

Sample Cover Letter

[Date]

[Address]

Re: Request for Community Based Services under State's Waiver Program

Dear Medicaid Consumer:

[Name of Senior or Individual with a disability] recently requested participation in the State's waiver program (the "Program") for community based services, i.e., Alternative Services. I also understand that _____ [Name of Senior or Individual with a disability] was denied participation in the Program and/or was placed on a "waiting list," as the waiver slots are currently full.

Please be aware that _____ [Name of Senior or Individual with a disability]'s civil rights may be violated by the State and its agencies under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the State's applicable civil rights acts, and certain other federal and State laws and regulations relating to Medicaid programs/activities. It is unlawful for anyone to discriminate based upon an individual's disability and force you to accept a nursing home as your only choice for your significant long term care needs. However, there is recourse that may be taken to draw attention to the issue.

Attached are the following:

1. Frequently Asked Questions and Answers regarding how to respond to a potential civil rights issue and Instructions on how to file a complaint.
2. A sample Complaint form. You can use this sample to fill out a similar complaint on your own behalf. The process is free and can be done by email, fax, or mail, a blank form is also attached.
3. A sample pleading, which can be modified and used to file suit on your behalf.

As an advocate for seniors or individuals with disabilities who need long term care, I encourage your efforts to secure services in the least restrictive setting. Good luck!

Very truly yours,

Enclosure

victor/misc/ada complaint-sample ltr



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS (OCR)

DISCRIMINATION COMPLAINT

Form Approved: OMB No. 0990-0269.
See OMB Statement on Reverse.



If you have questions about this form, call OCR (toll-free) at:
1-800-368-1019 (any language) or 1-800-537-7697 (TDD)

YOUR FIRST NAME Brian		YOUR LAST NAME Smith	
HOME PHONE (749) 222-3333		WORK PHONE (749) 111-2222	
STREET ADDRESS 200 Parkway		CITY Somewhere	
STATE Michigan	ZIP 48304	E-MAIL ADDRESS (If available)	

Are you filing this complaint for someone else? ☒ Yes ☐ No

If Yes, against whom do you believe the discrimination was directed?

FIRST NAME Michelle	LAST NAME Yates
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I believe that I have been (or someone else has been) discriminated against on the basis of: **please note you can mark both age & disability*

- ☐ Race / Color / National Origin ☐ Age ☐ Religion ☐ Gender (Male/Female)
☒ Disability ☐ Other (specify):

Who do you think discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

Waiver Agency and Michigan Department of Community Health

STREET ADDRESS 6 th Floor Louis Cass Bldg., 320 S. Walnut		CITY Lansing
STATE Michigan	ZIP 48913	PHONE (517) 373-3500

When do you believe that the discrimination took place?

LIST DATE(S)

May 13, 2004 to Present

Describe briefly what happened. How and why do you believe you (or someone else) were discriminated against? Please be as specific as possible. (Attach additional pages as needed)

I am an attorney filing this complaint on behalf of Michelle Yates. Michelle applied for the home/community services pursuant to the federally funded Medicaid waiver program administered by Michigan Department of Community Health [state organization]. Michelle was denied the alternative services in violation of the ADA and its implementing regulations, and Section 504 of the Rehabilitation Act and its implementing regulations (28 C.F.R. 41.51; 45 C.F.R. 84.4), Townsend v. Quasim [328 F3d 511 (9th Cir. 2003)] and Olmstead v. Zimring (527 U.S. 581, 119 S.Ct. 2176).

Please sign and date this complaint.

SIGNATURE

DATE

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from Health and Human Services (HHS) to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to our web site at: www.hhs.gov/ocr/discrimhowtofile.html. To mail a complaint see reverse page for OCR Regional addresses.

(The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.)

Do you need special accommodations for us to communicate with you about this complaint (check all that apply)?

- ☐ Braille ☐ Large Print ☐ Cassette tape ☐ Computer diskette ☐ Electronic mail ☐ TDD
- ☐ Sign language interpreter (specify language): _____
- ☐ Foreign language interpreter (specify language): _____ ☐ Other: _____

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE ()		WORK PHONE ()	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (If available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed.)

PERSON / AGENCY / ORGANIZATION / COURT NAME(S)

DATE(S) FILED

On or about July 22, 2004

CASE NUMBER(S) (If known)

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)

RACE (select one or more)

- ☐ Hispanic or Latino ☐ American Indian or Alaska Native ☐ Asian ☐ Native Hawaiian or Other Pacific Islander
- ☐ Not Hispanic or Latino ☐ Black or African American ☒ White ☐ Other (specify): _____

PRIMARY LANGUAGE SPOKEN (if other than English)

HOW DID YOU LEARN ABOUT THE OFFICE FOR CIVIL RIGHTS?

To mail a complaint, please type or print, and return completed complaint to the
OCR Regional Address based on the region where the alleged discrimination took place.

