech impairments, whichever of the following auxiliary aids and services (singly or in combination) may be necessary for effective communication, as soon as practicable after making such determination:
- written materials,
 - qualified, trained note-takers,
 - assistive listening devices and systems, and
 - computer-assisted real time transcription services.
26. Additional Appropriate Aids and Services. St. Luke's shall provide sign language and oral interpreters and technology when and as specified below.
27. Assessment. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration and frequency with which they will be provided, shall be made by hospital Personnel who are otherwise primarily responsible for coordinating and/or providing patient care services, in consultation with the person with a disability where possible. The assessment will take into account all relevant facts and circumstances, including without limitation the nature, length, and importance of the communication at issue, the individual's communication skills and knowledge, the Patient's health status or changes thereto, the reasonably foreseeable health care activities of the Patient (e.g., group therapy sessions, medical tests or procedures, rehabilitation services, meetings with health care professionals or social workers, or discussions concerning billing, insurance, self-care, prognoses, diagnoses, history and discharge), and the availability at the required times, day or night, of appropriate auxiliary aids and services.
28. Initial Assessment. The initial assessment will be made at the time an appointment is scheduled or on the arrival of the Patient or Companion at the Hospital, whichever is earlier. Hospital Personnel will perform and document a communication assessment as part of each initial inpatient assessment required by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"). Completion of communication assessments will be documented in the Patient's record. St. Luke's may use, but is not required to use, the Model Communication Assessment Form provided as Exhibit 1 to this Agreement.
29. Ongoing Assessments. If a Patient or a Companion who is deaf or hard of hearing or who has a speech impairment has an ongoing relationship with St. Luke's, the provision of appropriate auxiliary aids or services will be reconsidered as part of each routine assessment of an inpatient, or on a regular basis with respect to other Patients and

Companions. Hospital Personnel shall keep appropriate records that reflect the ongoing assessments, such as notations in Patients' records.

30. Medical Concerns. Nothing in this Agreement shall require that an electronic device or equipment constituting an appropriate auxiliary aid be used when or where its use may interfere with medical or monitoring equipment or may otherwise constitute a threat to a Patient's medical condition.
31. Complaint Resolution. St. Luke's will maintain an effective complaint resolution mechanism regarding use of the Program by Patients and Companions and will maintain records of all complaints filed and actions taken with respect thereto.
32. Prohibition of Surcharges. All appropriate auxiliary aids and services required by this Agreement will be provided free of charge to the Patient or Companion who is deaf or hard of hearing or who has a speech impairment, or other individuals associated with them.
33. Individual Notice In Absence of Request. If a Patient or a Companion who is deaf or hard of hearing or who has a speech impairment does not request appropriate auxiliary aids or services but Hospital Personnel have reason to believe that such person would benefit from appropriate auxiliary aids or services for effective communication, the Hospital will specifically inform the person that appropriate auxiliary aids and services are available free of charge.
34. Communication with Inpatients and Companions. St. Luke's will take appropriate steps to ensure that all Hospital Personnel having contact with a Patient or Companion who is deaf or hard of hearing or who has a speech impairment are made aware of such person's disability so that effective communication with such person will be achieved.
35. Circumstances Under Which Sign Language and Oral Interpreters Will Be Provided. St. Luke's shall provide qualified sign language interpreters to Patients and Companions who are deaf or hard of hearing or who have speech impairments and whose primary means of communication is sign language, and qualified oral interpreters to such Patients and Companions who rely primarily on lip reading, as necessary for effective communication. The determination of when such interpreters shall be provided to Patients or Companions shall be made as set forth in Paragraph 27 (Assessment), above. The following are examples of circumstances when it may be necessary to provide interpreters:
 - determination of a Patient's medical history or description of ailment or injury;
 - provision of Patients' rights, informed consent or permission for treatment;
 - religious services and spiritual counseling;
 - explanation of living wills or powers of attorney (or their availability);

- diagnosis or prognosis of ailments or injuries;
- explanation of procedures, tests, treatment, treatment options, or surgery;
- explanation of medications prescribed (such as dosage, instructions for how and when the medication is to be taken, and side effects or food or drug interactions);
- explanation regarding follow-up treatments, therapies, test results or recovery;
- blood donations or apheresis;
- discharge instructions;
- provision of mental health evaluations, group and individual therapy, counseling, and other therapeutic activities, including grief counseling and crisis intervention;
- explanation of complex billing or insurance issues that may arise; and
- educational presentations, such as classes concerning birthing, nutrition, CPR, and weight management.

The foregoing list of circumstances is neither exhaustive nor mandatory, and shall not imply that there are not other circumstances when it may be appropriate to provide interpreters for effective communication nor that an interpreter must always be provided in these circumstances.

