

S.R., by and through his next friend, Allison Ware; :  
THEODORE SMITH, by and through :  
his next friend, Ashley Maddison; S.H., by and :  
through her next friend, Julia Shmilovich; M.B., :  
by and through his next friend, Ashley Maddison; :  
N.C., by and through his next friend, Sue Walther; :  
CHRYSTAL STEWARD, by and through her next :  
friend, Deborah Fegan, on behalf of themselves :  
and all others similarly situated, :

V.

Defendants.

## Class Action

WHEREAS, the Plaintiffs, six Pennsylvania Medical Assistance beneficiaries who were under the age of 21 with mental health disabilities who had been adjudicated dependent, filed this putative class action on December 18, 2017, on behalf of themselves and a class of others similarly situated, alleging that the Defendants have not complied with provisions of Title XIX of the Social Security Act, Title II of the Americans with Disabilities Act, and section 504 of the

Rehabilitation Act, as well as regulations promulgated under those statutes, by failing to provide medically necessary mental health and child welfare services to dependent youth with mental health disabilities and failing to protect them from discrimination, including but not limited to, unnecessary institutionalization; and

WHEREAS, by order dated April 3, 2018, the Court certified a class of “[a]ll Pennsylvania children and youth under the age of 21 who now, or in the future, are adjudicated dependent and have diagnosed mental health disabilities,” and by order dated May 8, 2018, approved the proposed class Notice and Notice distribution plan; and

WHEREAS, Plaintiffs’ counsel, with assistance from Department of Human Services (“Department” or “DHS”) staff, distributed the Notice of the class action to individuals and organizations that represent children in the dependency system, including the Pennsylvania Court Appointed Special Advocate organizations, and posted the Notice on the website of Disability Rights Pennsylvania; and

WHEREAS, the Defendants filed a Motion to Dismiss, which the Court denied by order dated May 23, 2018; and

WHEREAS, the Parties have engaged in significant discovery, including third-party discovery; and

WHEREAS, the Defendants deny that they have not complied with the cited provisions of Title XIX of the Social Security Act, Title II of the Americans with

Disabilities Act, or section 504 of the Rehabilitation Act and Plaintiffs do not concede the validity of any defense; and

WHEREAS, the Parties agree that class members need prompt access to medically necessary and appropriate mental health and child welfare services in order to grow and thrive and are best served by living in family and integrated settings rather than congregate and segregated environments; and

WHEREAS, the Parties seek to amicably resolve the claims in this case without the expense, risks, delays, and uncertainties associated with continued litigation;

NOW, THEREFORE, the Parties enter into this Settlement Agreement.

## **I. Definitions**

1. The following definitions apply to this Settlement Agreement:
  - a. “AFCARS” means the federal Adoption and Foster Care Analysis and Reporting System, specifically the diagnostic and placement classification categories referenced in Paragraphs 29 and 43. The Parties understand that the AFCARS classifications are subject to change, and, if they are amended, Defendants will use the revised classifications. To the extent that the AFCARS diagnostic or placement categories are withdrawn, revoked, or otherwise abandoned, Defendants will use its best efforts to continue to report information

using the AFCARS classifications as they exist at the time this Agreement is executed.

b. “Agreement” means this Settlement Agreement.

c. “BH-MCO” means Behavioral Health Managed Care Organization, an entity which manages the purchase and provision of Medicaid-funded behavioral health services under an agreement with DHS or Primary Contractors.

d. “Children” mean children and youth under age 21.

e. “Class” and “Class members” means all Pennsylvania children and youth under the age of 21 who, now or in the future, are adjudicated dependent and have diagnosed mental health disabilities.

f. “CMS” means the Centers for Medicare and Medicaid Services.

g. “Community-based residential services” includes Group Home (Family Operated), Group Home (Staff Operated), and Supervised Independent Living.

h. “Congregate care” means Group Home (Shelter Care), Residential Treatment Center, Child Care Institution, Child Care Institution (Shelter Care), Juvenile Justice Facility, Medical or Rehabilitative Facility, and Psychiatric Hospital.



i. “Consultant” means the individual or individuals retained by DHS with expertise in both child welfare and mental health systems, who is mutually acceptable to both DHS and Plaintiffs.

j. “Community Residential Rehabilitation Host Home” (“CRR-HH”) means services provided by surrogate parents and the Community Residential Rehabilitation Services (“CRRS”) provider in the private residence of a family, other than the home of the child’s parents, with whom the CRRS provider contracts to provide a structured living arrangement for one to three children. CRR-HH provides services to youth up to age 18 who have demonstrated over time, maladaptive interpersonal behavior which significantly impairs the child’s functioning within the family and among the child’s peers. These services target youth who are at risk for out of home placement. For data collection purposes, CRR-HH will be considered Group Homes (Family Operated) and certain types of Foster Care.

k. “County children and youth social service agency” or “CCYA” means the child protective services agency – including CCYA officials, employees, agents, contractors, and successors – in each Pennsylvania county established and governed by specific state laws regarding child welfare.

l. “County MH/ID Office” means the mental health and intellectual disability program established by a county or two or more counties

acting in concert pursuant to the Pennsylvania Mental Health and Intellectual Disability Act, 50 P.S. § 4101 et seq.

