

RESOLUTION AGREEMENT

between the

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

and

FAXTON ST. LUKE'S HEALTH CARE

This Resolution Agreement ("Agreement"), dated ~~July 21~~^{April}, 2003, is entered into by the People of the State of New York, by ELIOT SPITZER, Attorney General of the State of New York (the "OAG"), and Faxton St. Luke's Health Care ("Faxton St. Luke's" or "the Hospital"), located in Utica, New York.

WHEREAS Faxton St. Luke's is a public health facility licensed by the State of New York, subject to N.Y. Public Health Law ~~§~~ 2801-c. 2803 and 10 N.Y.C.R.R. ~~§~~ 405.7, which require, among other things, that all hospitals operating in the state provide skilled interpretation services and translations or transcriptions of significant hospital forms, instructions and information in order to ensure effective visual, oral and written communication with all patients regardless of their language;

WHEREAS Faxton St. Luke's receives, and at all relevant times has received, Federal financial assistance administered by the United States Department of Health and Human Services ("HHS") and as a recipient of such funds is subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. ~~§~~ 20006 et seq. ("Title VI"), and the HHS Title VI regulations at 45 C.F.R. Part 80, which, among other things, prohibit a recipient of HHS funds from engaging in policies or practices that have the effect of discriminating against individuals on the basis of national origin, including policies or practices that preclude or inhibit equal access to a recipient's programs and activities for patients of limited English proficiency ("LEP patients");

WHEREAS the OAG received several complaints in February and March 2002 alleging that Faxton St. Luke's failed to provide adequate interpretation and translation services to LEP patients;

WHEREAS the OAG subsequently commenced an investigation into the Hospital's policies, procedures, and practices regarding language assistance services for LEP patients;

WHEREAS Faxton St. Luke's subsequently made efforts to improve its language assistance policies and procedures, and to significantly enhance the language assistance services rendered and the facility's ability to monitor them;

WHEREAS the OAG and Faxton St. Luke's share the common goals of assuring that all LEP patients obtain meaningful access to all programs and services provided by Faxton St. Luke's; developing comprehensive language assistance policies, procedures, and practices that improve, in a cost effective manner, the language assistance services provided to LEP patients; and enabling Faxton St. Luke's to better track and monitor the language assistance needs of its patients and to respond to any changes in these needs;

WHEREAS Faxton St. Luke's expressly denies any wrongdoing or liability in this matter;

WHEREAS the parties herein desire to obviate further investigation or litigation, and it is

expressly understood that this is a compromise settlement entered into solely for the purposes of avoiding the expense and inconvenience of further investigation and litigation;

WHEREAS, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, Faxton St. Luke's and the OAG hereby agree as follows:

I.

DEFINITIONS

1.1. "Faxton St. Luke's" means the health care organization that encompasses the St. Luke's campus at 1656 Champlin Avenue, Utica, New York, the Faxton campus at 1676 Sunset Avenue, Utica, New York, and various off-campus satellite offices and primary care sites in and around Utica, New York.

1.2. "Clinical Departments" refer to the emergency rooms, inpatient departments or floors, and outpatient departments or clinics (including off-campus primary care sites) within Faxton St. Luke's.

1.3. "LEP Patient" means a patient whose primary language is not English and who cannot speak, read, write or understand the English language at a level sufficient to permit such patient to interact effectively with health care providers.

1.4. "Effective Date" means the date this Agreement is executed by the parties hereto.

1.5. "Hospital's Primary Languages" means Bosnian, Spanish, and any other languages identified pursuant to subparagraph 10.4(b) below.

1.6. "Patient's Primary Language" means the language primarily spoken by an LEP patient and in which such patient requires language assistance.

~~1.7.~~ "Medical Information" means any communication about a patient's medical condition, medical ailments, medical history or any course of medical treatment proposed, followed or discussed with a patient that the Hospital requires to be documented in the patient's medical records.

~~1.8.~~ "Patient Visit" means an inpatient admission or a visit for medical services to the emergency department or an outpatient clinic.

1.9. "LEP Patient Encounter" means an interaction between an LEP patient and an employee of the Hospital involving communication of Medical Information that requires use of one of the language assistance resources described in subparagraphs 4.2(a), 4.2(b), **4.2(c)**, and 4.2(d) below pursuant to Hospital policy and procedure and/or the patient's individualized care plan.

II.

COMPLIANCE WITH LAW

2.1. Faxton St. Luke's shall comply fully with the obligations, terms and conditions set forth in Title VI and the regulations promulgated thereunder, N.Y. Public Health Law §§ 2801-c, 2803 and the regulations promulgated thereunder, and 10 N.Y.C.R.R. § 405.7.