Region I - CT, ME, MA, NH, RI, VT Office for Civil Rights Department of Health & Human Services JFK Federal Building - Room 1875 Boston, MA 02203 (617) 565-1340; (617) 565-1343 (TDD) (617) 565-3809 FAX	Region V - IL, IN, MI, MN, OH, WI Office for Civil Rights Department of Health & Human Services 233 N. Michigan Ave - Suite 240 Chicago, IL 60601 (312) 886-2359; (312) 353-5693 (TDD) (312) 886-1807 FAX	Region IX - AZ, CA, HI, NV, AS, GU, The U.S. Affiliated Pacific Island Jurisdictions Office for Civil Rights Department of Health & Human Services 50 United Nations Plaza - Room 322 San Francisco, CA 94102 (415) 437-8310; (415) 437-8311 (TDD) (415) 437-8329 FAX
Region II - NJ, NY, PR, VI Office for Civil Rights Department of Health & Human Services 26 Federal Plaza - Suite 3313 New York, NY 10278 (212) 264-3313; (212) 264-2355 (TDD) (212) 264-3039 FAX	Region VI - AR, LA, NM, OK, TX Office for Civil Rights Department of Health & Human Services 1301 Young Street - Suite 1169 Dallas, TX 75202 (214) 767-4056; (214) 767-8940 (TDD) (214) 767-0432 FAX	
Region III - DE, DC, MD, PA, VA, WV Office for Civil Rights Department of Health & Human Services 150 S. Independence Mall West - Suite 372 Philadelphia, PA 19106-3499 (215) 861-4441; (215) 861-4440 (TDD) (215) 861-4431 FAX	Region VII - IA, KS, MO, NE Office for Civil Rights Department of Health & Human Services 601 East 12th Street - Room 248 Kansas City, MO 64106 (816) 426-7278; (816) 426-7065 (TDD) (816) 426-3686 FAX	Region X - AK, ID, OR, WA Office for Civil Rights Department of Health & Human Services 2201 Sixth Avenue - Mail Stop RX-11 Seattle, WA 98121 (206) 615-2290; (206) 615-2296 (TDD) (206) 615-2297 FAX
Region IV - AL, FL, GA, KY, MS, NC, SC, TN Office for Civil Rights Department of Health & Human Services 61 Forsyth Street, SW. - Suite 3B70 Atlanta, GA 30323 (404) 562-7886; (404) 331-2867 (TDD) (404) 562-7881 FAX	Region VIII - CO, MT, ND, SD, UT, WY Office for Civil Rights Department of Health & Human Services 1961 Stout Street - Room 1426 Denver, CO 80294 (303) 844-2024; (303) 844-3439 (TDD) (303) 844-2025 FAX	

Burden Statement

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave., S.W., Room 531H, Washington, D.C. 20201.



FACT SHEET



U.S. Department of Health and Human Services • Office for Civil Rights

HOW TO FILE A DISCRIMINATION COMPLAINT WITH THE OFFICE FOR CIVIL RIGHTS

The Department of Health and Human Services (HHS) Office for Civil Rights (OCR) enforces certain Federal civil rights laws that protect the rights of all persons in the United States to receive health and human services without discrimination based on race, color, national origin, disability, age, and in some cases, sex and religion.

If you believe that you have been discriminated against because of your race, color, national origin, disability, age, sex or religion by a health care or human services provider (such as a hospital, nursing home, social service agency, etc.) or by a State or local government health or human services agency, you may file a complaint with the Office for Civil Rights (OCR). Complaints alleging discrimination based on disability by programs directly operated by HHS may also be filed with OCR. You may file a complaint for yourself or for someone else.

Complaints to the Office for Civil Rights should be filed in writing, either on paper or electronically. You can use OCR's Discrimination Complaint Form which can be found on our web site or at an OCR Regional office. If you do not use OCR's form, your complaint should include the following information:

1. Your name, address and telephone number.
2. If you are filing a complaint for someone else, include that person's name, address and telephone number.
3. The name and address of the organization or person you believe discriminated against you.
4. How, why and when you believe you (or the person on whose behalf you are filing the complaint) were discriminated against.
5. Any other information that would help OCR understand your complaint.

You must file your complaint within 180 days of the date when the discrimination happened. OCR may extend the 180-day period if you can show "good cause."

You can file your complaint by email at OCRcomplaint@hhs.gov, or you can mail or fax your complaint to the OCR Regional Office that is responsible for the state in which you allege the discrimination took place. To find out where to file your complaint, use the OCR Regions list at the end of this Fact Sheet or you can look at the regional office map to help you determine where to send your complaint.

MORE INFORMATION ABOUT HOW TO GET A COPY OF OCR'S DISCRIMINATION COMPLAINT FORM

Option 1: Open and print out the Discrimination Complaint Form in PDF format (you will need Adobe Reader software) and fill it out. Return the completed complaint to the appropriate OCR Regional Office by mail or fax.

