



July 27, 2015

[REDACTED]
[REDACTED]
[REDACTED]

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Re: Letter of Findings in response to ADA Complaint No. 15-003

Dear [REDACTED]:

The Agency for Health Care Administration (the "Agency") hereby provides this Letter of Findings in response to your Americans with Disabilities Act Discrimination ("ADA") Complaint, as submitted by [REDACTED], Esq., on your behalf on March 3, 2015 (the "Complaint"). A copy of the Complaint is attached as **Exhibit A**.

Pursuant to state and federal law and the Agency's Americans with Disabilities Act Grievance Policy (the "ADA Grievance Policy"),¹ a disabled person (or his/her authorized representative) who believes that he/she was subjected to discrimination by the Agency or a Medicaid managed care plan on the basis of his/her disability may file a complaint with the Agency.²

I have been appointed by the Agency's Secretary as the ADA Compliance Officer. In that capacity, I reviewed the facts and circumstances of your Complaint and conducted an investigation of this matter. As discussed in detail below, I have determined that Humana Medical Plan, Inc. violated your rights under the ADA.³ In this letter, pursuant to federal regulations, I identify factual findings, conclusions of law, and steps the Agency has taken to remedy the violations.

Factual Findings

1. On March 3, 2015, [REDACTED] Esquire, filed a disability discrimination complaint on your behalf. The Complaint alleges that on an unspecified date Humana referred you to an unspecified office location of [REDACTED]. The

¹ The Agency's ADA Grievance Policy is posted on the Agency's website at:

<http://ahca.myflorida.com/docs/ADAGrievancePolicy.pdf>

² The Agency's optional ADA Complaint Form is posted on the Agency's website at:

<http://ahca.myflorida.com/docs/ADAComplaintForm.pdf>

³ In addition to the ADA, your right to file a disability discrimination complaint with the Agency arises pursuant to Section 504 of the Rehabilitation Act of 1973, Section 508 of the Rehabilitation Act of 1973, and all implementing federal regulations.



Complaint alleges that [REDACTED] informed you they only accepted Medicaid for children and did not provide sign language interpreter services.

2. At all times relevant, you have been enrolled with Humana Medical Plan, Inc. ("Humana") as your statewide Medicaid Managed Care Assistance plan.

3. On March 3, 2015, the Complaint was received by the Agency.

4. On March 4, 2015, Humana advised the Agency that your designated case manager had informed you of three adult dental providers in their network in your area from which you could access necessary Medicaid dental services. Humana's notes indicate none of those three providers "offered to provide sign language interpretation." Your case manager attempted to reach you twice, without success.

5. On March 5, 2015, the Agency received an update from Humana indicating that your Humana case manager was attempting to determine whether interpretation services were available in the community because Humana did not offer such services to their enrollees.

6. On March 5 and 6, 2015, your case manager attempted to reach you with no response.

7. On March 6, 2015, Humana mailed you an "unable to contact" letter via the United States Postal Service.

8. On March 10, 2015, the Agency received an email from Humana which indicated that interpretation services were not a part of your benefits and that you should obtain a medical necessity referral from your Primary Care Provider (PCP) for authorization by Humana.

9. On March 11, 2015, your complaint was forwarded to Humana's ADA Director, Dr. Michelle M. Griffin, PhD in the Language Assistance & Alternative Formats Service Department. For almost a month, Dr. Griffin made weekly attempts to contact you via videophone⁴, without success.

10. On April 11, 2015, Dr. Griffin forwarded your information to Deaf Interpreter Services, Inc.⁵ ("Deaf Interpreter"). Deaf Interpreter made multiple attempts to contact you, finally reaching you via videophone on May 5, 2015.

11. During the month of May, you were provided with over three hours of assistance through videophone.

⁴ Videophone is an electronic device that simultaneously transmits and receives both audio and visual signals over telephone lines. This device allows American Sign Language "ASL" literate individuals to communicate directly without an intermediary.

⁵ Deaf Interpreter provides nationwide professional, nationally-certified sign language and oral interpreters, video remote interpreting (VRI), and caption/CART services. Deaf interpreter is Humana's designated Sign Language interpretation service provider.

12. The process implemented by Humana proved successful in that you had several dental appointments for you and your children on [REDACTED], 2015, at [REDACTED], [REDACTED], 2015, at [REDACTED], and [REDACTED], 2015, at [REDACTED] with ASL interpreters present at each appointment. On [REDACTED], 2015, an ASL interpreter was also present for a doctor's appointment at [REDACTED] but you made a same day cancellation at the time of the appointment.

Conclusions of Law

Through the use of auxiliary aids and services, public entities and public accommodations are required to "take appropriate steps to ensure that communications with individuals with disabilities, including applicants, participants, members of the public, and companions are effective as communications with others."⁶ The type of auxiliary aid provided is determined on a case-by-case basis depending on the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.⁷

The term "auxiliary aids and services" includes:

Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;⁸

Healthcare providers need not supply auxiliary aids and services just because they are demanded or desired, but only where necessary in order to enable effective communication.⁹ There is no requirement that public entities and public accommodations use the newest or most advanced technologies; the selected auxiliary aid or service will be sufficient if it provides effective communication.¹⁰ For example, the exchange of notes is effective in situations that do not involve substantial conversation like during an appointment for routine blood work or allergy shots.¹¹

⁶ 28 C.F.R. § 35.160(a)(1); 28 C.F.R. § 36.303(c)(1).

