

**MEMORIALIZATION OF CORRECTIVE ACTIONS THROUGH EXPEDITED
COMPLAINT RESOLUTION PROCESS
BETWEEN THE UNITED STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES OFFICE FOR CIVIL RIGHTS
AND IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

COMPLAINT # 21-415056

I. INTRODUCTION AND BACKGROUND

- A. The purpose of this Memorialization of Corrective Actions is to set forth the corrective actions that the Iowa Department of Health and Human Services (Iowa HHS) has put in place to resolve a complaint filed with the United States Department of Human Services (HHS), Office for Civil Rights (OCR) through OCR's Expedited Complaint Resolution process (ECR) and to establish a monitoring period to ensure that the corrective actions continue and address any issues that may arise.
- B. OCR received complaint # 21-415056 (the complaint) from Garrett Frey, alleging the Iowa HHS discriminated against him on the basis of disability by failing to provide him with the necessary 24 hours of home-based services to allow him to remain at home, placing him at risk of institutionalization.
- C. Pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84; Section 1557 of the Affordable Care Act, (Section 1557) Act, 42 U.S.C. § 18116 and its implementing regulations at 45 C.F.R. Part 92; and Title II of the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12132, and its implementing regulations at 45 C.F.R. Part 92, covered entities are obligated to provide services in the most integrated setting appropriate to an individual with disabilities.
- D. As a recipient of Federal financial assistance from HHS, Iowa HHS is a covered entity and is obliged to comply with Section 504 and Section 1557 and, as a state entity, Iowa HHS is required to comply with Title II of the ADA.
- E. On May 5, 2023, OCR initiated an investigation into the above-mentioned complaint under Section 504, Section 1557, and Title II. On September 14, 2023, OCR paused the investigation and initiated the ECR process.
- F. On September 29, 2023, an ECR meeting was held with Iowa HHS, Mr. Frey, and OCR. At the time the ECR meeting was held, Mr. Frey was approved for 24 hours a day of consumer-directed attendant care consumer-directed services, but he alleged that the reimbursement rate was not adequate to hire and retain needed providers through his consumer-directed care plan. Further, he alleged that he was denied respite services because he was unable to hire and retain providers other than his mother, who was ineligible to provide both consumer-directed attendant care and respite services.

- G. During the ECR process, Iowa HHS took the following affirmative steps to provide Mr. Frey with the ability to secure the services necessary for him to reside in the most integrated setting in his community:
1. **Raised provider reimbursement rate:** On October 2, 2023, Iowa HHS approved an Exception to Policy request asking to deviate from the Iowa Administrative Codes that regulate the consumer-directed services Mr. Frey receives through Iowa's Home and Community Based Services Health and Disability Waiver. Specifically, Mr. Frey was approved to pay his consumer-directed providers an enhanced rate of \$5.50 per unit, to exceed his monthly waiver cap, and to draw upon services between multiple providers to expand the eligible pool of providers.
 2. **Allowed for respite services by an exception to the Iowa's Home and Community Based Services Health and Disability Waiver:** On October 2, 2023, Iowa HHS also made an exception to the Iowa Home and Community Based Health and Disability Waiver's standard policies to allow Mr. Frey to receive respite services under his consumer-directed plan.
 3. **Expanded provider base to enable a sufficient array of providers:** On December 14, 2023, Iowa HHS notified OCR that it was attempting to secure additional providers to meet Mr. Frey's needs in lieu of relying on his mother, who was providing over 85% of his attendant care service hours as a last resort to ensure that his needs were addressed.
 4. **Secured necessary providers for overnight services and nursing services:** On January 31, 2024, Iowa HHS provided an updated plan for adequate consumer-directed services to supplement the three providers already in place with two additional providers for overnight services from 9:00 p.m. – 9:00 a.m. and nursing visits two times a week.

The totality of Iowa HHS actions ensured that Mr. Frey could receive needed 24-hour services from an array of service providers to meet the totality of his needs for attendant care and nursing services, with respite and back-up services. As of April 29, 2024, Mr. Frey has confirmed that the services at issue in his complaint are in place and stabilized.