m. “DHS” or the “Department” means the Pennsylvania Department of Human Services, its officials, departments and agencies, employees, counsel, agents, contractors, and successors.

n. “EBP” means Evidenced-Based Practices, including Evidence-Based Therapies.

o. “Effective Date” means the date the Court issues an order granting final approval of the Settlement Agreement.

p. “Family” means biological kin, adoptive parents, extended family of adoptive parents, custodial parents (subsidized or not subsidized), and non-related persons providing temporary care or resources.

q. “Foster Care” means the provision of care to dependent children in the following settings: Foster Family Home (Licensed Home), Foster Family Home (Therapeutic Foster Family), Foster Family Home (Shelter Care Foster Family Home), Foster Family Home (Relative Foster Family), Foster Family Home (Pre-Adoptive Home), and Foster Family Home (Kin Foster Family Home).

r. “Mental health disability” means a mental health impairment that substantially limits one or more major life activity.

- s. “Parties” means the Plaintiffs and Defendants and their respective counsel.
- t. “Primary Contractor” means a County, Multi-County Entity, or a BH-MCO which has an agreement with the Department to manage the purchase and provision of Medicaid-funded behavioral health services.
- u. “Program Standards and Requirements for the HealthChoices Behavioral Health Program” is part of the grant agreement between DHS and the Primary Contractors and/or BH-MCOs that annually sets forth the obligations of the Primary Contractors and/or BH-MCOs to administer the Behavioral Health HealthChoices Program. The Program Standards and Requirements includes the Appendices to that document.
- v. “Residential Treatment Facility” or “RTF” means a facility that provides 24-hour care for children with mental health disabilities, including Psychiatric Residential Treatment Facilities. Regarding data collection, RTFs are counted as Residential Treatment Centers.
- w. “Therapeutic Foster Care” means a foster family home that provides specialized care and services.

## **II. Mental Health Screenings and Evaluations**

2. Within 180 days of the Effective Date, DHS will issue written guidance to encourage CCYAs to refer for a mental health screening each child: (a)

for whom it has an open case with the CCYA, (b) who has not been referred for or is not currently receiving mental health services, and (c) who, based on the CCYA's observations or information provided to CCYA, including information from the child's family or foster family, is exhibiting potential mental or behavioral health symptoms. DHS will allow counsel for Plaintiffs and the class 14 days to review and provide feedback on the written guidance before it is issued.

3. The DHS guidance issued pursuant to Paragraph 2 will provide that the CCYA will make the screening referrals to the child's BH-MCO or, if the child is not covered by Medicaid, to the child's County MH/ID Office, unless: (a) the CCYA is aware that a referral has already been made by a different source, or (b) the CCYA has a process for completing the screening itself and will complete the screen within 7 days of the date a screen is determined to be needed.

4. Within 180 days of the Effective Date, DHS will provide written guidance to the County MH/ID offices encouraging: (a) coverage of mental health screenings and evaluations for children who meet the criteria in Paragraph 2 but are not eligible for Medicaid, and (b) completion of those screenings within 7 days of referral. DHS will allow counsel for Plaintiffs and the class 14 days to review and provide feedback on the written guidance before it is issued.

5. Beginning with the calendar year 2026 Program Standards and Requirements for the HealthChoices Behavioral Health Program, DHS's

agreements with the Primary Contractors and/or BH-MCOs will require that the BH-MCO's provider network provide treatment intervention within 7 days for routine appointments, including mental health screenings and mental health evaluations.

6. Beginning the calendar year 2026 Program Standards and Requirements for the HealthChoices Behavioral Health Program, DHS's agreements with the Primary Contractors and/or BH-MCOs will require that the BH-MCOs assist in scheduling and arranging for a mental health evaluation for every class member who is enrolled in Medical Assistance for whom the mental health screening indicates a need for such evaluation. Depending on the needs of the class member, the evaluation must consist of a complete psychological, neuropsychological, and/or psychiatric evaluation.

7. The Primary Contractor and/or BH-MCO may allow a provider to utilize telehealth resources to conduct a mental health evaluation, if medically necessary, if consented to by the class member or health care decision maker, as permitted by Federal and State law, and in accordance with DHS policies within the timeframes set forth in Paragraph 5.

8. Within 180 days, DHS will issue written guidance to the Primary Contractors and BH-MCOs (with the expectation that the guidance will be shared with their providers who conduct mental health evaluations) that the mental health

evaluation should include specific recommendations of services and interventions (including the amount, duration, and scope of services) – regardless of funding source or the availability of the services and interventions – that the class member needs, including, but not limited to, any specific Evidence-Based Therapies. DHS will allow counsel for Plaintiffs and the class 14 days to review and provide feedback on the written guidance before it is issued.