⁷ 28 C.F.R. § 35.160(b)(2); 28 C.F.R. § 36.303(c)(1).

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.303(b).

⁹ *McCullum v. Orlando Regional Healthcare System*, 768 F.3d 1146, 1147 (11th Cir. 2014).

¹⁰ 56 Fed. Reg. 35694-01 (July 26, 1991).

¹¹ 28 C.F.R. § 35, Appendix A.

When an interpreter is required for effective communication, the public entity or public accommodation should provide a qualified interpreter. A qualified interpreter does not require certification in order to have the skills necessary to facilitate communication.¹² Public entities and public accommodations are entitled to rely on an adult accompanying a disabled person, where the disabled individual specifically requests that the accompanying adult interpret or facilitate communication.¹³

Where a violation has occurred and a public entity takes affirmative steps to investigate and correct non-compliance by contractors/subcontractors, the public entity has provided adequate supervision and, thus, cannot be found to have violated the ADA.¹⁴

Auxiliary aids and services must be provided by public entities and public accommodations when necessary to disabled individuals, unless they can demonstrate it would fundamentally alter the nature of the goods, services, programs, activities, facilities, advantages, privileges or accommodations being offered or would result in an undue burden.¹⁵ Auxiliary aids and services include the provision of an interpreter depending on the “context in which the communication is taking place, the number of people involved, and the importance of the communication.”¹⁶

In your case, at a minimum the dental providers under contract with Humana were required to assess the complexity of the interactions involved during your desired appointment to determine whether an alternative to a live interpreter would provide you with effective communication. To categorically assert that they do not provide interpretation services is a violation of Title III of the ADA. Further, Humana’s failure to adequately supervise its subcontracted network providers and to enforce its contracts with those network providers to ensure compliance with Title III of the ADA itself constituted a violation of your rights.

Furthermore, auxiliary aids and services are not provided on a contingent basis. The determination must be solely based on whether the aid or service is necessary to ensure effective communication. Therefore, Humana’s policy which required you to obtain a doctor’s prior authorization for interpretation services and to exclude those services as outside the scope of your member benefits is a violation of the ADA.

Remedial Measures

Based on the foregoing findings, the Agency has initiated a contract compliance action against Humana pursuant to the Agency’s contract with Humana. [Attachment II,

¹² ADA Technical Assistance Publications, *Revised ADA Requirements: Effective Communication*, U.S. Department of Justice, January 2014; ADA Technical Assistance Publications, *ADA Title III Technical Assistance Manual: Covering Public Accommodations and Commercial Facilities: III-4.3200 Effective Communication*, 1993.

¹³ 28 C.F.R. § 35.160 (c)(2)(iii); 28 C.F.R. § 36.303 (c)(3)(ii).

¹⁴ *Reynolds v. Guiliani*, 506 F.3d 183, 196 (2d Cir. 2007).

¹⁵ 28 C.F.R. § 35.160(b)(1); 28 C.F.R. § 35.164; 28 C.F.R. § 36.303 (a).

¹⁶ ADA Title II Technical Assistance Manual, section II-7.1200; ADA Title III Technical Assistance Manual, section III-4.3200.

Section XII. A., item 1 of Contract FP023] In accordance with the aforementioned contract provision, Humana has been monetarily sanctioned in response to the plan's violations of the ADA. Humana will be advised by the Agency that further ADA violations of the type set forth in your Complaint will not be tolerated by the Agency and may result in additional sanctions (which sanctions may include increased monetary penalties or termination of their contract).

Conclusion

Based on the remedial measures set forth above, the Agency will be taking no further action and will close the Complaint as of the date of this Letter.¹⁷

Sincerely,

Rachel Goldstein
ADA Compliance Officer

¹⁷ This Letter, while administratively final, does not prevent you from pursuing this matter privately in court.

RIGHT TO AN APPEAL

If you believe that this Letter of Findings does not satisfactorily address the issue(s) asserted in your Complaint due to a factual error or omission, you or your authorized representative may request an appeal to this Letter of Findings, in writing, to the Agency's designated ADA Compliance Officer. Your appeal must be received by the Agency's ADA Compliance Officer no later than 21 calendar days after your receipt of this Letter of Findings. The mailing address of the Agency's ADA Compliance Officer is:

Rachel Goldstein
ADA Compliance Officer
Agency for Healthcare Administration
2727 Mahan Dr., Mail Stop #3
Tallahassee, Florida 32308

To be considered, your written appeal must specify, in detail, the asserted factual error(s) or omission(s) that were included in this Letter of Findings.

Within 30 business days after receipt of your appeal, the ADA Compliance Officer, or her delegate, will issue a final resolution in writing.