



RICK SCOTT  
GOVERNOR

JUSTIN M. SENIOR  
INTERIM SECRETARY

October 19, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) [REDACTED]

Re: Letter of Findings in response to ADA Complaint No. 16-004

Dear [REDACTED]:

The Agency for Health Care Administration (the “Agency”) hereby provides this Letter of Findings in response to your Americans with Disabilities Act (“ADA”) Discrimination Complaint, received on September 6, 2016 (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”),<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

### Factual Findings

1. On August 30, 2016, you filed the disability discrimination Complaint with the Agency which indicated you were in need of case management services to assist you with the coordination of housing and medical services.
2. On September 6, 2016, the Complaint was received by the Agency.

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<sup>1</sup> The Agency’s ADA Grievance Policy is posted on the Agency’s website at:

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

<sup>2</sup> The Agency’s optional ADA Complaint Form is posted on the Agency’s website at:

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

<sup>3</sup> 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.



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

4. On August 28, 2016, several days before you filed the disability discrimination Complaint, you also filled out a Florida Statewide Medicaid Managed Care Program Complaint Form online via the Agency's webpage.

5. On August 29, 2016, in response to your online complaint, an Agency representative, Glenda Gomes, contacted you via phone and left a voicemail to inform you she was working on the issue and would reach out to you once she made contact with Humana. Shortly thereafter, Chuck Prager, a representative with Humana's critical inquiry department, called and left you a voicemail indicating he was assigned to your case and asked you to return his call.

6. On August 30, 2016, Mr. Prager advised the Agency that Humana's Case Management Coordinator ("CMC") attempted to reach you via phone in order to assess your needs to appropriately assign a case manager. The CMC called your number on three separate occasions, each time receiving a voicemail message where she left her contact information and requested a return call.

7. On August 31, 2016, on his second attempt to call, Mr. Prager was able to reach you and communicated that the CMC was attempting to contact you in order to arrange case management services. You indicated to him that you did receive several voicemails and attempted to call the CMC back but that the call went to voicemail. Mr. Prager advised you to keep trying to reach the CMC and the CMC would also continue to try and reach you via phone. Before close of business, the CMC updated Mr. Prager that she had called three times and left three voicemails, the last of which indicated she would be waiting for your phone call the following day between 8:30 A.M.- 12 P.M.

8. On September 1, 2016, on his second attempt to call, Mr. Prager successfully reached you to ask if you were able to make contact with the CMC. You indicated you spoke to the CMC twice that morning and that she had already begun working to address your concerns. The CMC provided an update indicating you agreed to schedule an appointment with your primary care provider ("PCP") to discuss the referrals needed and your medication refills. The CMC indicated you were assigned your own Case Manager ("CM") going forward, and a social worker to assist you with accessing community resources. The update also indicated inquiries regarding your dental benefits were forwarded to [REDACTED], your dental benefit provider, and that a [REDACTED] representative would contact you.

9. An Agency representative, Ms. Gomes placed a follow up call to you to ensure you were satisfied with the resolution of the complaint. You indicated that you spoke with Mr. Prager, that you were assigned a case manager and social worker, and you requested the case be closed.

10. The resolution process implemented by Humana proved successful in that you were provided the services you requested, including assignment of a case manager and social worker.

### Conclusions of Law

Public entities and public accommodations are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the entity can demonstrate that the modifications would fundamentally alter the nature of the service, program, or activity or cause an undue financial or administrative burden.<sup>4</sup> The type of modification that is required to ensure equal access is determined on a case-by-case basis depending on the individual and the nature, length, and complexity of the modification requested.

The term “*undue burden*” means significant difficulty or expense. Factors to be considered include:

- (1) The nature and cost of the modification needed;
- (2) The overall financial resources of the site(s) involved in the modification; the number of employees at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation; or the impact of the modification upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites to any parent corporation or entity;
- (4) The overall financial resources and size of any parent corporation or entity; the number, type, and location of its facilities; and
- (5) The type of operation(s) of any parent corporation or entity, including the composition, structure, and functions of the workforce.<sup>5</sup>

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.<sup>6</sup>

In your case, Humana initiated a collaborative resolution approach to manage your request. Agency and Humana staff consulted with you and worked diligently to fulfill your request for case management services. Humana ultimately assigned you a case manager to help coordinate your medical services and a social worker to assist you with access to community based resources.

### 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 to accommodate your request for case management 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.<sup>7</sup>

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<sup>4</sup> 28 C.F.R. § 35.130.

<sup>5</sup> 28 C.F.R. § 36.104.

<sup>6</sup> *Reynolds v. Giuliani*, 506 F.3d 183, 196 (2d Cir. 2007).

<sup>7</sup> This Letter, while administratively final, does not prevent you from pursuing this matter privately in court.

Sincerely,

Rachel Goldstein  
ADA Compliance Officer

**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.