### **III. Teaming Models**

9. Within 180 days of the Effective Date, DHS will issue written guidance to encourage CCYAs to use an evidence-based teaming model for any class members for whom the CCYA, County MH/ID Office, or DHS’s Regional OCYF Office determines that teaming is likely to improve the class member’s access to services and/or outcomes. DHS will allow counsel for Plaintiffs and the class 14 days to review and provide feedback on the written guidance before it is issued. The guidance will include, at a minimum, the following information:

a. Composition of the Team: The Team should include representatives from all involved agencies and systems that serve the class member (including, as applicable: child welfare, BH-MCOs, juvenile justice, mental health, intellectual disability/autism, education, and any other involved agency); the class member’s biological family, extended biological family, and foster family (if applicable); the class member (if 11 or older), if they so choose; any natural or

informal supports the family, foster family, and/or class member ask to have included; and representatives of providers that serve the child including any congregate care program.

b. Use of a Facilitator: The Team should have an identified facilitator who may be a professional independent of the agencies or a representative of one of the involved agencies or systems and who will be responsible to ensure the service plan identifies the class member's and family's or foster family's strengths and needs, ensure the service plan includes realistic and measurable goals and objectives, and clearly delineates the responsibilities of all Team members.

c. Training for CCYA Staff: DHS will encourage that all levels of CCYA staff (excluding support staff) – from caseworkers to supervisors to administrators – will be trained at least annually (and, in no event, later than 90 days after they are hired) in the teaming model chosen by the CCYA.

d. The intensity of teaming services provided by the Team should be commensurate with the needs of the class member being served. For example, more intensive teaming services for class members with more significant or complex needs could include, but not be limited to, increased frequency of meetings, meeting quickly after trigger events, (including an unplanned change in placement; a proposed or actual expulsion from school; an arrest or referral to law

enforcement), ensuring that appropriate crisis plans exist in all settings in which the child may experience a mental health crisis, and, when necessary, providing input on and support implementation of such crisis plans, new mental health evaluations, and seeking assistance from DHS through the Complex Needs Planning process as needed.

10. DHS will allow CCYAs to select the teaming models they prefer to use but will require that CCYAs inform DHS of the teaming models they choose in the needs-based plan and budget for FY 2027-2028 and annually thereafter. DHS will evaluate the teaming models chosen by the CCYAs for appropriateness in consideration of the characteristics of the population served in that county. Should DHS determine that a teaming model chosen by the CCYA is not appropriate, it will advise the CCYA to change models in the next needs-based plan and budget. The CCYA will inform DHS annually how it is implementing its chosen model and how it is maintaining fidelity to the model.

#### **IV. Complex Needs Planning Process**

11. Within 180 days of the Effective Date, DHS will revise and clarify its Bulletin on the Complex Needs Planning process to better support CCYAs and Teams in their efforts to coordinate and plan for the care and treatment of class members with complex needs in the least restrictive setting in an effort to ensure class members have access to such care and treatment with reasonable promptness.



12. The revised Complex Needs Planning process will set forth clear roles and responsibilities for the process at the county, regional, and state levels to maximize resources, expertise, and collaboration.

13. The revised Complex Needs Planning process will also include instructions to the CCYAs on how to identify children in their care who have “complex needs” that warrant referral to the Complex Needs Planning process to reflect as follows:

a. Understanding that each youth with complex needs and their families are unique, and that there are several characteristics that differentiate them from the general population, including any of the following:

- i. Complex trauma including abuse, neglect, developmental, and institutional trauma;
- ii. Multiple and complex diagnoses across developmental, physical, and/or mental health domains;
- iii. Complex communication needs;
- iv. Inconsistent presentation of behaviors and symptoms across settings;
- v. Lack of diagnostic clarity;
- vi. Disrupted education;
- vii. Limited, strained, or no natural supports;

- viii. Multiple system involvement including justice systems; or
- ix. An extensive history of out-of-home care, including multiple disrupted placements.

b. When considering a specific youth, not all of these characteristics are required – though it is often a combination of several and sometimes all of them. Additionally, a youth may not have the most acute needs, but could still be considered as having “complex needs.”

14. Within 180 days of the Effective Date, as part of the revised Complex Needs Planning process, DHS will form a Complex Needs Planning Team. The Complex Needs Planning Team will include representatives from each relevant DHS program office. The Complex Needs Planning Team will be available to provide technical assistance regarding licensing, funding, successful strategies from other counties/regions, and referrals to clinical resources and support CCYA’s and children’s Teams. The Complex Needs Planning Team also will be available, as needed, to assist in developing a comprehensive plan to meet the needs of a class member identified as having complex needs and/or securing medically necessary services for the class member with reasonable promptness.

15. Within 60 days of the Effective Date, DHS will identify a financial resources team. Within one year of the Effective Date, the financial resources team will develop guidance and online training for CCYAs, County MH/ID

Offices, Primary Contractors, BH-MCOs, and Teams serving class members, on the various funding streams that support the development of person-centered plans for class members in the least restrictive setting, and share that guidance and training with relevant stakeholders. DHS will allow counsel for Plaintiffs and the class 14 days to provide feedback on the content of DHS' guidance and online training before it is made public. The financial resources team will be available, as requested, to provide technical assistance on funding services for class members in the Complex Needs Planning process.

16. Beginning with the calendar year 2026 Program Standards and Requirements for the HealthChoices Behavioral Health Program, DHS will require Primary Contractors and/or BH-MCOs to report to DHS, each quarter, class members who have been residing at an RTF for more than one year and do not have an identified discharge resource (family or provider) and an expectation of discharge within 60 days. DHS will review the report to determine whether the class member meets the criteria for referral to DHS's Complex Needs Planning process, and if so, will advise the county of the availability of the Complex Needs Planning process for that class member.

