



May 21, 2015

RICK SCOTT
GOVERNOR


ELIZABETH DUDEK
SECRETARY



VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Re: Letter of Findings in response to ADA Complaint No. 15-002



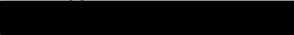


Dear 

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  Esq., on your behalf on February 17, 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 17, 2015,  Esquire,  filed a disability discrimination complaint on your behalf. The Complaint alleges that you were referred to surgeon Dr.  by your primary care provider, Dr.  The Complaint alleges that for your appointment with Dr.  (on an unspecified date) your request for an American Sign Language

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.



("ASL") interpreter was denied. The Complaint also alleges that no interpreter was present for your [REDACTED] 2015, surgery with Dr. [REDACTED]

2. The Complaint also alleges your primary care provider, Dr. [REDACTED], denied you an interpreter (on an unspecified date). However, United reported that Dr. [REDACTED] office manager frequently communicates using sign language and provides interpretation for other patients. Dr. [REDACTED] reported you were typically accompanied by a family member who knows sign language and at no time did you request Dr. [REDACTED] provide an interpreter. The Complaint indicated that you were scheduled to have your next appointment with Dr. [REDACTED] on [REDACTED] 2015 a [REDACTED] and you wanted an interpreter present for that appointment.

3. At all times relevant, you have been enrolled with United HealthCare Services, Inc. ("United") as your statewide Medicaid Managed Care Assistance plan.

4. On [REDACTED] 2015, the Complaint was received by the Agency. Internal notes indicate your Complaint did not identify your Medicaid recipient ID and that there were several members residing in the same county with the same name.

5. On [REDACTED] 2015, in response to the Complaint and in an attempt to correctly identify you, the Agency placed a telephone call to you via an interpreter with Sorenson Relay Service. There was no answer and a message was left for you to return the call.

6. On [REDACTED] 2015, the Agency placed a second telephone call to you via an interpreter to verify your Medicaid ID number and the accuracy of the information in the Complaint. You indicated your next appointment with Dr. [REDACTED] was scheduled for [REDACTED] 2015, at 1:00 pm and that you wanted an interpreter present for the appointment.

7. On [REDACTED] 2015, the Agency asked United to contact you to assist with an interpreter for your [REDACTED] appointment with Dr. [REDACTED]

8. On [REDACTED] 2015, United indicated they had already set up case management for you when you complained about the lack of an interpreter at your surgical procedure performed at [REDACTED] Hospital on [REDACTED] 2015. The designated case manager attempted to make contact with you on [REDACTED] and left a message with your [REDACTED]-in-law through a Spanish speaking interpreter. Your [REDACTED]-in-law told the case manager you would return the call.

9. On [REDACTED] 2015, the Agency placed a telephone call to you via an interpreter to confirm you were satisfied with United's assistance. There was no answer and a message was left for you to return the Agency's call.

10. On [REDACTED] 2015, a representative from United indicated they contacted Dr. [REDACTED] and he advised that you had appointments on [REDACTED] 2015, [REDACTED] 2015, and [REDACTED] 2015. He stated that at no time during scheduling, appointment confirmation calls, or the appointment itself did you request an interpreter but that he would make one available for your future appointments. United attempted several times to contact you to assist with arranging interpreter services, with no response.

11. On [REDACTED], 2015, the Agency placed a telephone call to you via an interpreter to follow up and confirm you were satisfied with United's resolution. There was no answer and a message was left for you to return the Agency's call.

12. On [REDACTED], 2015, United reported you returned their phone call. United explained to you they spoke to both Dr. [REDACTED] and Dr. [REDACTED] and both doctors agreed to provide interpreter services at future appointments. You verbalized an understanding, agreed to follow up with your designated case manager, and indicated you had no other concerns.

13. On [REDACTED], 2015, Mr. [REDACTED] submitted another Complaint on your behalf, alleging you were denied a sign language interpreter during your appointment "that week."

14. United indicated you scheduled an appointment with Dr. [REDACTED] on [REDACTED], 2015, a [REDACTED] and that you wanted to bring your own interpreter. On the day of the appointment, the interpreter did not show up. Dr. [REDACTED] office called in their stand-by interpreter but you refused to proceed with the appointment because the interpreter only signed using letters instead of symbols.