III.

LANGUAGE ASSISTANCE COORDINATOR

3.1.. Within two months after the Effective Date, Faxton St. Luke's shall appoint a Language Assistance Coordinator who shall be responsible for implementing, coordinating, and monitoring the Hospital's language assistance services for LEP patients and ensuring compliance with this Agreement. The Language Assistance Coordinator's responsibilities shall include:

- (a) training all Faxton St. Luke's employees on the language assistance policies and procedures set forth in this Agreement;
- (b) monitoring staff in all Clinical Departments through unannounced visits, documentation reviews and other measures to ensure compliance with these language assistance policies and procedures, and where warranted, retraining and taking other appropriate corrective actions to remedy any deficiencies or problems;
- (c) assessing the foreign language abilities of and providing training in medical interpretation to bilingual staff, as required for staff to communicate or interpret Medical Information;
- (d) conducting periodic patient and provider satisfaction surveys;
- (e) assessing on a regular basis the language needs of the communities in the geographical area that Faxton St. Luke's serves;
- (f) collecting information sufficient to prepare, and then preparing, the reports described in Article X below;
- (g) reviewing, investigating and responding to complaints about language assistance services;
- (h) communicating with community groups, advisory councils and associations serving LEP patients; and
- (i) assisting Clinical Department heads on a regular basis in meeting the obligations set forth in this Agreement.

3.2. The Language Assistance Coordinator may delegate the above duties to other Hospital employees or departments, but shall be responsible for ensuring that these duties are Fulfilled.

3.3. The Language Assistance Coordinator shall report to the President and CEO or other senior management official.

IV.

LANGUAGE ASSISTANCE POLICY AND PROCEDURE

4.1. Identification of LEP Patients at Registration or Admission

(a) Within three months after the Effective Date, Faxton St. Luke's shall ensure that fields for the following questions are included both in its patient admission and registration forms and in their corresponding computerized screens; "Do you need an interpreter?" and "If so,



in what language?" The computerized registration and admission fields shall be mandatory and the completed fields shall appear whenever a patient's computer record is subsequently accessed. Within four months after the Effective Date, Faxton St. Luke's shall train its registration and admission staff on the appropriate completion of these forms and computer fields.

(b) Within four months after the Effective Date, Fax-ton St. Luke's shall develop a system of color-coding or otherwise prominently marking LEP patients' charts in a manner identifying the patient's need for language assistance and the Patient's Primary Language.

4.2. Language Assistance Resources

Faxton St. Luke', shall establish and maintain the following language assistance resources in sufficient quantity and quality to ensure timely and meaningful access of all LEP patients to the Hospital's services, activities and programs:

(a) Bilingual Staff

(1) Faxton St. Luke's shall continue its efforts to actively recruit and seek to retain bilingual staff. It shall encourage bilingual staff to communicate with LEP patients who speak a language in which the bilingual staff person is fluent, except that a bilingual employee shall not communicate Medical Information to any LEP patient unless Faxton St. Luke's has assessed his or her foreign language abilities and determined them to be sufficient to communicate Medical Information effectively in the foreign language.

(2) Faxton St. Luke's shall maintain records of the tool(s) used to assess employees' foreign language abilities and the assessment results of all bilingual staff deemed qualified to communicate Medical Information.

(b) Staff Interpreters

(1) Within two months after the Effective Date, Faxton St. Luke's preliminarily shall determine whether to utilize its bilingual staff as interpreters, subject to the standards set forth below, and if so, shall develop a plan for phasing in such a program. It shall provide to the OAG a written explanation of this determination and plan, and the factors on which they are based.

(2) Only staff whose language skills are determined to be sufficient to interpret effectively to and from the relevant foreign language and English may serve as Staff Interpreters. The Hospital shall assess the foreign language abilities of interested staff and shall maintain the assessment tool(s) used and the test results of staff determined to be qualified to serve as Staff Interpreters.

(3) Before serving as Staff Interpreters, staff must complete training in medical interpretation that is offered by an instructor qualified in the training of medical interpreters; provides training and instruction in the role of the interpreter, the mechanics of interpreting **effectively**, interpreter ethics, medical and anatomical terminology, relevant cultural issues, and (for non-medical staff only) how medical providers gather information; involves some practice exercises; (for example, role playing); and provides post-training competency evaluation.