17. Beginning with the calendar year 2026 Program Standards and Requirements for the HealthChoices Behavioral Health Program, DHS will require Primary Contractors and/or BH-MCOs to report to DHS, each quarter, class

members who have been residing in an inpatient psychiatric hospital for more than 60 days and do not have an identified discharge resource (family or provider) and an expectation of discharge within 14 days. DHS will review the report to determine whether the class member meets the criteria for referral to DHS's Complex Needs Planning process, and if so, will advise the county of the availability of the Complex Needs Planning process for that class member.

18. DHS will include in the calendar year 2026 Program Standards and Requirements that by April 1, 2026, the Primary Contractors and/or BH-MCOs will provide to DHS summaries of community services that are available to serve class members identified as having complex needs in the least restrictive setting and best practices in serving class members identified as having complex needs. By July 1, 2026, DHS will share this information with officials and staff of DHS, CCYAs, Primary Contractors, BH-MCOs, and all Teams that serve class members identified as having complex needs.

## **V. Medicaid and Child Welfare Service Enhancements**

19. Within ninety (90) days of the Effective Date, DHS will communicate to CMS its intent to request to secure federal funding for the following services:

a. respite services, including community-based and overnight respite, for families and foster parents of class members; and

b. evidence-based teaming services (unless DHS determines and confirms to Plaintiffs' counsel that Medicaid funding is available for that service without the need to secure federal funding as outlined in this Section).

20. If CMS is open to all or part of the proposal to secure federal funding for the services identified in Paragraph 19, DHS will submit a formal request for federal funding for those services to CMS no later than two (2) years after the Effective Date. If, however, CMS confirms in writing that it will not grant a request for federal funding for any or all of the services identified in Paragraph 19, or if CMS does not respond to the intent to request federal funding after DHS makes two outreach attempts to CMS over a 180-day period, DHS is not obligated to submit such a request for federal funding for those services. In the event that CMS confirms in writing that it will not grant a request for federal funding (or does not respond to the intent to request federal funding after the two outreach attempts) for any or all of the services identified in Paragraph 19 and this Agreement remains in effect as of February 1, 2029, DHS will re-communicate to CMS its intent to request federal funding for those services identified in Paragraph 19, and, if CMS is agreeable to considering the request at that time, DHS will submit a formal request for federal funding no later than December 31, 2031.

21. Beginning 120 days after the Effective Date and every 60 days thereafter, DHS will provide Plaintiffs' counsel with updates regarding its efforts

to secure federal funds pursuant to Paragraphs 19 and 20, including a summary of any progress DHS has made until DHS secures the federal funding, CMS indicates that federal funding will not be approved, or CMS does not respond to DHS's requests as outlined in Paragraph 20.

22. DHS will work in good faith to address and resolve any questions or concerns raised by CMS to secure approval for the federal funding submitted pursuant to Paragraphs 19 and 20.

23. Within 120 days of the Effective Date, DHS will issue written guidance providing a definition and description of therapeutic foster care to be used by the CCYAs. DHS must consult with CCYAs and the Consultant in establishing the definition. At minimum, DHS's written guidance will describe: (a) industry-wide standards for therapeutic foster care; (b) best practices for training of therapeutic foster families; and (c) best practices for providing support to therapeutic foster families, especially to prevent disrupted placements. DHS will allow counsel for Plaintiffs and the class 14 days to review and provide feedback on the written guidance before it is issued.

24. Within 180 days of the Effective Date, DHS will publish on its website a printable list of all mental and behavioral health services that may be available to Pennsylvania children through Medicaid or other funding sources, to the best of its knowledge. The service list will reference the possible funding

source(s) for each service and provide information on what entities individuals should contact for more information on or to request those services. Before DHS publishes that list, it will share the list with Plaintiffs' counsel and other stakeholders and allow them 14 days to provide feedback. DHS will review the list at least every 6 months to ensure the accuracy of the information. DHS will require the Primary Contractors and BH-MCOs to provide information in their Member Handbooks about the service list, including where it can be found on DHS's website and how they can request a paper copy of the list from the Primary Contractors and BH-MCOs. DHS will announce the publication of the service list (including when it updates the list) to providers and provider associations through its listserv and, in that announcement, will urge provider associations to share the service list with its members, especially those who conduct mental health evaluations.

## **VI. Policies and Procedures Relating to RTFs**

25. Beginning with the calendar year 2026 Program Standards and Requirements for the HealthChoices Behavioral Health Program, DHS will require the Primary Contractor and/or BH-MCO to submit to it for review and prior approval, any plan to admit a class member aged 10 or younger to an RTF. DHS will review the RTF provider's service description to determine if the placement is the least restrictive to meet the needs of the class member. If DHS questions the

RTF placement, it will contact the Primary Contractor or BH-MCO to review the placement.

26. For each class member who is placed in an RTF following the review described in Paragraph 25, DHS will require the Primary Contractor and/or BH-MCO to submit a report to it every three months describing the child's discharge plan and what, if any, barriers exist or are anticipated to prevent timely discharge.