36. Chosen Method for Obtaining Interpreters. Within thirty (30) days of the effective date of this Agreement, the Hospital shall provide to the United States a signed copy of a contract into which it has entered with one or more reputable interpreter(s) and/or interpreter agency(ies) to provide qualified sign language and oral interpreters at the request of the Hospital. Each such contract, at a minimum, will require the interpreter or agency to maintain a response time of one (1) hour or less (with a fifteen (15) minute grace period, when needed) in at least eighty (80) percent of non-scheduled incidents within any six (6) month period (excluding any incident when the assessment calls for an interpreter to be provided at a later time), measured from the time beginning fifteen (15) minutes after it is determined that an interpreter is necessary for effective communication with a Patient or Companion who is deaf or hard of hearing or who has a speech impairment; provided, however, during the first year this Agreement is in effect, each such contract may allow a response time of no more than two (2) hours in those circumstances where the interpreter or the only available interpreter from an agency is performing interpreter services elsewhere at the time of the request.
- a. Each such contract, at a minimum, will require a response time of two (2) hours or less in 100% of non-scheduled incidents.

- b. Each such contract may provide that the foregoing response times are subject to “force majeure” events, i.e., any response time that is delayed because of a force majeure event shall be excluded from the determination whether the prescribed response criteria have been met. Force majeure events shall be events outside the reasonable control of the Hospital, the agency, or the interpreter called to respond, such as weather problems and other Acts of God, unanticipated illness or injury of the interpreter, and unanticipated transportation problems (including without limitation mechanical failure of the interpreter’s automobile, automobile accidents, and roadway obstructions).
 - c. Notwithstanding anything above to the contrary, during the first year this Agreement is in effect, the Hospital shall make all reasonable attempts to provide a qualified interpreter within one (1) hour of the determination that interpreting services are needed. In order to satisfy this provision, the Hospital, at a minimum, must undertake the action specified in Paragraph 41 below in an effort to obtain qualified interpreter services within one (1) hour of the determination that interpreting services are needed.
 - d. Within thirty (30) days prior to the end of the first year this Agreement is in effect, the Hospital and DOJ shall negotiate reasonably and in good faith, based on the facts then known, whether the grace period provided above should be eliminated, shortened or extended, and this Agreement shall be amended accordingly. In the event the Hospital is unable to obtain one (1) or more reputable interpreter(s) and/or interpreter agency(ies) willing to contract with it after the first year of this Agreement for the response times set forth above, despite the Hospital’s good faith efforts, the Hospital shall not be deemed to be in breach of this Paragraph 36 and shall be entitled to request the consent of DOJ to such modifications of such performance standards as may be reasonable under the circumstances. DOJ shall consider any such request reasonably and in good faith, and any such modification that is agreed to shall be deemed an amendment to this Agreement.
 - e. Should the Hospital elect to participate in the pilot study sponsored by the Deaf-Hearing Communications Centre, Inc. (“DHCC”) of Holmes, Pennsylvania, for the provision of Video Interpreting Services (“VIS”), and/or contract with DHCC or any other agency for VIS, said VIS shall be deemed to satisfy the Hospital’s obligation under this Paragraph 36 to have a contract for the response times set forth above with one (1) or more reputable interpreter(s) and/or interpreter agency(ies).
37. Free-Lance Interpreters. Within thirty (30) days of the effective date of this Agreement, St. Luke’s will compile and maintain as current a list of all known free-lance sign language and oral interpreters who reside within 15 miles of the Hospital.
38. Notice to Patients and Companions Who are Deaf or Hard of Hearing or Who Have Speech Impairments. As soon as Hospital Personnel have determined that an interpreter is necessary for effective communication with a Patient or a Companion who is deaf or hard

of hearing or who has a speech impairment, and one hour later, the Hospital will inform such person (or a family member or friend, if such person is not available) of the current status of efforts being taken to secure the appropriate auxiliary aids and services on his or her behalf. Additional updates shall be provided thereafter as necessary until such aids and services are secured.

39. Other Means of Communication. St. Luke's agrees that between the time an interpreter is requested and when an interpreter arrives, Hospital Personnel will continue to try to communicate with the Patient or Companion who is deaf or hard of hearing or who has a speech impairment for such purposes and to the same extent as they would have communicated with the person but for the hearing impairment, using all available methods of communication. This provision in no way lessens St. Luke's obligation to provide qualified interpreters in a timely manner as required by this Agreement.
40. Restricted Use of Certain Persons to Facilitate Communication. Due to confidentiality, potential emotional involvement, and other factors that may adversely affect the ability to facilitate communication, St. Luke's shall never require or coerce a family member, companion, case manager, advocate, or friend of a Patient or Companion who is deaf or hard of hearing or who has a speech impairment to interpret or facilitate communications between Hospital Personnel and such Patient or Companion. In any case, such person shall be used to interpret or facilitate communication only if the Patient or Companion who is deaf or hard of hearing or who has a speech impairment does not object, if such person wishes to provide such assistance, and if such use is necessary or appropriate under the circumstances, giving appropriate consideration to any privacy issues that may arise.
41. Procedures for Obtaining Interpreters. Beginning 30 days after the effective date of this Agreement, St. Luke's shall take the following steps, in order, when it receives notice that a Patient or Companion requires sign language or oral interpreters for effective communication, with regard to a non-scheduled incident, until a qualified interpreter is secured or the steps have been exhausted:
 - a. request an interpreter (he or she must be *qualified* to interpret for the specific individual who will be using the services) from each of the interpreters or agencies with whom St. Luke's has an ongoing contract for qualified sign language or oral interpreter services;
 - b. exert reasonable efforts (which shall be deemed to require no fewer than five (5) telephone inquiries) to contact any free-lance interpreters or other interpreting agencies already known to St. Luke's and request their services; and
 - c. inform the Patient or Companion who is deaf or hard of hearing or who has a speech impairment (or, if unavailable, the person's companions) of the efforts taken to secure a qualified interpreter and that the efforts have failed, and follow up on reasonable suggestions for alternate sources of interpreters, such as contacting an interpreter known to that person.