(4) ~~The Language Assistance~~ **Coordinator shall track the interpretation and translation of Medical Information by Staff Interpreters, through appropriate reporting requirements.**

(5) Faxton St. Luke's shall maintain a list including the name, extension, Clinical Department, foreign language abilities, and times of availability of **all Staff Interpreters.**

(6) Faxton St. Luke's shall update its Staff Interpreter list once every six months, and shall ensure that the most recent version of the List is available all times, either on computer or in hard copy, at each patient admission of registration desk, information desk, and nurses station, as well as in the ~~financial~~ **services and billing office, the Pharmacy, and any other appropriate location.**

(c) Contract Interpreters

(1) Faxton St. Luke's shall continue its current arrangements with one or more providers of face-to-face interpreters in order to ensure the adequate availability of such services in the Hospital's Primary Languages. ~~It shall request and maintain records demonstrating the qualifications of the service employees to provide such services, and may rely on the service's representations of such qualifications.~~ **Within two months of the Service Date, Faxton St. Luke's shall evaluate whether to expand its use of contract interpreter services, and if so shall develop a plan for phasing in those additional services. It shall provide to the OAG a written explanation of this determination and plan, and the factors on which they are based.**

(d) Telephonic Interpretation Services

(1) Faxton, St. Luke's shall maintain a contract with a provider of telephonic interpretation services, such as Pacifica, which shall be accessible at all times to all employees with patient contact responsibilities, preferably through the use of dual-handset phones.

(2) Faxton St. Luke's shall ensure that the number and locations of appropriate phones are adequate to serve the telephonic interpretation needs of the Hospital's LEP patients.

(e) Visual Resources

Employees may use non-verbal communication tools, such as pictorial boards or the "Do You Understand?" handbook, to communicate with an LEP patient under appropriate circumstances. Such circumstances shall be set forth in detail in both the Hospital's policy and procedure and the patient's individual care plan, and may include, for example, discussion of Activities of Daily Living or other brief communication in which both the questions asked of the patient and the answers the patient may provide can be easily and ~~adequately~~ **adequately** conveyed through visual means.

(f) Other Interpreter Resources

Nothing in this Agreement shall prevent Faxton St. Luke's from providing additional language assistance resources for LEP patients.

4.3. Procedure for Providing or Securing Language Assistance Services

Within four months of the Effective Date, Faxton St. Luke's shall promulgate the policies and procedures set forth in this Section and shall provide detailed procedures for staff to follow in securing each of the interpreter resources listed in subparagraph 4.3(a)(2) below:

(a) Procedures

(1) *Identifying an LEP Patient's Primary Language.* If an employee encounters an LEP patient needing language assistance, the employee shall identify the Patient's Primary Language. Faxton St. Luke's shall maintain a multi-language identification card, in substantially the form of Exhibit A, on its intranet system and at each patient admission or registration cubicle, information desk, nurses station, emergency department information desk(s), Clinical Department registration desk, security guard post and in the financial services and billing office. Employees having difficulty identifying the Patient's Primary Language first shall use the language identification card and then, if necessary, shall contact the Language Assistance Coordinator or the telephonic interpretation service for further assistance.

(2) *Steps for Providing or Securing Language Assistance.* After identifying the LEP patient's Primary Language, the employee shall provide or secure language assistance services for the LEP patient as follows:

(i) If the employee is fluent in the Patient's Primary Language, he or she may communicate with the patient in that language subject to the restrictions of subparagraph - 4.2(n).

(ii) If the employee does not speak the Patient's Primary Language or has not been deemed qualified to communicate Medical Information, and only as consistent with the Hospital's policy and procedure and the patient's individual care plan, he or she may use a Visual Resource, as described in subparagraph 4.2(e) above, to communicate with the patient.

(iii) If the use of a visual Resource is not appropriate, or if at any time during the use of a Visual Resource there is any doubt whatsoever that the employee and the patient are communicating effectively, the employee shall secure a Contract Interpreter or a Staff Interpreter. (The Hospital shall in its policy specify the order in which these resources shall be used.)

(iv) If no Contract Interpreter or Staff Interpreter is available to provide the necessary language assistance within a reasonable time, the employee shall access a telephonic interpretation service to assist the patient.

(3) *Time Limit on Securing Language Assistance Services.* Language assistance services shall be available to LEP patients in the inpatient and outpatient setting within twenty (20) minutes of a request for such services, pursuant to 10 N.Y.C.R.R.

§ 405.7(a)(7)(ii).