27. Beginning with the calendar year 2026 Program Standards and Requirements for the HealthChoices Behavioral Health Program, DHS will require the Primary Contractor and/or BH-MCO to provide to DHS, before a class member is referred for RTF placement after two previous RTF admissions and discharges to a lower level of care in a two year period, a written summary outlining the reasons the class member is being referred for RTF placement. The DHS Complex Needs Planning Team will review the summary. If DHS and/or its Complex Needs Planning Team questions whether the placement is the least restrictive to meet the needs of the class member, it will contact the Primary Contractor and/or BH-MCO to confirm the placement.

28. DHS will maintain updated service descriptions with admission and exclusion criteria for all RTFs and make the service descriptions available to CCYAs.



## **VII. Information Relating to Class Members**

### **29. Uniform, Centralized Data Collection System for CCYAs**

a. By December 31, 2031, DHS will develop a Uniform, Centralized Data Collection System. The CCYAs will be expected, at minimum, to input data for all dependent children, including those who they are serving at the time the system is implemented. One of the goals of the system is to permit the CCYAs and DHS to have access to consistent information that permits them to assess services provided to and placements of dependent children with mental health disabilities, including those with co-occurring conditions; to identify gaps in or delays in access to services or placements; and to determine whether progress is being made in ensuring that dependent children with mental health disabilities have timely access to services and placements in the most integrated setting appropriate to their needs.

b. DHS's Uniform, Centralized Data Collection System will gather the following information for each dependent child: (1) diagnoses of an intellectual disability, autism spectrum disorder, visual impairment and blindness, hearing impairment and deafness, orthopedic impairment or other physical condition, mental/emotional disorders, attention deficit hyperactivity disorder, serious mental disorders, developmental delay, developmental disability, other diagnosed condition(s); (2) the date(s) of any mental health screens to the extent

known by the CCYA; (3) whether the child was referred to the DHS Resource Account for Complex Needs Planning and, if so, the dates and the status of the referral; (4) the beginning and, if available, end dates of the child's placement in any of the following out-of-home placements as used in AFCARS: Foster Family Home (Licensed Home), Foster Family Home (Therapeutic Foster Family), Foster Family Home (Shelter Care Foster Family Home), Foster Family Home (Relative Foster Family), Foster Family Home (Pre-Adoptive Home), Foster Family Home (Kin Foster Family Home), Group Home (Family Operated), Group Home (Staff Operated), Group Home (Shelter Care), Residential Treatment Center, Qualified Residential Treatment Center, Child Care Institution, Child Care Institution (Shelter Care), Supervised Independent Living, Juvenile Justice Facility, Medical or Rehabilitative Facility, Psychiatric Hospital, Runaway, Whereabouts Unknown; and (5) whether the child is in a shared case between CCYA and juvenile probation.

c. DHS will use its best efforts to gather and include in its Uniform, Centralized Data Collection System the following information for each dependent child: (1) whether any mental health screening resulted in a referral for evaluation and, if so, the date that the evaluation began; (2) mental health services received by the dependent child with an effort for classifications that are as specific as practicable; and (3) whether the child needs any mental health services that they

are not receiving and, if so, what they are and why they are not receiving them; and  
(4) whether the child is part of an evidence-based teaming model.

d. DHS will confer with the Consultant to determine if there is other data that should be collected by DHS through the Uniform, Centralized Data Collection System.

### 30. Data Reports Regarding Class Members

a. Beginning with DHS's first submission of its semiannual AFCARS report to the federal government after the Effective Date of this Agreement, DHS will provide reports to Plaintiffs' counsel and the Consultant no later than 60 days after the dates of their semiannual AFCARS submissions that include the following information: (1) the number of dependent children served by the county during the report period who have mental/emotional disorders and/or serious mental disorders; (2) the number of dependent children served during the report period who have any mental/emotional disorders and/or serious mental disorders and a co-occurring diagnosis listed in Paragraph 29(b)(1); (3) the number of dependent children with mental/emotional disorders and/or serious mental disorders during the report period who are in a shared case between CCYA and juvenile probation; (4) the number of dependent children with mental/emotional disorders and/or serious mental disorders as of the last day of the report period who are in out-of-home placements broken down by the most recent type of placement

as listed in Paragraph 29(b)(4); and (5) subject to feasible change based on the recommendations of the Consultant, the number of dependent children with mental/emotional disorders and/or serious mental disorders who, in the previous 24 months, had more than four changes in living arrangements broken down by the number of changes and age groups (13 and younger; 14 and older). Provided, however, that if the AFCARS report(s) contains any significant data error(s), DHS will provide the report(s) to Plaintiffs' counsel and the Consultant as soon as possible after the error(s) are corrected and will notify them promptly of any delays in the reports and when DHS expects to finalize and produce them.

b. DHS will include in the reports submitted pursuant to Paragraph 30(a) the following information when and if it is available (see Paragraph 29(c)) from DHS's Uniform, Centralized Data Collection System: (1) the number of dependent children who received mental health screens and the average number of days between referrals for and receipt of screens; (2) the number of dependent children who received initial appointments for evaluations and the average number of days between referrals for and receipt of initial appointments for evaluations; and (3) the number of dependent children receiving mental health services broken down by types of services with an effort for classifications that are as specific as practicable.

