



841 Broadway #301
New York, NY 10003

212/674-2300 Tel
212/674-5619 TTY

212/254-5953 Fax
www.CIDNY.org

CIDNY–Queens
137-02A Northern Blvd.
Flushing, NY 11354

646/442-1520 Tel
718/886-0427 TTY

718/886-0428 Fax
www.CIDNY.org

Center for Independence of the Disabled, NY

October 5, 2012

Mr. Mark Kissinger
New York State Department of Health
Empire State Plaza, Corning Tower, 14th Floor
Albany, New York 12237

By Email: mlk15health.state.ny.us

Re: ADA Compliance by Managed Long-term Care Plans in New York State

Dear Mark:

People with disabilities cannot derive a full and equal benefit from publicly funded health insurance unless health plans comply with federal civil rights law. Health disparities are an inevitable result of failure to ensure programmatic accessibility. The State has the responsibility to ensure that Medicaid health plans identify barriers to care and provide reasonable accommodations and full programmatic accessibility.

To facilitate greater State and health plan compliance, some fifteen years ago, the disability community worked with New York City and New York State to develop ADA Compliance Guidelines for health plans serving Medicaid beneficiaries. These guidelines are included as Appendix J in the New York State Department of Health contract with managed long-term care plans. Appendix J educates managed long-term care plans regarding their obligations pursuant to the Americans with Disabilities Act, Title II and Title III and Section 504 of the Rehabilitation Act of 1973. It provides guidance for the development of a plan to assure compliance and standards for review of managed long-term care plan compliance.

What are some things managed long-term care plans are required to do?

- ✓ Identify enrollees with disabilities *in order to* provide reasonable accommodations that are necessary to avoid discrimination.
- ✓ Give notice of how disability is defined with examples of disabilities that include functional limitations (e.g. trouble standing, ongoing sadness, difficulty with reading).
- ✓ Let people know what kinds of accommodations are available (providing examples that are nonexclusive).
- ✓ Ensure that personnel are trained to provide accommodations.
- ✓ Include a network of providers with accessible practices.
- ✓ Ensure that people with disabilities know that they may file ADA compliance-related complaints with the HHS Office of Civil Rights.

What is the "state-of-the state" of managed long-term care compliance?

Unfortunately, as mandatory enrollment in managed long-term care unfolds and as preparation for mandatory enrollment of dual eligible proceeds, a review of managed long-term care ADA Compliance Plans shows a pervasive lack of compliance. This lack of compliance will impede efforts to achieve State health policy goals related to eradication of disparities and will place the State and its managed long-term care plans at risk of litigation. Our intention in bringing these concerns to the attention of State and Federal regulators is to encourage remediation.

In 2012, a Freedom of Information Act request to the New York State Department of Health seeking release of ADA compliance plans and any related documents revealed that 16 of 18 managed long-term care plans had submitted an Appendix J plan. While all the plans submitted showed serious deficiencies, no documents were transmitted in response to the FOIL that showed that evaluation of the Appendix J plans had occurred or that corrective action had been taken.

What kinds of managed long-term care plan deficiencies are evident?

- ✓ One in three plans does not provide evidence that they identify people with disabilities;
- ✓ None of the 18 plans provides has a procedure for identifying and recording requests for accommodations for people with disabilities or the disposition of those requests;
- ✓ Only two of the 18 plans provide notice to enrollees of the right to reasonable accommodations—it is limited to hearing and vision-related disabilities.
- ✓ Not one plan provides detailed guidance on how to request a reasonable accommodation, how and when the request will be addressed and by whom.
- ✓ No plans provide accommodations for people with psychiatric disabilities, or mention learning disabilities or intellectual disabilities.
- ✓ Plans list a very narrow spectrum of accommodations and do not indicate that the accommodations listed are nonexclusive.
- ✓ Not one of the managed long-term care plans trains its employees on the policies and specific procedures for ADA compliance of the managed long-term care plan.
- ✓ No plan gives notice of the right to complain to the U.S. Department of Health and Human Services Office of Civil Rights.

Are there things that the managed long-term care plans and the State could do to improve?

- ✓ Assign responsibility for compliance activities within the Department of Health (DOH), including regularly updating ADA compliance guidelines that contain clear and detailed guidance on baselines for compliance, model compliance plan and member handbook language, and educate DOH personnel regarding federal civil rights law compliance.
- ✓ Work with the disability community to write model ADA compliance plan that guides managed long-term care plans—as does the model member handbook.
- ✓ DOH must provide or require plans to obtain training for grievance and appeal personnel, member services personnel, case managers and other relevant personnel to receive training on the ADA, compliance plan requirements and disability literacy.
- ✓ DOH must have adequate personnel to review ADA compliance plans, issue statements of deficiency and review and approve plans of correction with clear timelines for compliance, provide or arrange for technical assistance, and test compliance with ADA compliance plan provisions.
- ✓ OTDA must provide training on a regular basis on ADA compliance or arrange for it to be provided to Administrative Law Judges, health plan grievance and appeal personnel.
- ✓ The Department of Health must report to the public on progress towards ADA compliance in the managed long-term care program;
- ✓ Train plans on ADA compliance planning and implementation in relation to their staff training, quality assurance activities, provider compliance, network adequacy activities, etc.
- ✓ Develop a brochure for enrollees regarding ADA rights in managed care that is distributed upon enrollment.

In conclusion, CIDNY and other advocates are willing to work with the State and the managed long-term care plans to achieve improvements in Americans with Disabilities Act compliance.

Best regards,

Susan M. Dooha, J.D.
Executive Director

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Re:

On behalf of:

Cardozo Bet Tzedek Legal Services

Catskill Center for Independence

Center for Disability Rights, Inc.

Coalition of the Institutionalized Aged and Disabled

Commission on the Public's Health System

Directions in Independent Living, Inc.

Disability and Aging Rights, MFY Legal Services

Empire Justice Center

Independent Living, Inc.

Independent Living Center of the Hudson Valley, Inc.

The Long Term Care Community Coalition

New York Association on Independent Living

New York Association of Psychiatric Rehabilitation Services, Inc.

Options for Independence, Inc.

Southern Tier Independence Center

Taconic Resources for Independence, Inc.

Cc: laa03@health.state.ny.us