Option 2: Download the Discrimination Complaint Form in Microsoft Word format to your own computer, fill out and save the form using Microsoft Word. Use the Tab and Shift/Tab on your keyboard to move from field to field in the form. Then, you can either: (a) print the completed form and mail or fax it to the appropriate OCR Regional Office; or (b) email the form to OCR at OCRComplaint@hhs.gov.

If you have any questions, or need help to file your complaint, call OCR (toll-free) at 1-800-368-1019 (voice) or 1-800-537-7697 (TDD). You may also send an email to OCRMail@hhs.gov.

Website: <http://www.hhs.gov/ocr>

OCR Regional Addresses	
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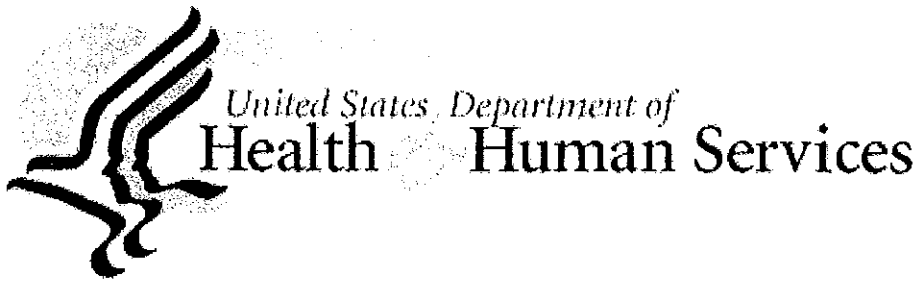
Chicago, IL 60601

(312) 886-2359; (312) 353-5693 (TDD)

(312) 886-1807 FAX

(206) 615-2290; (206) 615-2296 (TDD)

(206) 615-2297 FAX

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Office for Civil Rights

Frequently Asked Questions with Answers

- **Q. What are civil rights?**
- A. Civil rights are personal rights guaranteed and protected by the U.S. Constitution and by subsequent acts of Congress, such as the Civil Rights Act of 1964. They include, for example, the right to free speech, due process, equal protection of the laws and to be free from discrimination. Our office enforces part of certain statutorily-created civil rights. As far as HHS goes, all persons in the United States have a right to receive services in a nondiscriminatory manner from state and local social and health services agencies, hospitals, clinics, nursing homes or other agencies receiving funds from HHS. For example, you cannot be denied services or benefits, simply because of your race, national origin, or disability.
- **Q. How does one file a complaint at the Office for Civil Rights?**
- A. If you believe discrimination has happened to you or any specific class of individuals because of race, color, national origin, age, sex, disability or religion by a health care or human services provider (such as hospitals, nursing homes, social service agencies, etc.), you or your representative may file a complaint with the Office for Civil Rights (OCR). Complaints against the U.S. Department of Health and Human Services alleging discrimination in services on the basis of disability may also be filed with OCR.
- **Q. Is there a timeframe for filing a complaint with the Office for Civil Rights?**
- A. Complaints usually must be filed within 180 days from the date of the alleged discriminatory act. (OCR may extend the 180-day period if good cause to do so is shown.)
- **Q. What information is needed for one to file a complaint?**
- A. Include the following information in your written complaint (request a Discrimination Complaint Form from OCR or at <http://www.hhs.gov/ocr/disform.html>. You will need to save the form to a disk):
 - Your name, address and telephone number. You must sign the complaint. (If you file a complaint on someone's behalf, include his/her name, address and telephone number and state your relationship to that person - e.g., spouse, attorney, friend, etc.)
 - Name and address of the institution or agency you believed discriminated against you.
 - How, why and when you believe you were discriminated against. - Any other relevant information.
- **Q. What happens with my complaint once the Office for Civil Rights receives it.**
- A. Determining Jurisdiction - Once a complaint is received, OCR must determine if it has the legal authority to review and investigate the complaint. Our authority primarily is over those entities (known as "Recipients") receiving federal financial assistance from the Department of Health and Human Services (DHHS) and in certain cases over entities for which OCR has been designated enforcement responsibility by another agency.

- **Q. How does your office respond to my concern for privacy and confidentiality.**
- A. Privacy Act Notice/Confidentiality - In OCR investigations, the name of the complainant usually is kept confidential unless its' disclosure is necessary to the case. If OCR determines that release of your identity is required for the processing of the case, you will be asked to sign a release. If you choose not to provide a release, the investigation may be impeded or terminated.

- **Q. How does the Office for Civil Rights conduct an investigation of my complaint?**
- A. Once it is clear that OCR has jurisdiction to handle your complaint, the investigator will gather information through interviewing witnesses, obtaining documentation, and making visits to appropriate sites. You may be interviewed again as information is gathered.