c. DHS will produce the following congregate care data to Plaintiffs' counsel and the Consultant no later than 120 days after the Effective Date of this Agreement and every six months thereafter:

(1) the numbers and average length of stay of dependent children with mental health disabilities served in each of the following settings: (a) in-state RTFs (including individuals placed in out-of-state RTFs within 50 miles of their home counties); (b) out-of-state RTFs (excluding individuals placed within 50 miles of their home counties); and (c) inpatient psychiatric hospitals (excluding emergency room visits);

(2) Of the dependent children with mental health disabilities served in RTFs, the number who had been there for: (a) six to twelve months; (b) 12-24 months; and (c) more than 24 months;

(3) The numbers and average length of stay of dependent children with mental health disabilities under the age of 10 in RTFs;

(4) The numbers and average length of stay of dependent children with mental health disabilities ages 10 through 14, inclusive, in RTFs;

(5) The number of dependent children with mental health disabilities discharged from RTFs and the number of dependent children with mental health disabilities discharged from RTFs who were readmitted for RTF treatment within 90 days of their discharge; and

(6) Of the dependent children with mental health disabilities in inpatient psychiatric hospitals (excluding emergency room visits), the number who were hospitalized for: (a) more than 30 days; (b) more than 90 days; and (c) more than 180 days.

d. DHS will confer with the Consultant to determine if there are other metrics which DHS should include in its reports.

e. After the termination of this Agreement pursuant to Paragraph 60, DHS's obligations to provide the reports outlined in this Paragraph will end.

#### **VIII. Identifying and Addressing Barriers to Child Welfare and Mental Health Services for Class Members**

31. Within 90 days of the Effective Date, DHS will engage an independent consultant(s) (the "Consultant" as defined by this Agreement). DHS will pay the reasonable fees and expenses incurred by the Consultant. If, for some reason, the Consultant is unable to fulfill their responsibilities, DHS will work with Plaintiffs' counsel to identify a replacement to fill that role.

32. A party may seek to terminate the Consultant for good cause. The party seeking termination will submit to the other party a written description of why the Consultant should be terminated. If the Parties are unable to reach an agreement on whether the Consultant should be terminated, the Parties will request the Court to refer the matter to a magistrate judge for resolution.

33. If the Parties agree or the magistrate judge orders that the Consultant be terminated for good cause, the Parties will confer within fifteen (15) days of termination to begin the process of jointly selecting a new Consultant. If the Parties are unable to agree upon the selection of a new Consultant, each party will submit two (2) names along with resumes and rate proposals to a magistrate. The magistrate judge will assist the Parties by selecting a Consultant from among the names submitted.

34. The Parties agree that: (a) DHS will include in its contract with the Consultant that, except as authorized by the Parties acting together, the Consultant will not make any public statements regarding any act or omission of DHS or its agents, representatives, or employees, or disclose information provided to the Consultant pursuant to this Agreement to any non-party; (b) DHS will include in its contract with the Consultant that except for proceedings in this matter, the Consultant will not testify or present any other evidence in any other litigation or proceeding regarding any act or omission of DHS or any of its agents, representatives, or employees solely related to this Agreement, nor testify regarding any matter or subject that the Consultant may have learned solely as a result of the Consultant's performance under this Agreement, nor serve as a non-testifying expert regarding any matter or subject that the Consultant may have learned solely as a result of the Consultant's performance under this Agreement;

(c) the Consultant is not to be considered a State, County or local agency or an agent thereof, and accordingly the records maintained by the Consultant will not be deemed public records subject to public inspection; (d) DHS will include in its contract with the Consultant that unless such conflict is waived by the Parties, the Consultant will not accept employment or provide consulting services that would present a conflict of interest with the Consultant's responsibilities under this Agreement; (e) DHS will propose in its contract with the Consultant that all information obtained by the Consultant shall be maintained in a confidential manner (it is not a violation of confidentiality for Consultant to communicate with Plaintiffs' counsel as provided for in Paragraph 39).

35. DHS will work in good faith and collaboratively with the Consultant to identify and implement specific recommendations for tangible actions needed to enhance the service delivery system, reduce reliance on congregate care, and increase the availability of foster care and community-based residential services and evidence-based non-residential services for class members so that DHS is able to achieve Substantial Compliance with the Agreement as defined in Paragraph 44.

36. DHS and the Consultant will develop a plan for the Consultant's review of the Pennsylvania mental health and child welfare systems as it relates to class members so that the Consultant is able to make recommendations for improvement to achieve the goals stated in Paragraph 35 and to enable DHS to



achieve Substantial Compliance with the Agreement as defined in Paragraph

44. DHS will provide the plan to Plaintiffs' counsel upon its completion as well as any amendments that are subsequently made to the plan.

37. The Consultant will have access through DHS to data and information reasonably available and needed from its Office of Mental Health and Substance Abuse Services and its Office of Children, Youth and Families. DHS will make reasonable efforts to obtain information requested by the Consultant that is in possession of the CCYAs, Primary Contractors, and the BH-MCOs.