42. Staff Interpreters. A Hospital may, but shall have no obligation to, satisfy its obligations under this Agreement by hiring or otherwise contracting with qualified staff interpreters. Staff interpreters must meet the definition of "qualified interpreters." Patients and Companions who are provided with staff interpreters must have the same level of coverage (for both duration and frequency) as St. Luke's is otherwise obligated to provide under this Agreement. St. Luke's may assign other duties to staff interpreters. To the extent that St. Luke's does not have staff interpreters or a staff interpreter is not available when needed, the Hospital will follow the procedures set forth above to obtain the services of qualified interpreters.

TECHNOLOGY

Telephones and Related Equipment

43. Public Telephones. As soon as practicable but no later than ninety (90) days after the effective date of this Agreement, St. Luke's will provide the following:
- a. TTY's in public areas. St. Luke's will make a TTY device available wherever a telephone is made available to the public (whether public pay telephone, public closed circuit telephone, or otherwise). To satisfy this provision, St. Luke's can permanently install the required TTY's or make available a sufficient number of portable TTY's. Standards §§ 4.1, 4.31.9. Each such TTY, whether permanently installed or portable, shall comply with the Standards set forth in Schedule A, attached.
 - b. TTY's required in specific locations. St. Luke's will provide a TTY at each public telephone location in or adjacent to an emergency department, recovery room, or waiting room. Standards §§ 4.1, 4.31.9. To satisfy this provision, St. Luke's can permanently install the required TTY's or make available a sufficient number of portable TTY's. Each such TTY, whether permanently installed or portable, shall comply with the Standards set forth in Schedule A.
 - c. Shelves and outlets. Wherever portable TTY's are made available as an alternative to installed TTY's (at emergency departments, recovery rooms, and waiting rooms, and where there are banks of four or more public telephones), and wherever there is a bank of three or more public telephones, St. Luke's will provide shelves and electrical outlets that comply with the Standards set forth in Schedule A.
 - d. Signs indicating the location of TTY's.
 - i. Wherever public telephones are available but TTY's are not permanently installed, St. Luke's will post signs complying with the Standards set forth in Schedule A. Such signs will indicate the location of the nearest portable or permanently installed TTY's; and

- ii. Wherever TTY's are permanently installed, St. Luke's will post signs complying with the Standards set forth in Schedule A to indicate their location.
 - e. Volume control telephones. St. Luke's will ensure that no less than twenty-five (25) percent of all public telephones are equipped with volume control mechanisms, plus at least one public telephone at each of the following locations: in or adjacent to emergency departments, recovery rooms, and waiting rooms. Each volume control telephone shall comply with the Standards set forth in Schedule A. St. Luke's will ensure that volume control phones are dispersed among all public telephones throughout the Hospital. St. Luke's will ensure that signs complying with the Standards set forth in Schedule A are displayed at each volume control telephone.
 - f. Storage and availability of equipment. Portable equipment for use in public areas shall be stored in places that are readily accessible to all Hospital Personnel who have client contact at all times of the day and night. All Hospital Personnel will be notified of the storage location that is closest to their work area(s). The equipment is to be stored at the appropriate supervised location (e.g., nurses' station, admission desk, etc.) closest to the public phone for which the equipment is to be made available. Such equipment shall be made available to Patients or Companions who are deaf or hard of hearing or who have speech impairments as soon as practicable but no more than ten (10) minutes from the time of the person's request.
44. Telephones in Patient Rooms. Within ninety (90) days of the effective date of this Agreement:
- a. Portable access technology - defined. St. Luke's will make available portable access technology. Such technology, as referred to in this section, shall include TTY's with printout capability, visual notification devices for incoming telephone calls, volume control telephones, and telephones that are hearing aid compatible. St. Luke's shall ensure that each volume control telephone and each visual notification device for incoming telephone calls complies with the Standards set forth in Schedule A hereto.
 - b. Portable access technology - general obligation. Each Hospital will make portable access technology available to Patients and Companions who are deaf or hard of hearing or who have speech impairments and who are admitted to (or are accompanying Patients who are admitted to) rooms equipped with a telephone. In units of St. Luke's where patients normally do not have telephones in their rooms, if hearing patients are given access to common area telephones other than the public phones identified in this Agreement, St. Luke's will maintain in each such unit appropriate portable access technology that can be used by Patients and Companions who are deaf or hard of hearing or who have speech impairments so that such persons have equal access to make outgoing calls and receive incoming calls as do hearing persons.

- c. Timeliness. Within ninety (90) days of the effective date of this Agreement, St. Luke's will make the equipment required by this section available within thirty (30) minutes of a Patient's arrival in a patient room, regardless of the hour of the day or night. St. Luke's will notify all relevant Hospital Personnel of the availability and location of this equipment.