- **Q. What kind of notification do I receive, when the Office for Civil Rights has completed an investigation?**
- A. At the conclusion of an investigation, OCR issues a Letter of Findings, which presents OCR's decision on whether there has been a violation of a federal statute or regulation. If there is a violation finding, the recipient is then allowed a specific time period, usually 60 days, to correct the violation or provide OCR with a plan of correction. Corrective action may involve a change in policy or procedure, provision of a service, reinstatement to a job, backpay, restoration of lost benefits, or a notice to clients and employees that a recipient has taken steps to comply with with a federal statute or regulation. If a recipient is unwilling to take corrective action to come into compliance, OCR will recommend that enforcement proceedings be initiated. A final decision upholding a finding of a violation may result in the termination of Federal financial assistance to the recipient.

- **Q. Am I able to initiate a private court action?**
- A. Under most of the statutes enforced by OCR, a complainant who has been discriminated against may initiate private court action instead of, or in addition to filing a complaint with OCR. If you are interested in doing so, you should consult an attorney as soon as possible to ensure that the action will be timely filed.

- **Q. If I believe that I have been denied health or human services or treated in an unfair manner because of my race, color, national origin, disability or age, where do I go and what do I do?**
- A. Contact the OCR regional office that serves your state. Describe your situation in writing to the OCR regional staff and they will advise you and if necessary assist you in filing a civil rights complaint with the office. They will then investigate the complaint and issue a Letter of Findings to you and the alleged discriminating party. If the alleged discriminating health or human service agency has violated your civil rights, the Office for Civil Rights will seek an appropriate remedy in an attempt to rectify the discrimination.

- **Q. What is the extent of your geographical coverage?**
- A. If a complainant alleges discrimination by a DHHS funded health or human services entity in:
 1. Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and/or Vermont, the Boston Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.
 2. New Jersey, New York, Puerto Rico and/or the Virgin Islands, the New York Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.
 3. Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and/or West Virginia, the Philadelphia Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.
 4. Alabama, Florida, Georgia, Kentucky, Mississippi, North and South Carolina, and/or Tennessee, the Atlanta Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.
 5. Illinois, Indiana, Michigan, Minnesota, Ohio, and/or Wisconsin, the Chicago Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.
 6. Arkansas, Louisiana, New Mexico, Oklahoma, and/or Texas, the Dallas Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR

regional office.

7. Iowa, Kansas, Missouri, and/or Nebraska, the Kansas City Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.
8. Colorado, Montana, North and/or South Dakota, Utah, and/or Wyoming, the Denver Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.
9. Arizona, California, Hawaii, Nevada, Guam, Pacific Islands, and/or American Samoa, the San Francisco Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.
10. Alaska, Idaho, Oregon, Washington, the Seattle Regional Office will handle the complaint. If the entity is outside of these states, the office will forward the complaint to the appropriate OCR regional office.

• **Q. What happens if the Office for Civil Rights cannot help me?**

- A. The Office for Civil Rights will try to identify the appropriate state or federal agency and refer your case unless you tell us not to.

• **Q. Are there other federal agencies that protect my rights?**

- A. Other Federal and State agencies exist to protect your rights. Some are:
 Education - Office for Civil Rights, U.S. Department of Education
 Employment - Equal Employment Opportunity Commission (EEOC); Office of Federal Contract Compliance Programs, U.S. Department of Labor
 Housing - Office of Fair Housing, U.S. Department of Housing and Urban Development. More than one agency may be able to help you.

• **Q. I've talked to one of your representatives about a problem with the police harassing my son because he is African American and was told that your office cannot take the case. Why can't your office do something? His civil rights are being violated!**

- A. This office is a civil rights office within the U.S. Department of Health and Human Services. As such, our jurisdiction is generally limited to complaints of discrimination filed against providers of health and social services who receive Federal financial assistance from our Department. The Department of Justice (DOJ) usually handles complaints against law enforcement agencies. You may wish to call DOJ at 1-800-869-4499.

• **Q. What is Federal financial assistance?**

- A. Examples of Federal financial assistance as defined by our regulations include Medicaid, Medicare Hospital Insurance (Part A), Public Health Service grants, Aid to Families with Dependent Children. These funds are given to a facility (such as a hospital, social service agency) or an individual service provider (such as a doctor, dentist) by the government for services provided or to provide a service. Social security benefits, Supplemental Security Income, Medicare Supplemental Medical Insurance (Part B) are not considered Federal financial assistance when applying the civil rights laws OCR enforces. Generally speaking, the reason for this is that these sources of funding are paid directly to an individual beneficiary by the government.