(4) *Time Limit on Securing Language Assistance Services for Emergency Department Visits.* Language assistance services shall be available to LEP patients in the emergency department(s) within ten (10) minutes of a request for such services, pursuant

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to 10 N.Y.C.R.R. § 405.7(a)(7)(ii)

(5) *Documenting Language Assistance.* In every instance in which Medical Information is provided to an LEP patient in a foreign language by any means (by a bilingual staff member, by a Contract Interpreter, by telephonic interpretation, or if applicable by a Staff Interpreter), staff should note in the patient's chart: who provided the language assistance services; the language; the time and date that such services were requested and then provided; and what was communicated. This notation should be recorded in a location where staff would otherwise record details of such communication, in a manner that allows for ready review by the Language Assistance Coordinator.

(b) Refusals of the Hospital's Language Assistance Services

(1) If an LEP patient wishes to use a family member, friend or other interpreter resource not provided by Faxton St. Luke's for language assistance ("Outside Interpreter"), staff shall inform the LEP patient, through one of the interpreter resources identified in paragraph 4.2 or in writing in the Patient's Primary Language, that Faxton St. Luke's will provide an Interpreter at no cost to the patient.

(2) If the LEP patient refuses the Hospital's interpretation services, the employee may use the Outside Interpreter if the employee reasonably concludes that the Outside Interpreter is able and willing to provide effective interpretation services.

(3) If, at any time during the visit, an employee believes that the Outside Interpreter is hampering effective communication with the LEP patient, the employee shall secure one of the Hospital's interpreter resources.

(4) Absent extraordinary circumstances, staff shall not use a person under 16 years of age as an interpreter. If the patient requests the use of such person even after being informed of the availability of free interpretation provided by the Hospital, staff further shall inform the LEP patient, through one of the interpreter resources identified in paragraph 4.2 or in writing in the Patient's Primary Language, that hospital policy discourages interpretation by persons under 16 years of age.

(5) If an LEP patient declines the Hospital's language assistance services, the employee shall document such refusal in a specific and uniform location in the LEP patient's medical records, such that it can be readily reviewed by the Language Assistance Coordinator. Such documentation shall include, at a minimum:

(i) an acknowledgment that free language assistance services were offered to the patient and that he or she knowingly declined those services, signed by the LEP patient or, if he or she refuses, by the staff offering such services;

(ii) the name of the interpreter who explained, in the Patient's Primary Language, the patient's right to free language assistance services, unless such explanation was provided in writing;

(iii) the patient's reasons for refusing the Hospital's language assistance services' and

(iv) if an Outside Interpreter is used, the Outside Interpreter's name, age,

and relationship to the patient

(c) Assisting LEP Patients While Awaiting Interpreter. While waiting for an interpreter, employees shall use non-verbal communication tools, such as language and/or pictorial boards and telephonic interpretation services, to determine whether the LEP patient has any immediate needs.

(d) Telephone Contact With LEP Patients. Within four months of the Effective Date, the Hospital shall develop a procedure for interpreting Medical Information during telephone calls with LEP patients and for scheduling appointments over the telephone with LEP patients

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V.

TRAINING ON LANGUAGE ASSISTANCE POLICIES AND PROCEDURES

5.1. Faxton St. Luke's shall conduct training sessions on an annual basis for all hospital staff regarding the Hospital's legal obligation to provide language assistance services to LEP patients and the language assistance policies and procedures set forth in this.; Agreement. All hospital staff shall receive such training within six months of the Effective Date. The training sessions may include a segment on the cultural needs of the Hospital's diverse patient population, including any barriers to accessing care that may be specific to particular segments of the Hospital's patient population. The Hospital shall maintain attendance records for each training session.

5.2. Faxton St. Luke's shall develop and distribute to all staff at the training sessions described in paragraph 5.1 written materials describing the Hospital's language assistance policies and procedures as set forth in this Agreement.

5.3. As part of a new employee's initial orientation, Faxton St. Luke's shall provide such employee with training on the Hospital's language assistance policies and procedures and the corresponding written materials.

5.4. Faxton St. Luke's shall submit all written materials and training materials prepared in connection with the training sessions for prior approval by the OAG, whose approval shall not be withheld unreasonably

Vi.

INFORMING PATIENTS OF THEIR LANGUAGE ASSISTANCE RIGHTS

6.1. Faxton St. Luke's shall inform all patients of their right to receive free interpretation services if they are LEP patients.

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6.2. Within two months after the Effective Date, Faxton St. Luke's shall post and maintain signs informing patients that "Free Interpretation Services Are Available" in at least English and each of the Hospital's Primary Languages, in a conspicuous manner throughout the Hospital, including at a minimum all locations where the patient's bill of rights is posted.