Captioning and Decoders

- 45. Televisions and Caption Decoders. Within thirty (30) days of the effective date of this Agreement, St. Luke's will develop a policy to ensure that Patients and Companions with hearing impairments have priority use of televisions with closed captioning capabilities. 28 C.F.R. § 36.303(e).
 - a. Clearly stated directions for use of the closed caption capability shall be added to the Patient Guide or otherwise made available in each patient room or public area containing a television with captioning capability. The directions for operating the closed caption function shall also accompany all closed caption decoders for standard television sets.

- 46. Duty to Provide Visual Programs in a Manner That is Accessible to Persons With Hearing Impairments.
 - a. It is expressly agreed that St. Luke's does not have an obligation to provide captions on any program broadcast over the public airways or commercial cable television services, where such captions are not already integrated into the program.

 - b. Beginning no later than ninety (90) days from the effective date of this Agreement, if the Hospital solicits a third party, parent company, or affiliated health care provider to produce or provide video programs that may be broadcast within the Hospital to Patients or Companions who are deaf or hard of hearing, the Hospital will ensure that the program is captioned, unless, under the circumstances, doing so would impose an undue burden. 28 C.F.R. § 36.303. Commercial videos available to the general public shall not be subject to this requirement.

 - c. Beginning no later than ninety (90) days from the effective date of this Agreement, if St. Luke's produces internally a pre-recorded program for broadcast within the Hospital, St. Luke's will ensure that the program is made accessible to Patients and Companions who are deaf or hard of hearing, whether by captioning such program or by providing a transcript or sign language interpreter whenever it is viewed by a Patient or Companion who is deaf or hard of hearing. If the program is not captioned, the method of access delivery must be tailored to the needs of the Patient or Companion who is deaf or hard of hearing. For instance, if the person does not know sign language, St. Luke's may provide effective communication through a transcript. In most circumstances, captioning will be regarded as providing effective communication with all persons who are deaf or hard of

hearing, regardless of the communication skills and history of such persons (though repeated screenings may be necessary, if the person who is deaf or hard of hearing cannot read English at the rate required to keep pace with the audible portion of the program). If, however, the contents of a program are sufficiently important to require precise communication of its contents, St. Luke's will take additional measures to ensure effective communication.

- d. Beginning no later than ninety (90) days from the effective date of this Agreement, if St. Luke's produces its own live broadcasts, it will make the majority of such programs accessible to Patients and Companions who are deaf or hard of hearing. Captioning is one way, but not the only way, to accomplish this objective. St. Luke's can also choose to provide sign language interpreters (if the person who is deaf or hard of hearing uses sign language) or written scripts prepared in advance of the live broadcast. In order to determine which programs should be captioned, St. Luke's may prioritize and consider such factors as the importance and length of the program, as well as any significant difficulty or expense in captioning the program or displaying the captions, given the location of its filming or viewing.

Miscellaneous Technology Provisions

47. Client Education. St. Luke's shall ensure that each Patient and Companion who is deaf or hard of hearing or who has a speech impairment who is provided with portable access technology is appropriately directed as to the proper use of such equipment.
48. Acquisition of Additional Equipment. In addition to the equipment required above, the Hospital shall purchase and/or rent such additional equipment as is reasonably needed to replace defective units. The Hospital shall also monitor developments in technology and shall upgrade such equipment when and if it deems it reasonable and appropriate to do so.

NOTICE TO COMMUNITY

49. Policy Statement. Within thirty (30) days of the effective date of this Agreement, St. Luke's shall add the following statement to the signs it has posted throughout the emergency room and admitting areas notifying persons with difficulty hearing or speaking to ask a staff member for help:

Sign language and oral interpreters, TTY's, assistive listening devices, and other auxiliary aids and services are available free of charge to people who need them for effective communication. For assistance, please contact any Hospital personnel or the Program Office at _____ (voice/TTY), room _____.
50. Advertisements. Within ninety (90) days of the effective date of this Agreement, St. Luke's will take appropriate steps to publicize in the community the Hospital's commitment to provide all of its services to Patients and Companions who are deaf or hard of hearing or who have speech impairments. Such publicity shall be deemed satisfied by the purchase of reasonable advertising space at least twice in newspapers of general

circulation serving the same community as is served by the Hospital, which advertisements will include a statement that all appropriate auxiliary aids and services, including qualified sign language interpreters, TTY's, and assistive listening devices, will be provided free of charge upon request, and include appropriate instructions regarding access to the Program Office at the Hospital. Annually thereafter, St. Luke's shall take reasonable steps to publicize the existence of the Program to the deaf and hard of hearing community.

51. Patient Guide. St. Luke's will include in all future printings of its Patient Guide (or equivalent) and all similar publications a statement to the following effect:

"To ensure effective communication with Patients and their companions who are deaf or hard of hearing or who have speech impairments, we provide appropriate auxiliary aids and services free of charge, such as: sign language and oral interpreters, TTY's, note-takers, computer-assisted real time transcription services, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders, and open and closed captioning of most Hospital programs.

Please ask your nurse or other Hospital personnel for assistance, or contact the Program Office at _____ (voice or TTY), room _____."