- H. Iowa HHS has worked cooperatively with OCR and Mr. Frey throughout this matter and is continuing to ensure his needs are met.
- I. The Parties voluntarily agree to resolve the complaint by memorializing the corrective actions Iowa HHS has taken together with a monitoring period of six months during which OCR will monitor the provision of services Mr. Frey receives through Iowa's Health and Disability Waiver to ensure that he continues to receive adequate services necessary for him to remain in the most integrated setting in his community.
- J. This Memorialization of Corrective Actions is not an admission of liability by Iowa HHS regarding the allegations in the complaint.

II. GENERAL TERMS

- A. This Memorialization of Corrective Actions resolves OCR Complaint # 21-415056 and is limited to the facts and issues presented in the complaint. It does not replace Iowa HHS' continuing obligation to comply with Section 504, Section 1557, and Title II and all other federal laws and applicable regulations or preclude OCR from taking appropriate action to evaluate Iowa HHS' compliance with laws enforced by OCR.
- B. If at any time OCR believes that Iowa HHS or any of its components has failed to comply in a timely manner with any obligation under this Memorialization of Corrective Actions, OCR may issue Iowa HHS a notice of alleged non-compliance and will provide a reasonable opportunity of no less than seven calendar days to respond.
- C. This Memorialization of Corrective Actions is a public document that will be available on OCR's public website and upon request by any individual.

III. SPECIFIC IOWA HHS COMMITMENTS

- A. Iowa HHS will continue to ensure an adequate reimbursement rate for Mr. Frey's consumer-directed providers so that he can hire and retain needed providers.
- B. Iowa HHS will continue to ensure that Mr. Frey receives adequate consumer-directed services for 24 hours each day to meet his needs, including back up and respite services to enable him to live at home.
- C. Iowa HHS will continue to work with Mr. Frey to identify consumer-directed providers so that there is a sufficient array of providers to meet his needs.
- D. Iowa HHS will not make any changes to Mr. Frey's care plan without first assessing his needs, ensuring the change is needed to effectuate his right to remain in the most integrated setting in his community, and consulting with him.

IV. MECHANISM FOR REPORTING CONCERNS TO IOWA HHS

- A. Iowa HHS will designate **REDACTED**, as the point of contact to receive and resolve any issues Mr. Frey encounters with the provision of services he receives through Iowa's Health and Disability Waiver. In the event Mr. Frey is not satisfied with the resolution, he can elevate his concerns to Becky Blum, Contract Manager, Medicaid Contracting Bureau.

B. Iowa HHS will report to Mr. Frey and OCR actions taken to address any issues Mr. Frey raises.

V. MONITORING AND REPORTING

A. Iowa HHS will provide monthly written confirmation by the last day of each month during the monitoring period that the services outlined in this Memorialization of Corrective Actions remain in place. Further, during the monitoring period, the Complainant may report to OCR any concerns related to the provision of adequate services under his self-directed plan. A finding of non-compliance may extend the six-month monitoring period.

VI. EFFECTIVE DATE AND MONITORING PERIOD

A. The effective date of this Memorialization of Corrective Actions is the date of the last signature below. This Memorialization of Corrective Actions will continue for a monitoring period for six months from the date of the last signature on this document.

FOR THE IOWA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

FOR THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
OFFICE FOR CIVIL RIGHTS

/s/

May 23, 2024

/s/

May 23, 2024

Elizabeth Matney, Director
Iowa Medicaid & Division of
Administration
Deputy Director, Iowa Department of
Health and Human Services

Robinsue Frohboese, J.D., Ph.D.
Deputy Director, Strategic Planning Division

/s/

May 23, 2024

/s/

May 23, 2024

Becky R. Blum, Contract Manager
Iowa Medicaid, Iowa Department of
Health and Human Services

Mordecai Simha, J.D.
Acting Senior Manager, Olmstead and
Community Integration Section, Strategic
Planning Division

/s/

May 23, 2024

Holly Gibson, J.D.
Olmstead and Community Integration Section
Enforcement Analyst, Strategic Planning
Division