38. The Parties defer to the expertise of the Consultant in determining the scope of information necessary to conduct and complete this work and develop recommendations.

39. Within one year after engagement, the Consultant will provide Plaintiffs' counsel a status report summarizing their work with DHS pursuant to this Agreement and will provide an updated report annually thereafter until the termination of this Agreement pursuant to Paragraph 60. Plaintiffs' counsel will have access to communicate/meet with the Consultant about the scope and progress of the work under this Agreement and DHS will have the option to participate in this communication/meeting with the Consultant. This communication/meeting with the Consultant will take place at a reasonable time after the request is made by Plaintiffs' counsel for the communication/meeting.

Plaintiffs' counsel will be provided, upon request, with any information provided to the Consultant as part of their work under this Agreement. The information and/or data shared pursuant to this Paragraph shall be covered by the Confidentiality Stipulation and Order filed in this case on August 10, 2018.

40. DHS will generate baseline data for each of the following congregate care metrics that will be part of the Consultant's Substantial Compliance Assessments:

- a. the average length of stay of class members in RTFs;
  - b. the number of class members in RTFs who will meet the criteria for discharge from an RTF within 60 days but who do not have an identified discharge resource;
  - c. the number of class members in inpatient psychiatric hospitals for more than 14 days who do not have an identified discharge resource;
  - d. the average length of stay of class members under age 10 in RTFs;
  - e. the number of class members in shelters for more than 30 days;
- and
- f. the number of class members discharged from RTFs to a lower level of treatment who are readmitted to an RTF within 60 days of their initial discharge dates.

g. DHS will work with the Consultant to determine when it is appropriate to generate this baseline data. Once the baseline data is generated, DHS will provide that information to Plaintiffs' counsel. The information and/or data shared pursuant to this Paragraph shall be covered by the Confidentiality Stipulation and Order filed in this case on August 10, 2018.

41. DHS and the Consultant will propose to Plaintiffs' counsel meaningful and achievable percentage reductions to the congregate care metrics listed in Paragraph 40 that will be used as part of the Substantial Compliance Assessment as set forth in Paragraph 44. DHS and the Consultant will provide Plaintiffs' counsel at the time they submit their proposal with an explanation as to how they arrived at the recommendations, including any data and information relied upon. The information and/or data shared pursuant to this Paragraph shall be covered by the Confidentiality Stipulation and Order filed in this case on August 10, 2018.

a. Within 30 days after DHS and the Consultant submit the proposed percentage reductions to the congregate care metrics to Plaintiffs' counsel, the Parties and the Consultant will meet to discuss the proposal. If Plaintiffs' counsel disagrees with the proposal, the Parties and the Consultant will try to reach consensus for adjustments to the proposed reductions.

b. If the Parties and Consultant are unable to achieve consensus on the reductions to the congregate care metrics, Plaintiffs' counsel can request that the Court refer the dispute to a magistrate judge for mediation and/or resolution. If the magistrate judge is required to resolve the dispute, they will assess whether the disputed reductions to the congregate care metric(s) are meaningful and achievable in consideration of the statutory, regulatory and budgetary framework under which DHS operates and in consideration of efforts expended by the Parties to achieve compliance with the Agreement.

42. DHS will determine when it wants the Consultant to begin its first Substantial Compliance Assessment to determine whether it is in substantial compliance with the Agreement (as defined in Paragraph 44), provided, however, that it will measure data at least nine months after the baseline congregate care data generated pursuant to Paragraphs 40-41 (except for the number of class members in shelter data which will be measured at least six months after the baseline data for this area as specified in Paragraph 43).

43. The Consultant will undertake at least two additional Substantial Compliance Assessments to determine if DHS is in Final Substantial Compliance with the Agreement, possibly more if required by Paragraph 45. Each Substantial Compliance Assessment must be at least 9 months after the prior Assessment. The Parties recognize, however, that the data for determining whether there has been

the required reduction of the number of class members in shelters will be based on AFCARS data that reflect a six-month time period. Accordingly, the number of class members in shelters data will be at least 6 months after the prior assessment.

44. In each Substantial Compliance Assessment, the Consultant must determine that all the following criteria have been met:

- a. DHS has taken the actions required by the Agreement.
- b. Information from relevant resources reflect that the following services are being provided with reasonable promptness: CRR-HH; therapeutic foster care; outpatient psychiatric services (including evidence-based therapies); Family-Based Mental Health Services; Intensive Behavioral Health Services; and crisis services.
- c. Data on each of the congregate care metrics determined pursuant to Paragraphs 40-41 show the agreed-upon percentage reductions from baseline.