52. Notice to Hospital Personnel and Physicians. St. Luke's shall ensure that its Administrative Policies and Procedures No. 2.71, dated November 30, 1999, is distributed to all Hospital Personnel and affiliated physicians (physicians with practicing or admitting privileges) within thirty (30) days of the effective date of this Agreement, and shall ensure that it is distributed to all new Hospital Personnel and newly affiliated physicians upon their employment or affiliation with St. Luke's.

TRAINING OF HOSPITAL PERSONNEL

53. Comprehensive Training. Within ninety (90) days of the date of this Agreement, St. Luke's will provide one or more training sessions for Hospital Personnel, affiliated physicians, and others associated with St. Luke's. These training sessions can be offered to other hospitals' personnel.
54. Content of Comprehensive Training. Such training shall be sufficient in duration and content to train a reasonable number of Hospital Personnel in access to the Program, use of the Program, and sensitivity to the needs of the deaf community. Such training shall include topics relevant to the health care needs of people who are deaf or hard of hearing or who have speech impairments, such as the various degrees of hearing and speech impairment, language and cultural diversity in the deaf community, myths and misconceptions about persons who are deaf, hard-of-hearing, or who have speech impairments, identification of communication needs of persons who are deaf or who have speech or hearing impairments, the unique needs and problems encountered by late-deafened individuals, psychological implications of deafness and its relationship to interaction with hearing health care professionals, recommended and required charting

procedures, types of auxiliary aids and services as required under this Agreement,¹ the proper use and role of qualified sign language interpreters, procedures and methods for accessing sign language and oral interpreter agencies and free-lance interpreters, the existence in St. Luke's of a Program Office and Program Administrators, making and receiving calls through TTY's and through telephone relay service providers, third party resources that can provide additional information about people who are deaf or hard of hearing or who have speech impairments, the existence of the Hospital's complaint resolution process, and any other requirements of this Agreement applicable to such Hospital Personnel.

55. St. Luke's will make this training mandatory for the following categories of Hospital Personnel:
 - a. All personnel who work or volunteer in the Program Office;
 - b. All Program Administrators; and
 - c. All persons who will be responsible for training other Hospital Personnel concerning the Program.
56. St. Luke's may choose to discharge its training obligation by requiring appropriate personnel to view a videotape that covers the training topics required by this Agreement for that audience.
57. Emergency Department Personnel. St. Luke's will provide special mandatory in-service² training to Hospital Personnel with patient responsibility who work or volunteer in the Emergency Department that addresses the special needs of deaf and hard of hearing Patients and Companions or those with speech impairments who utilize that department. In addition to the subjects specified in Paragraph 54, above, this training will include the following objectives: to promptly identify communication needs and preferences of persons who are deaf or hard of hearing or who have speech impairments and to secure qualified interpreter services as quickly as possible when necessary. Such training shall be

¹Such training shall include instruction regarding how to communicate in writing with persons who are deaf or hard of hearing or who have speech impairments. For example, depending on the written communication skills of the person, it may be necessary to write in complete sentences, use legible handwriting, use special efforts to make the communication as thorough, precise, and dignified as oral communication with others would be, and refrain from using abbreviations or medical symbols (e.g., arrows instead of "increase" or "decrease" or mathematical symbols for "less than" or "greater than").

² In-service" for purposes of this Agreement shall include, without limitation, such means of training or familiarization of Hospital Personnel as are customarily utilized by St. Luke's including, without limitation, written policies and procedures, videotapes, training materials, training sessions, seminars, conferences and the like.

provided within sixty (60) days of the effective date of this Agreement and annually thereafter.

58. Psychiatric Personnel and Social Workers. St. Luke's will provide specialized mandatory in-service training to Hospital Personnel with patient responsibility who work in the Department of Psychiatry (or its equivalent, if any) or are members of the Social Work Department (or its equivalent). In addition to the subjects specified in Paragraph 54, above, this training will include the following objectives: to promptly identify communication needs and preferences of Patients and Companions who are deaf or hard of hearing or who have speech impairments; to secure qualified interpreter services as quickly as possible when necessary; and to facilitate appropriate interaction between Patients who are deaf or hard of hearing or who have speech impairments and other Patients, when appropriate (e.g., group therapy sessions and other times when interaction with persons other than Hospital Personnel is encouraged). Such training shall be provided within sixty (60) days of the effective date of this Agreement and annually thereafter.
59. Other Key Personnel. Special training will be given to the following Hospital Personnel not otherwise trained as provided above: all clinical directors and nursing supervisors; personnel who staff the Admission desk (or its equivalent for in-patient registration), the Central Registry desk (or its equivalent for out-patient registration), and the General Information desk; all triage nurses and other triage professionals; and all heads of each department in which communication with Patients occurs. Such training will cover all of the subject matters listed above in Paragraph 54. Such training shall be provided within sixty (60) days of the effective date of this Agreement and annually thereafter.
60. Operators. All Hospital Personnel who receive incoming telephone calls from the public will receive special instructions on using TTY's and the telephone relay service to make and receive calls to and from persons using TTY's.
61. Training Sessions for Affiliated Physicians. St. Luke's will annually conduct one or more training sessions on the communication and psychological needs of persons who are deaf or hard of hearing or who have speech impairments and will invite all physicians who are affiliated in any way with the Hospital (admitting or surgical privileges, etc.) to attend. Training videotapes that contain substantially similar information shall also be provided to any affiliated physician upon request.
62. Written materials Distributed to Affiliated Physicians. Within ninety (90) days of the effective date of this Agreement, St. Luke's will distribute a set of materials to all affiliated physicians. These materials will contain at least the following: the Hospital's policy statement and any relevant forms; a description of the Program; and a request that physicians' staff members notify the Hospital of those Patients and Companions who are deaf or hard of hearing or who have speech impairments as soon as they schedule admissions, tests, surgeries, or other health care services at the Hospital.