• **Q. I inquired about filing a complaint against a major university and was told that I should file with the Department of Education's Office for Civil Rights. I was not given a reason for this referral. I know that the university receives millions from your agency, so why can't your agency accept the complaint?**

- A. It is possible for several Departments to have provided Federal financial assistance to that University. In order to avoid duplication of effort and to be more efficient, we coordinate our activities with other agencies to determine which agency would be the most appropriate agency to handle your complaint. This decision is made on a case by case basis with many factors considered. Some of these factors include, the subject matter, which department provides the largest portion of Federal financial assistance, whether an agency has started an investigation. Generally, DHHS does not investigate educational institutions unless the complaint is against a health related portion of the University, e.g., the University's School of Medicine.

• **Q. Do I have to be a minority person in order to have "civil rights"?**

- A. All persons in the United States have civil rights under the constitution and appropriate laws. DHHS is charged with enforcing only a few of these civil rights laws. For example, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the ground of race, color, and national origin. A common misperception is that this law is for the exclusive use of "minorities." This law does not exclude non-minority persons. In other words, this law provides protection to all persons living in the United States from discrimination on the basis of race, color, or national origin. In addition, we enforce other laws that protect persons from discrimination on the bases of disability, sex, age, etc. A person of any race can have a disability, and sex and age are not exclusive characteristics of a minority person. As such, laws prohibiting discrimination protect ALL persons.
- **Q. Does OCR have the authority to investigate discrimination complaints filed against programs that provide low income persons with free or reduced cost health care?**
- A. Yes, we have the authority to investigate such complaints if the following conditions are met:
 - * the facility receives Federal financial assistance from DHHS - in addition, if the alleged discrimination involves disability, we can accept complaints filed against a State or local government entity providing health or social services even if it does not receive Federal financial assistance, and we can accept complaints of disability discrimination in programs conducted by DHHS.
 - * the alleged discrimination must be on a basis in which we have authority (e.g., race, disability) the subject matter must be covered by our regulations (e.g., we generally do not accept employment complaints based on race; the Equal Employment Opportunity Commission usually handles such complaints.)
 - * the complaint must be filed within 180 days of the alleged discrimination, unless a waiver is granted
 - * the complaint must be in writing and signed
- **Q. I have a young child who is occasionally quite sick because he has AIDS. I've tried to enroll him in a day-care center near my house, but was told that they do not take children who have AIDS because of the danger that it would pose to other children. What can I do?**
- A. It is unlawful for a public or private facility to discriminate against a person based solely on his/her disability if that person is a qualified person with a disability and meets the eligibility criteria to receive benefits or services. Each complaint, however, is examined on a case by case basis. Specifically, in cases involving AIDS, an issue that may come up is whether the person poses a significant threat to the health and safety of others. Generally speaking, in a day-care setting, having AIDS itself should not disqualify a child from participation. You may contact our office to speak to one of our investigators.
- **Q. I'm a disabled person. I called your office to file a complaint and was told that your office cannot help me. What do I have to do to have a complaint accepted for investigation by your office?**
- A. In order for our office to accept a complaint for investigation, the following conditions must be met:
 - * You must identify the alleged discriminating entity or agency, you must identify the alleged injured party (the person who was allegedly discriminated against), the alleged discrimination must be on a basis in which we have jurisdiction (e.g., race, disability).
 - * OCR must have authority to investigate the facility you are complaining against. The facility must receive funds from DHHS, OR if the alleged discrimination is on the basis of disability the facility can also be a DHHS conducted program, or a state or local government entity providing health or social services.
 - * The subject matter must be covered by our regulations. For example, we generally do not accept employment complaints based on race because the Equal Employment Opportunity Commission usually handles such complaints. The complainant must clearly state why the action taken was based on the complainant's protected basis. For example, having a disability, by itself, does not protect a person from having an adverse action taken against him. It is unlawful only if the adverse action is taken because of the person's disability. A hearing impaired person cannot be denied services solely because a hospital does not want to provide a sign language interpreter. However, a hearing impaired person may be legitimately refused additional non-emergency services by a hospital for failing to pay his bills.
 - * The complaint must be filed within 180 days of the alleged discrimination, unless a waiver is granted.
 - * The complaint must be in writing and signed.
- **Q. I called your office regarding being fired from my job at a local supermarket because of age**

discrimination and your office said that it could not accept my complaint. Whom should I call for assistance?