6.3. Within two months after the Effective Date, Faxton St. Luke's shall draft and determine whether to produce and distribute brochures written in English and each of Faxton; St. Luke's Primary Languages, containing information including.

(a) notification of the right to free interpretation services, instructions on how to obtain such

services (including how to contact the Language Assistance Coordinator and the Department of Outcomes Management), and other basic hospital information;

ib) a clear statement on the cover in bold-faced type, written in both English and the appropriate Hospital Primary Language, that the patient is an LEP patient and requires language assistance services in that Primary Language;

(c) notification of the right to make a formal complaint about any of the Hospital's services, including the Hospital's language assistance services; the procedures for making a complaint, including where to find a complaint form and how to file it; and the names and addresses of the government agencies, including the OAG, and the New York State Department of Health, with which the patient may register a complaint if the matter is not resolved to the patient's satisfaction.

The Hospital shall provide to the OAG a written explanation of this determination and, if undertaken, a plan for producing and distributing the brochures, and the factors on which they are based.

6.4. Faxton St. Luke's shall continue its community marketing efforts, and specifically shall include notification of free language assistance services in all its foreign-language marketing materials.

VII. COMPLAINTS

7.1. The Department of Outcomes management shall provide to the Language Assistance Coordinator copies of all complaints about language assistance services, as soon as they are received.

7.2. Complaints shall be investigated thoroughly and resolved in a timely manner consistent with usual hospital practice.

VIII. SIGNAGE AND TRANSLATION OF DOCUMENTS

8.1. Within four months after the Effective Date, Faxton St. Luke's shall review the English language signage throughout the facility, and determine which signs (if any) should be translated into the Hospital's Primary Languages. These signs shall be translated into all of the Hospital's Primary Languages and shall be posted (with the English signs) within nine months after the Effective Date.

8.2. Within nine months after the Effective Date, Faxton St. Luke's shall translate the following material into all Faxton St. Luke's Primary Languages and make such translated material available in the same manner as the corresponding English-language documents:

- (a) significant financial forms and information;
- (b) medical consent forms;
- (c) advance directives;
- (d) general discharge instructions;
- (e) significant billing information; and
- (f) any other material Faxton St. Luke's considers vital to a patient's medical care and

treatment.

8.3. If and when Faxton St. Luke's develops or begins using new written materials of the types described in paragraph 8.2, it shall translate those materials into all of the Hospital's Primary Languages within two months.

8.4. Faxton St. Luke's shall, on an ongoing basis, review its patient education materials and determine which should be translated into the Hospital's Primary Languages. Faxton St. Luke's shall translate into the Hospital's Primary Languages all patient education material necessary to ensure equal access to health care services.

IX.

RECRUITMENT

9.1. Faxton St. Luke's shall consider fluency in one or more of the Hospital's Primary Languages as a positive job qualification when hiring staff who will have patient contact responsibilities. Faxton St. Luke's shall advertise job openings in appropriate foreign language media, with community groups and institutions, and in other venues accessible to qualified people fluent in the Hospital's Primary Languages.

X.

MONITORING

10.1. Reporting Periods. The Hospital shall collect and report monitoring data over three Reporting Periods. The first Reporting Period shall begin four months after the Effective Date and end one year after the Effective Date. The second and third Reporting Periods shall begin at the end of the prior Reporting Period and end one year thereafter.

10.2. Data Collection and Reporting. For each Reporting Period, the Language Assistance Coordinator shall prepare a report (the "Language Assistance Monitoring Report") that summarizes the information collected during that period, pursuant to the requirements below.

(a) Computer Records of Patient Visits. At the end of each Reporting Period, the Language Assistance Coordinator shall retrieve the following data from the Hospital's computerized registration and admission system:

(1) the number of LEP patients who visited Faxton St. Luke's during the period, broken down in percentage terms by Patient's Primary Language; and

(2) the number of Patient Visits during the period, broken down in percentage terms by Patient's Primary Language.

The Language Assistance Coordinator is not required to retrieve the data listed in this subparagraph by manual search of files.

(b) Patient and Provider Satisfaction Surveys

(1) Within six months after the Effective Date, and every three months thereafter, the Language Assistance Coordinator shall conduct patient and provider satisfaction surveys regarding the Hospital's language assistance services. The LEP patients chosen for the survey represent all the Hospital's Primary Languages, in approximate proportion to the Hospital's LEP patient population. The surveys shall also cover a range