63. Education for Others. St. Luke's will develop and implement an internal program that will provide appropriate training to all Hospital Personnel not trained under the preceding sections. This training will take place at such times as may be necessary to permit the Hospital to meet all of its obligations under this Agreement.
64. General Training Provisions. St. Luke's will provide the training specified above to new Hospital Personnel (including, without limitation, Emergency Department and Psychiatric and Social Work personnel) within a reasonable time after the commencement of their services for the Hospital. Such training shall be comparable to training provided to specific departments as necessary. A screening of a video of the original training will suffice to meet this obligation.

REPORTING, MONITORING AND VIOLATIONS

65. St. Luke's will keep appropriate records to document response times for each request for interpreters, CART, and assistive listening devices. St. Luke's shall provide such documentation to the Department upon reasonable written notice.
66. Hospital Compliance Reports. Three (3), nine (9), fifteen (15), and twenty-one (21) months following the effective date of this Agreement, and annually thereafter, the Hospital shall provide a written report (a "Report") to the Department regarding its efforts to comply with this Agreement. Each Report shall take the form of, or provide similar information to, the sample report attached hereto as Exhibit 2. The Hospital shall make the most recent three Reports available for public inspection in the Program Office. The Hospital shall maintain appropriate records to document the information contained in the Report.
67. Right of Compliance Review. During the term of this Agreement, the United States may, from time to time, upon reasonable advance notice to St. Luke's Program Office, inspect the Hospital premises and review the Hospital's compliance with this Agreement. As a part of such review, the United States may, with reasonable notice and in a reasonable manner that protects patient confidentiality rights and avoids interfering with patient care and other hospital services, require St. Luke's to permit the United States to interview Hospital Personnel, Patients and Companions who are deaf or hard of hearing or who have speech impairments or others associated with them, and other persons with knowledge relating to implementation of this Agreement, to the extent reasonably necessary to determine whether St. Luke's is complying with the provisions of this Agreement. St. Luke's will retain during the life of this Agreement all records required to be maintained by this Agreement. St. Luke's will produce such records for the purpose of photocopying if and when requested by the United States, unless doing so would unduly burden or disrupt the Hospital's normal business operations, in which case the Hospital will identify the burdens or disruptions and make a good faith effort to cooperate with the

United States to ameliorate those disruptions or burdens while allowing the United States appropriate access to the records. No such records shall be produced in violation of applicable law or without any legally required consents, and any records containing confidential information that are produced shall be kept confidential by the United States. Nothing herein is intended to, nor shall, limit, extend or expand the investigatory or compliance review powers of the United States otherwise provided by law.

Violation of Agreement

68. If St. Luke's Hospital violates this Agreement or any subpart of this Agreement, the United States shall have all such remedies as are allowed under the ADA and the Rehabilitation Act. Any such violation by St. Luke's shall be deemed a second violation of the ADA for the purpose of calculating civil penalties, if any.
69. Notwithstanding the provisions of paragraph 68, above, in the event that the United States believes that St. Luke's Hospital has violated any provision of this Agreement, it shall give notice (including reasonable particulars) of such violation to St. Luke's chief executive officer, and St. Luke's Hospital shall then respond to such notice and/or cure such non-compliance as soon as practicable but no later than 30 days thereafter. Any event of non-compliance that prevents or restricts a Patient from receiving urgent health care services shall be cured without delay. The Parties shall negotiate in good faith in an attempt to resolve any dispute relating thereto before seeking relief under paragraph 68, above, but the United States may seek damages and civil penalties for any breach of this Agreement that has resulted in discrimination or injury to a particular person.
70. Compensatory and Injunctive Relief for Complainants. Within ten (10) days of the effective date of this Agreement, the Hospital will send by certified mail, return receipt requested, a certified check to the individual complainants in the amount of \$500.00. The check is compensation for alleged discrimination against the complainants. Simultaneous with the mailing of the check, the Hospital will provide to the Department of Justice a copy of the check for its records.

RELEASES

71. Warranty by the United States. The Department warrants that: (1) as of the date on which it signed this Agreement, it is not aware of any other person who may have a basis for a claim against St. Luke's based on an alleged failure to provide effective communication to a Patient or Companion, and (2) it will not seek additional damages on behalf of any person who has, or who may have, the basis for a claim against St. Luke's that is based on an alleged failure to provide effective communication to a Patient or Companion, if the discrimination is alleged to have taken place prior to the effective date of this Agreement, or thereafter with respect to acts or omissions of St. Luke's that do not violate this Agreement. Except as otherwise provided in this Agreement, these warranties

do not extend to future acts of discrimination or retaliation, or subjects not covered by this Agreement.