- A. Generally speaking, most employment discrimination complaints, especially those against private employers, should be addressed to the local Equal Employment Opportunity Commission that services the state in which you reside.
- **Q. My constitutional, human and civil rights have been violated. Why can't your office help me?**
- A. OCR's charge is to ensure that the civil rights laws under our jurisdiction are not violated. OCR enforces laws prohibiting discrimination on the bases of disability, age, race, color, national origin, sex and religion in the provision of health and social services. OCR can investigate only those matters that are covered by the laws it enforces.
- **Q. Can your office represent me in my complaint?**
- A. No. OCR is a neutral fact finding agency. Our charge is to ensure that the laws under our jurisdiction are not violated. If your complaint is accepted for investigation, we may, for example, obtain a promise that the program will change its practices or provide you with a service. Although we will consult with you, you may not be satisfied with any individual remedies proposed. You should consult an attorney about your right to file a private law suit in court if you wish to protect fully your individual rights and remedies. Delay in doing so may foreclose your right to bring a law suit.
- **Q. If you can't represent me, do you think the ACLU will help?**
- A. The ACLU is not a government agency, and it decides what issues to become involved in on a case by case basis. The concept of civil liberties encompasses many more issues than discrimination prohibited by the laws enforced by OCR. It also concerns individual freedom issues found in the Constitution -- freedom of speech, association, religion are counted in the civil liberties category. For further information, call the local ACLU office in your area.

Last revised: December 12, 2003

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U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

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**UNITED STATES DISTRICT COURT
IN THE _____ DISTRICT OF MICHIGAN
_____ DIVISION**

Plaintiff,

vs.

[Defendant/Defendants].

_____/ **[Name of Attorney(s)]**

Attorney(s) for Plaintiff

[Address and phone number]

_____/

COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge.

NOW COMES Plaintiff _____, by and through **[his/her]** attorney, _____
[attorney/firm name] and for **[his/her]** Complaint against **[Defendant/Defendants]**
_____ hereby states as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action under the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* (“ADA”), Section 504 of the Rehabilitation Act of 1973, as amended,

at 29 U.S.C. §794 (the “Rehabilitation Act”), and the Persons With Disabilities Civil Rights Act, M.C.L. §37.1101, *et seq.* (“PDCRA”).

2. This Court has jurisdiction pursuant to the following statutes:

- a. 28 U.S.C. §1331, which gives district courts original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States;
- b. 28 U.S.C. §1343 (3) and (4), which gives district courts jurisdiction over actions to secure civil rights extended by the United States government;
- c. 28 U.S.C. §1367, which gives the district court supplemental jurisdiction over state law claims.

3. Venue is appropriate in this judicial district under 28 U.S.C. §1391(b) because the events that gave rise to this Complaint occurred in this district.

PARTIES

4. Plaintiff is a citizen of the United States and resides in the County of _____, State of **[Michigan]**, which is in this judicial district.

5. Defendant _____ **[Individual’s Name]** is the Director of the **[Michigan Department of Community Health (“MDCH”)]**. Defendant _____ **[director’s name]** is sued in **[his/her]** official capacity as Director of **[MDCH]**. As such, **[he/she]** has a duty to insure that the state’s federally funded Medicaid program(s) are administered in accordance with federal and state law.

6. Defendant **[MDCH]** is the single state agency responsible for the administration of the Medicaid program, Title XIX of the Social Security Act, in **[Michigan]**. **[MDCH]** has contracted with Defendant _____ **[Waiver Agency]** to provide Medicaid covered services to Medicaid eligible clients in _____ County, such as Plaintiff.

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[If applicable] [County Organization] in turn has contracted with _____
[Service Provider] to assess and arrange for Medicaid covered mental health services for
[County Organization]'s clients.

7. [Defendant/Defendants] [is/are] a public entity for the purposes of the ADA pursuant to 42 U.S.C. §12131(1), and is located in the County of _____, State of [Michigan], which is in this judicial district. [Defendant/Defendants] provide programs and/or activities receiving federal financial assistance acting under the color of state and federal law.

GENERAL ALLEGATIONS

8. The Federal Medicaid statute, Title XIX of the Social Security Act, is codified at 42 U.S.C. § 1396 *et seq.* It authorizes the establishment by states of medical assistance programs for low income individuals who meet certain eligibility requirements. These medical assistance programs are jointly funded by the federal and state governments, and are designed by the states within the framework of options and requirements established under the Medicaid statute.

9. Pursuant to the federal statutory scheme, when an application for Medicaid benefits is filed with the single state agency responsible for administering the Medicaid program(s), such assistance shall be furnished with reasonable promptness to all eligible individuals. 42 U.S.C. §1396a(a)(8). Once individuals have been determined eligible, the state agency must continue to furnish Medicaid services until the recipient is found to be ineligible. 42 C.F.R. §435.930(b).

10. The Federal Medicaid statute, as well as the [Michigan State Plan] approved by the Federal Medicaid agency, lists services that must be provided to eligible persons. Such

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services include _____ **[Name of Waiver]** services (“Alternative Services”) for persons who would otherwise require institutional care. 42 U.S.C. §1396a(a)(10)(A)(ii)(VI).

11. The Federal Medicaid statute further requires that an individual eligible for Alternative Services be able to freely choose such services provided in **[his/her]** home or community setting as opposed to institutional services. 42 U.S.C. §1396n(c)(2)(C) and (d)(2)(C).