15. On [REDACTED], 2015, United indicated the case manager and Spanish speaking clinical care coordinator called you via an interpreter to confirm you understood you had an appointment scheduled with Dr. [REDACTED] fo [REDACTED], 2015 a [REDACTED] and that an interpreter would be present.

16. The process implemented by United proved successful in that you had doctor visits on [REDACTED], 2015 an [REDACTED], 2015, with a Spanish speaking ASL interpreter present.

Conclusions of Law

Through the use of auxiliary aids and services, public entities are required to "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are effective as communications with others."⁴ 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.⁵

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

⁴ 28 C.F.R. § 35.160(a)(1).

⁵ 28 C.F.R. § 35.160(b)(2).

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;⁶

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.⁷ There is no requirement that public entities use the newest or most advanced technologies; the selected auxiliary aid or service will be sufficient if it provides effective communication.⁸ 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.⁹

When an interpreter is required, the public entity should provide a qualified interpreter. A qualified interpreter does not require certification in order to have the skills necessary to facilitate communication.¹⁰ Public entities are entitled to rely on a disabled person's own interpreter, where the disabled individual specifically requests that an accompanying adult interpret or facilitate communication.¹¹

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.¹²

You had an appointment with Dr. [REDACTED] on an unspecified date. Although your Complaint alleges your request for interpretation services was denied, Dr. [REDACTED] has no record of your request. She reported that you brought a family member with you to interpret on your behalf. Dr. [REDACTED] had interpretation services readily available upon request. Her office manager regularly provides interpretation services and communicates using sign language with deaf patients.

You had an appointment with Dr. [REDACTED] on [REDACTED], 2015, surgery at [REDACTED] Hospital on [REDACTED] 2015, and a follow up appointment on [REDACTED], 2015. Although your Complaint alleges you were denied interpretation services, Dr. [REDACTED] has no record of your request for interpreter services and [REDACTED] Hospital has demonstrated an established ADA policy.¹³

⁶ 28 C.F.R. § 36.303.

⁷ *McCullum v. Orlando Regional Healthcare System*, 768 F.3d 1146, 1147 (11th Cir. 2014).

⁸ 56 Fed. Reg. 35697 (July 26, 1991).

⁹ 28 C.F.R. § 35, Appendix A.

¹⁰ ADA Technical Assistance Publications, *Revised ADA Requirements: Effective Communication*, U.S. Department of Justice, January 2014.

¹¹ 28 C.F.R. § 35.160 (c)(2)(iii).

¹² *Reynolds v. Giuliani*, 506 F.3d 183, 196 (2d Cir. 2007).

¹³ [REDACTED] Hospital reported it uses a national firm, Tele-Interpreters, Inc., to arrange sign language services. All charge nurses have this information and know how to order this service.

You had an appointment with Dr. [REDACTED] on [REDACTED], 2015 a [REDACTED]. Although your Complaint alleges you were denied interpretation services for this appointment, Dr. [REDACTED] indicated you planned to bring your own interpreter. Federal regulations entitle federally funded providers to rely on an accompanying adult to facilitate communication when the disabled individual prefers that method of communication.¹⁴ On the day of the appointment, your interpreter never arrived. Dr. [REDACTED] office called in their stand-by interpreter but you refused to proceed with the appointment because the interpreter only signed using letters instead of symbols. Under the circumstances, the facts demonstrate Dr. [REDACTED] did his best to accommodate your last minute request for an interpreter after your scheduled interpreter failed to show for your appointment.¹⁵

Dr. [REDACTED] and Dr. [REDACTED] accommodated your request for an interpreter at all of your subsequent appointments. United and their providers collaboratively provided a swift response to your request and worked diligently with you to arrange for an interpreter at your doctor's appointments. United assigned you a case manager to assist you in arranging for an interpreter when needed for future doctor's 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 United or its providers failed to accommodate your request for ASL 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

cc: [REDACTED]
[REDACTED]

¹⁴ 28 C.F.R. § 35.160 (c)(2)(iii)

¹⁵ Federal regulations entitle public entities to require advance notice from patients requesting aids or services. ADA Technical Assistance Publications, *Revised ADA Requirements: Effective Communication*, U.S. Department of Justice, January 2014.

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.