72. Any and all claims, proceedings, and causes of action for damages, penalties, attorneys fees, interest, costs, declaratory, injunctive or other relief arising out of the transaction or series of transactions that gave rise to this Agreement and not expressly provided for by this Agreement are released.

MISCELLANEOUS PROVISIONS

73. Disclaimer of Liability. Nothing in this Agreement shall be construed as an admission by St. Luke's Hospital and Health Network of any liability or fault, that they engaged in any wrongful or illegal activity, that any of the United States' allegations are true, or that any person suffered any injury as a result of the events as alleged by the United States. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other tribunal as an admission or concession of liability or wrongdoing of any nature on the part of St. Luke's Hospital and Health Network, except in an action challenging St. Luke's Hospital and Health Network's compliance with this Agreement.
74. Term of the Agreement. This Agreement shall remain in effect for five (5) years, after which time its provisions shall automatically terminate.
75. Effective Date. The effective date of this Agreement shall be the date of the last signature, below.
76. Execution of Agreement. The undersigned counsel represent that they have been fully authorized by their clients to enter into and execute this Agreement under the terms and conditions contained herein.
77. Public Agreement. This Agreement, along with its exhibits, constitutes a public agreement, and a copy of the Agreement, or any information concerning its contents (except where privileged or confidential by law), may be made available to any person.
78. Changing Circumstances. During the five (5) years in which this Agreement will be in effect, there may be a change in circumstances, such as, for example and without limitation, an increased or decreased availability of qualified sign language or oral interpreters or developments in technology to assist or improve communications with persons who are deaf or hard of hearing or who have speech impairments. If St. Luke's determines that such changes create opportunities for communicating with Patients and Companions who are deaf or hard of hearing or who have speech impairments more efficiently or effectively than is required under this Agreement, or create difficulties not presently contemplated in the provision of appropriate auxiliary aids and services, it may seek approval to modify this Agreement by presenting written notice to the Department,

which approval will not be unreasonably withheld. All Parties shall negotiate in good faith prior to modification of this Agreement.

79. 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.
80. 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 other instances or provisions.
81. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
82. Compliance. While St. Luke's performs its obligations under this Agreement it shall be deemed by all Parties to have fulfilled its obligations under the ADA and the Rehabilitation Act regarding communication with Patients and Companions who are deaf or hard of hearing or who have speech impairments, for purposes of any remedy that may be available to the Parties for any alleged violation of such obligations by such Hospital.
83. Severability. In the event that a Court shall determine that any provision of this Agreement is unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain valid and enforceable, provided, however, that if the severance of any such provision shall materially alter the rights or obligations of the Parties hereunder, they shall, through reasonable, good faith negotiations, agree upon such other amendments hereto as may

be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

The undersigned AGREE and CONSENT to the form and content of this Agreement:

For The United States of America

By: _____ Date: _____

Ralph F. Boyd, Jr., Assistant Attorney General
John L. Wodatch, Section Chief
Susan Reilly, Deputy Chief
Naomi Milton, Supervisory Attorney
Susan G. Quim, Investigator
U.S. Department of Justice
Civil Rights Division
Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738
(202) 307-0663 (voice/ TTY)

For St. Luke's Hospital and Health Network

By: _____ Date: _____

INDEX OF SCHEDULES and EXHIBITS

Schedules

- A. Certain TTY and Telephone Standards

Exhibits

- 1. Model Communication Assessment Form
- 2. Compliance Report

SCHEDULE A

I. TTY's in Public Areas and Specific Locations

- A. If an acoustic coupler is used for a permanently affixed TTY, the telephone cord shall be sufficiently long to allow connection of the TTY and the telephone receiver.
- B. If an acoustic coupler is used for a portable TTY, the telephone handset cord shall be sufficiently long so as to allow connection of the TTY and the telephone receiver.

II. Shelves and Outlets

- A. Telephones designed to accommodate a portable TTY shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of being placed flush on the surface of the shelf. The shelf shall be capable of accommodating a TTY and shall have 6 in (152 mm) minimum vertical clearance in the area where the TTY is to be placed.

III. Signs Indicating Location of TTY's

- A. TTY's shall be identified by the international TTY/TDD symbol.
- B. At all public telephone locations, signs posted to indicate the availability of permanently affixed TTY's and signs which provide direction to or information about the location of TTY's shall satisfy the following requirements:
 - 1. Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.
 - 2. Character Height. Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. If a sign is to be suspended overhead, the minimum height shall be 3 inches (or 75 mm), as measured using an upper case X. Lower case characters are permitted.
 - 3. Finish and Contrast. The characters and background of signs shall be eggshell, matte, or other non-glare finish. Characters and symbols shall contrast with their background - either light characters on a dark background or dark characters on a light background.

4. Mounting Height and Location. Mounting height shall be 60 in (1525 mm) above the finish floor to the centerline of the sign. Mounting location for such signage shall be so that a person may approach within 3 in (76 mm) of signage without encountering protruding objects or standing within the swing of a door.