12. Title II of the ADA, found at 42 U.S.C. §§12131-12134, extends to state and local governments the non-discrimination provisions of the Rehabilitation Act. It requires that their services, programs and activities of state and local governments be administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

13. Plaintiff is a _____-year-old **[Woman/Man]** with the following need for long term care via Medicaid services: _____, _____, and _____ **[List/description of Disabilities/Long term care needs]**.

14. As a result of Plaintiff’s condition(s) _____ **[describe/list what effects Plaintiff’s age/disabilities have on her/him]**.

15. Plaintiff is eligible to be a Medicaid beneficiary of the _____ waiver program **[Name of Waiver Program]** (“Program”). Under the Program, Plaintiff is entitled to receive _____ **[Scope, amount and duration of Services Plaintiff Receives or should Receive]**.

16. Plaintiff meets the essential eligibility requirements for the receipt of services or the participation in **[Defendant’s/Defendants’]** Program.

17. On or about _____ **[Date]**, Plaintiff applied to be a participant in **[Defendant’s/Defendants’]** Program.

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18. On or about _____ [Date], [Defendant/Defendants], acting under the color of state and federal law, denied Plaintiff's request to be a participant in [Defendant's/Defendants'] Program, *[If Applicable]* placing Plaintiff on a "waiting list."

19. [Defendant's/Defendants'] administration of the Program limits the availability of the Alternative Services.

20. Without the Alternative Services, Plaintiff will have no choice but to move into an institution and/or nursing home.

COUNT I
VIOLATION OF 42 U.S.C. §1983

21. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

22. [Defendant/Defendants] [has/have] deprived Plaintiff of [his/her] federal constitutional and/or statutory rights by failing and refusing to provide Plaintiff with the home care services prescribed in [his/her] _____ care plans.

23. [Defendant/Defendants] [has/have] acted under the color of state law when [Defendant/Defendants] deprived Plaintiff of [his/her] federal rights, property interests and otherwise discriminated against Plaintiff based upon Plaintiff's disability.

24. As a direct and proximate result of [Defendant's/Defendants'] violation of 42 U.S.C. §1983, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered].*

COUNT II
VIOLATION OF THE MEDICAID STATUTE AND REGULATIONS

25. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

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26. The failure of **[Defendant/Defendants]** to provide Plaintiff with the Alternative Services violates provisions of the Federal Medicaid statute and regulations including, without limitation, the following:

- (a) The requirement of 42 U.S.C. §1396a(a)(8) that Medicaid assistance be furnished with reasonable promptness to eligible individuals.
- (b) The requirement of 42 C.F.R. §435.930(b) that once an individual has been found eligible for Medicaid services, the state agency must continue to provide such services until the recipient is found ineligible.
- (c) The requirement of 42 U.S.C. §1396a(a)(10)(A)(ii)(VI) that the Alternative Services be made available to persons who would otherwise be eligible for institutional care.
- (d) The requirement in 42 U.S.C. §1396n(c)(2)(C) and (d)(2)(C) that an Alternative Services eligible beneficiary be able to freely choose to receive medical assistance at home or in a community setting as opposed to receiving institutional care.

27. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*

COUNT III
VIOLATION OF THE [MICHIGAN] _____ STATE PLAN,
THE _____ STATUTE AND REGULATIONS

28. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

29. The failure of Defendant **[MDCH]** to provide Plaintiff with the Alternative Services prescribed in **[his/her] _____ [Name of Plan]** care plan(s) violates provisions of **[Michigan]** state law including, without limitation, the following:

- (a) The requirement of _____ **[Statute Cite]** that long term care services at home or in a community setting be made available to persons at risk of institutionalization who choose them as an alternative to nursing facility services.

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- (b) The agreement in the **[Michigan]** State Plan that Alternative Services be provided to eligible persons.

30. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*

COUNT IV
DISCRIMINATION BASED ON DISABILITY
(Title II of ADA)

31. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

32. Plaintiff is a "qualified individual with a disability" as defined in 42 U.S.C. §12131(2).

33. The ADA and its implementing regulations require that the Alternative Services be made available in the community rather than in institutions where to do so will meet the needs of qualified individuals with disabilities, such as Plaintiff.

34. Plaintiff has been denied and excluded from the benefits of **[Defendant's/Defendants']** Program, which would provide Plaintiff a less confining program that satisfies Plaintiff's needs.

