



November 18, 2015

[REDACTED]
[REDACTED]
[REDACTED]

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Re: Letter of Findings in response to ADA Complaint No. 15-007

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 February 5, 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 neither the Agency nor its contractors violated your rights under the ADA.³

Factual Findings

1. On February 5, 2015, [REDACTED] Esquire, filed a disability discrimination complaint on your behalf. The Complaint alleged that on an unspecified date, your primary care provider, Dr. [REDACTED] communicated with you via written notes. The Complaint indicated you wished to have an interpreter present at your next appointment, scheduled for [REDACTED], 2015.

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.



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

3. On February 6, 2015, the Agency placed a telephone call to you via an interpreter. There was no answer and a message was left requesting a return call. In addition, the Agency asked Humana to reach out to you to assign a case manager and coordinate your request for interpretation services. Humana responded that you were assigned a case manager. However, Humana indicated that you could not be reached by telephone. Humana called Dr. [REDACTED] practice and spoke to the office manager, [REDACTED]. [REDACTED] indicated the office was unaware of any issue regarding interpretation services and that due to the short notice; your [REDACTED] appointment should be rescheduled for a later date to coordinate an interpreter.

4. On February 9, 2015, the Agency placed a telephone call to you via an interpreter to provide you with an update on Humana's response. There was no answer and a message was left requesting a return call.

5. On February 10, 2015, the Agency placed a telephone call to you via an interpreter. You confirmed a case manager had been assigned to you and that the issue was resolved to your satisfaction. You indicated you understood an interpreter would be available for your upcoming appointment on [REDACTED], 2015 at [REDACTED] with Dr. [REDACTED].

6. On [REDACTED], 2015, you had an appointment with Dr. [REDACTED] and an ASL interpreter was present.

7. On March 12, 2015, your complaint was forwarded to Humana's ADA Director, Dr. Michelle M. Griffin, PhD in the Language Assistance & Alternative Formats Service Department. Dr. Griffin contacted you to provide information on Deaf Interpreter Services, Inc.⁴ ("Deaf Interpreter"), Humana's provider of sign language translation services. Although you indicated to Dr. Griffin your preferred language was English, the translator indicated you were signing in Spanish. Dr. Griffin contacted a Humana customer care representative who is fluent in Spanish and called you back with a Mexican Sign Language video relay representative to work with you on your request to change primary care providers.

8. On March 13, 2015, Humana received confirmation that you received an email from Deaf Interpreters explaining how to set up interpretation services.

9. On March 17, 2015, Dr. Griffin contacted Deaf Interpreter to confirm that you received assistance with scheduling your doctor's visit.

10. The process implemented by Humana proved successful in that you had several medical appointments with different providers on [REDACTED], 2015, all with interpreters

⁴ 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.

present. Humana has made over thirty weekly concierge calls to you to verify scheduled appointments and interpreters.

Conclusions of Law

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.”⁵ This can be accomplished through the use of auxiliary aids and services. 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.⁶

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;⁷

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.⁸ 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.⁹ For example, the exchange of notes is considered effective in situations that do not involve substantial conversation like during an appointment for routine blood work or allergy shots.¹⁰

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.¹¹ Public entities and

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

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

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

⁸ *McCullum v. Orlando Regional Healthcare System*, 768 F.3d 1146, 1147 (11th Cir. 2014).

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

¹⁰ 28 C.F.R. § 35, Appendix A.

¹¹ ADA Technical Assistance Publications, *Revised ADA Requirements: Effective Communication*, U.S. Department of Justice, January 2014; ADA Technical Assistance

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.¹²

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.¹³ 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.”¹⁴

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.¹⁵

You had an appointment with Dr. [REDACTED] on an unspecified date. Although your Complaint alleges your request for interpretation services was denied, Dr. [REDACTED] was unaware you were unsatisfied with the passage of notes as a method of communication. In response to your Complaint, Humana and their providers collaboratively provided a swift response to your request and worked diligently with you to arrange for an interpreter at your doctors’ appointments. Humana assigned you a case manager and provided you with information about their interpreter provider, Deaf Interpreter, to assist you in the coordination of future doctors’ visits.

Conclusion

Based on the foregoing, there is no evidence to suggest that you were excluded from or denied the benefit of medical services based on a disability, or that Humana or its providers failed

Publications, ADA Title III Technical Assistance Manual: Covering Public Accommodations and Commercial Facilities: III-4.3200 Effective Communication, 1993.

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

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

¹⁴ ADA Title II Technical Assistance Manual, section II-7.1200; ADA Title III Technical Assistance Manual, section III-4.3200.

¹⁵ *Reynolds v. Guiliani*, 506 F.3d 183, 196 (2d Cir. 2007).

to accommodate your request for Mexican Sign Language interpretation services in violation of federal law. The Agency, therefore, will be taking no further action and will close the Complaint as of the date of this Letter.¹⁶

Sincerely,

Rachel Goldstein
ADA Compliance Officer

¹⁶ 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.