IV. Volume Control

- A. Telephones required to have a volume control shall be identified by a sign containing a depiction of a telephone handset with radiating sound waves. These signs shall comply with the requirements set forth in Section III.B., above.
- B. Public area and patient room telephones required to have a volume control shall be capable of a minimum of 12 dbA and a maximum of 18 dbA above normal volume. If an automatic reset is provided then 18 dbA may be exceeded.

Exhibit 1
Model Communication Assessment Form

_____ am/pm
Date **Time**

Name of Person with Disability **Patient's Name**
(deaf, hard of hearing, or speech impairment)

Nature of Disability:

- Deaf
- Hard of Hearing
- Speech Impairment
- Other: _____

Relationship to Patient:

- Self
- Family Member
- Friend / Companion
- Other: _____

Do you want a professional sign language or oral interpreter?

- No.** I do not use sign language and do not use interpreters to lip read.
- No.** I prefer to have family members/ friends help with communication.
- Yes.** Choose one (free of charge):
 - American Sign Language (ASL) in terpreter
 - Pidgeon Sign ed English interpreter
 - Signed En glish in terpreter
 - Oral in terpreter
 - Other. Explain: _____

Which of the following would be helpful for you? (free of charge)

- TTY/TDD (text telephone)
- Assistive listening device (sound amplifier)
- Qualified note-takers
- Writing back and forth
- CART: Computer-assisted Real Time Tr anscription Service
- Other. Explain: _____

If you, or the Patient who you are with, is ADMITTED to the hospital, which of the following will you want in the patient room? (free of charge)

- Telephone handset amplifier
- Telephone compatible with hearing aid
- Closed caption decoders for television set (Note: any standard fee for television service applies)
- TTY/TDD
- Flasher for incoming calls
- Paper and pen for writing notes
- Other. Explain: _____

We ask this information so we can communicate with you effectively. All communication aids and services are provide FREE OF CHARGE. If you need further assistance, please ask your nurse or other hospital personnel.

Any questions? Please call our Effective Communication Program Office, _____(voice),
_____ (TTY), or visit us during normal busin ess hours. We are located in room
_____.

EXHIBIT 2

**ST. LUKE'S
COMPLIANCE REPORT**

Date _____

The following information is submitted pursuant to Paragraph 66 of the Agreement entered into by the United States and St. Luke's Hospital and Health Network. Defined terms herein have the meanings given in the Agreement. Section references below correspond to the same Sections of the Agreement.

I. GENERAL OBLIGATIONS

A. Appropriate Auxiliary Aids and Services, Establishment of Program to Provide

Action:	Status: (Provide implementation dates, names, titles, locations, and telephone numbers, for each section as appropriate - do not respond with checkmarks).
24. Designate Program Administrator(s) to answer inquiries and provide technical assistance	
24. Publicize telephone number	
24. Respond to telephone inquiries during business hours	

B. Provision of Auxiliary Aids and Services

Action:	Date plan implemented or revised:
25. Immediate Aids and Services	
26. Sign Language and Oral interpreters available	
27-29. Assessment of Patient (Initial/Ongoing):	

C. Complaint Resolution Mechanism

31. Date implemented or revised (attach copy) :	
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II. PROVISION OF INTERPRETING SERVICES

36. Complete this chart with the total number of requests for interpreting services received by the *entire hospital*, and actual response times for all requests that exceeded such criteria during the period (for reasons other than force majeure events).

Period of Report	Total # of Requests Made	# of Untimely Responses (Hours to Respond)				% of Untimely Responses
		2-3	3-4	4-5	5+	
Number and description of force majeure events causing untimely responses:						

36. Chosen Method of Providing Interpreters

Date of implementation:	
Company or reputable interpreters that will provide services (attach copy of contract):	
Staff Interpreters (provide names of each person identified, and short description of that persons interpreting experience) ³ :	

³ This information is being requested to ascertain that the hospital has taken steps to determine that staff interpreters are in fact qualified interpreters, rather than someone who only knows basic sign or rudimentary fingerspelling, as is often the case in complaints received by the Department.

III. TECHNOLOGY

A. Telephones and Related Equipment

Action:	Number of Items Required	Number of Items Installed or Purchased	Date for Remaining Items
43.a. TTY's in public areas			
43.b. TTY's required in specific locations			
43.c. Shelves and outlets			
43.d. Signs indicating location of TTY's			
43.e. Volume control telephones			
43.f. Storage location(s) and availability:			
44. Telephones in patient rooms, outlets, and timeliness	Procedure implemented (attach copy of procedure):		

B. Captioning and Decoders

Action:	Status:
45. Televisions & caption decoders	
46.b. Captioned video programs	
46.c. Prerecorded programs	
46.d. Live programs	

IV. NOTICE TO COMMUNITY

Action:	Date implemented:
49. Posting of revised policy signs	
50. Advertisements	
51. Patient Guide	

V. NOTICE TO HOSPITAL PERSONNEL AND PHYSICIANS

52. Policy Statement distributed (date):	
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VI. TRAINING OF HOSPITAL PERSONNEL

Action:	Date completed:	Date for training remaining personnel (if incomplete)
53-55. Comprehensive training		
57. Emergency department personnel		
58. Psychiatric personnel & social workers		
59. Other key personnel		
60. Operators		
61. Affiliated physicians		