35. As a result of **[Defendant's/Defendants']** denial and exclusion of Plaintiff from the Program, **[Defendant/Defendants]** violated the ADA by discriminating against Plaintiff in a number of ways, including without limitation, the following:

- (a) By reason of Plaintiff's disabilities, age and need for long-term care services;
- (b) The under-funding of the Program compelling institutionalization or placement in a nursing home, thus negating a meaningful choice for Plaintiff; by denying a waiver to Plaintiff, the Defendant is failing to reasonably accommodate the Plaintiff. Denial of long-term care for medically needy Medicaid beneficiaries in community based settings violates the ADA as the

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[Defendant's/Defendants'] can not show that providing these services is a fundamental alteration of Michigan's Medicaid program. *Townsend v. Quasim* 328 F3d 511 (9th Cir. 2003)

- (c) Providing services Plaintiff requires only in a segregated setting, as opposed to the "most integrated setting" appropriate to the needs of Plaintiff;
- (d) **[Defendant's/Defendants']** administration of the Program limits the availability of Alternative Services based on the severity of need or disability; and
- (e) Denying Plaintiff the equal/same opportunity to receive the benefit(s) of **[Defendant's/Defendants']** programs/activities that are available to other qualified individuals. It is not a fundamental alteration of the long term care system to accommodate the Plaintiff's request to receive services in the least restrictive setting.

36. **[Defendant's/Defendants']** actions violate the *Olmstead* ruling by the undue institutionalization of Plaintiff where a less confining service can satisfy Plaintiff's needs, and failure of **[Defendant/Defendants]** to administer the services, programs and activities in the most integrated setting appropriate to the needs of Plaintiff.

37. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered, including but not limited to needless isolation/segregation.]*

COUNT V **VIOLATION OF THE REHABILITATION ACT**

38. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

39. Plaintiff is a "disabled/handicapped" individual as defined in 29 U.S.C. 705.

40. The Rehabilitation Act and its implementing regulations require that **[Defendant's/Defendants']** administer programs/activities in the most integrated setting

appropriate to the needs of qualified handicapped/disabled persons. 28 C.F.R. §41.51 and 45 C.F.R §84.4.

41. Plaintiff has been denied and excluded from the benefits of **[Defendant's/Defendants']** Program, which would provide Plaintiff a less confining program that satisfies Plaintiff's needs.

42. As a result of **[Defendant's/Defendants']** denial and exclusion of Plaintiff from the Program, **[Defendant/Defendants]** violated the Rehabilitation Act by discriminating against Plaintiff in a number of ways, including without limitation, the following:

- (a) By reason of Plaintiff's disabilities, age and need for long-term care services;
- (b) The underfunding of the Program compelling institutionalization or placement in a nursing home, thus negating a meaningful choice;
- (c) Providing services Plaintiff requires only in a segregated setting, as opposed to the "most integrated setting" appropriate to the needs of Plaintiff;
- (d) Defendant's administration of the Program limits the availability of Alternative Services based on the severity of need or disability; and
- (e) Denying Plaintiff the equal/same opportunity to receive the benefit(s) of **[Defendant's/Defendants']** programs/activities that are available to other qualified individuals with disabilities.

43. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*

COUNT VI **DISCRIMINATION BASED ON DISABILITY (PDCRA)**

44. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

45. Plaintiff's developmental disabilities that substantially limits one or more major life activities unrelated to **[his/her]** ability to utilize and benefit from a place of public accommodation or public service, constitute a *disability* by and within the meaning of the PDCRA, M.C.L. §37.1103(d).

46. **[Defendant/Defendants]** violated the PDCRA, M.C.L. §37.1302, by discriminating against Plaintiff upon **[his/her]** application to be a participant in the Program in a number of ways including, without limitation, the denying Plaintiff the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a public service because of a disability that is unrelated to Plaintiff's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by Plaintiff of adaptive devices or aids (M.C.L. §37.1302(a)).

47. Plaintiff's *disability* was a determining factor in **[Defendant's/Defendants']** decision to deny and preclude Plaintiff from being a participant in the Program.

48. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*

WHEREFORE, Plaintiff requests that this Court enter judgment against **[Defendant/Defendants]** providing the following relief:

- (a) Compensatory damages in whatever amount in excess of \$ _____, exclusive of costs and interest, that Plaintiff is found to be entitled;
- (b) Punitive/exemplary damages against **[Defendant/Defendants]** in whatever amount, exclusive of costs and interest, that Plaintiff is found to be entitled;
- (c) An order placing Plaintiff in the position that **[he/she]** would have been in had there been no violation of **[his/her]** rights;

- (d) An order enjoining/restraining **[Defendant/Defendants]** from further acts of discrimination or retaliation;
- (e) An award of interest, costs, and reasonable attorney's fees;
- (f) Any and all other remedies provided pursuant to 42 U.S.C. §1983, the Federal Medicaid statute and regulations, the ADA, the Rehabilitation Act and the PDCRA;
- (g) Take other appropriate nondiscriminatory measures to overcome the above described discrimination; and
- (h) such other and further relief as the Court deems appropriate.

[Firm Name]

By: _____
[Attorney name(s)]
Attorney(s) for Plaintiff
[Address and phone number]

Sample Complaint drafted by Patricia E. Kefalas Dudek and Victor A. Veprauskas IV
victor/misc/ada sample complaint

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