45. To achieve Final Substantial Compliance that will result in termination of the Agreement pursuant to Paragraph 60, the Consultant must conclude that DHS achieved substantial compliance: (a) in the first three consecutive Substantial Compliance Assessments; or (b) in any three out of four consecutive Substantial Compliance Assessments. However, to the extent that the Consultant concludes that DHS has achieved Substantial Compliance with one or

more (but not all) specific criteria/metrics identified in Paragraph 44 in the first three consecutive Substantial Compliance Assessments or in any three out of four consecutive Substantial Compliance Assessments, then those criteria/metrics will be deemed to be achieved and the Consultant will not continue to assess them in any future Substantial Compliance Assessments. Additionally, if the full development and implementation of the Uniform, Centralized Data Collection System pursuant to Paragraph 29 is the only item preventing a determination of Final Substantial Compliance, the Parties will meet and confer to determine whether the status of development and implementation of that system is sufficiently advanced that it is sufficient to justify a determination of Final Substantial Compliance. If the Parties are unable to reach an agreement on this issue, the Parties agree that, upon the request of either party, the issue will be referred to the magistrate judge to determine whether DHS should be found to be in Final Substantial Compliance based on the status of the development and implementation of the Uniform, Centralized Data Collection System existing at that time.

46. Within 60 days of the date that the Consultant issues a Substantial Compliance Assessment, Plaintiffs or DHS can provide written feedback to the Consultant and the opposing party to contest the Substantial Compliance Assessment. The opposing party can respond to the feedback within 30 days of

receipt. Within 30 days after receiving input from both Parties, the Consultant will confirm or modify their Substantial Compliance Assessment. Within 45 days after the Consultant's final decision, either party may request that the Court refer the dispute to a magistrate judge to review the determination regarding substantial compliance.

## **IX. Status Reports**

47. No later than six months after the Effective Date, DHS will provide Plaintiffs' counsel with a status report to confirm its implementation and/or status of the following requirements in this Agreement:

- a. mental health screening and evaluation provisions in Paragraphs 2 through 8;
- b. teaming requirements in Paragraphs 9 and 10;
- c. Complex Needs Planning process and related provisions in Paragraphs 11 through 18;
- d. adoption of a uniform therapeutic foster care definition provision in Paragraph 23;
- e. compilation and publication of children's mental and behavioral health services in Paragraph 24;
- f. changes to RTF-related policies and procedures pursuant to Paragraphs 25 through 28; and

g. status of DHS's engagement of the Consultant and its work with the Consultant pursuant to Paragraphs 31 through 46.

48. No later than 15 months after the Effective Date, DHS will provide Plaintiffs' counsel with a status report to confirm its implementation and/or the status of:

a. the Uniform, Centralized Data Collection System required by Paragraph 29; and

b. any matters addressed in the six-month status report that were not fully completed.

49. No later than 24 months after the Effective Date and every 9 months thereafter, if needed, DHS will provide Plaintiffs' counsel with a status report to confirm its implementation of any matters addressed in the reports issued pursuant to Paragraphs 47 and 48 that were not fully implemented as of the dates of those reports.

#### **X. Approval, Continuing Jurisdictions, Enforcement, and Termination**

50. Within 21 days after the Agreement is executed, Plaintiffs will petition the Court for preliminary approval of the Settlement Agreement and for permission to provide notice to the Class of the Settlement Agreement and to schedule a fairness hearing. Plaintiffs will petition the Court for final approval of the Settlement Agreement, which Defendants will not oppose.



51. The Settlement Agreement will be binding on the Parties, as well as their successors, only if the Court approves it. If the Court does not approve the Agreement or if approval is overturned on appeal, the Agreement will be deemed null and void, and the litigation will be reinstated in the same procedural posture as it had when the Parties executed it.

52. This Settlement Agreement will become effective upon its approval by the Court, except that the Parties will begin the process described in Paragraph 31 regarding identification and retention of a Consultant after the Settlement Agreement is fully executed. If the Court does not approve the Settlement Agreement, the Parties' obligations under this Paragraph will end.

53. The Court shall retain jurisdiction over this litigation for purposes of interpretation and enforcement of the Settlement Agreement until the Settlement Agreement is terminated.

54. If the Plaintiffs determine that the Defendants have failed to comply with any provision of this Settlement Agreement, the Plaintiffs may file a motion in this Court for specific performance, but not for contempt of court, subject to the requirements of Paragraph 55. DHS reserves the right to assert any available defenses to a claim for specific performance, and the Plaintiffs reserve the right to contest the validity of the defense.

55. Before filing a motion for specific performance, Plaintiffs' counsel will give 45 days' written notice of their intention to do so to the Defendants' counsel, specifying the grounds therefor, and the Parties will meet to attempt to resolve the issue(s) that prompted the notice. Notice under this Paragraph must be provided at least forty-five days before the termination of this Agreement. This Paragraph, however, does not apply to request for reviews of Substantial Compliance Assessments pursuant to Paragraph 46.

56. This Settlement Agreement is not nor is it to be construed to be a Consent Decree and does not operate as an adjudication on the merits of the litigation. Actions taken or to be taken by the Defendants hereunder are not admissions of liability on the part of the Defendants, but are undertaken in the spirit of compromise. The sole remedy of Plaintiffs for an alleged failure of the Defendants to fulfill the specified terms of this Agreement is to seek specific performance pursuant to Paragraph 54 after taking the steps required by Paragraph 55.

57. Subject to the Court's approval, Defendants will pay Plaintiffs' counsel, Disability Rights Pennsylvania, the total sum of \$895,000 for attorneys' fees, litigation expenses, and costs incurred for representation incurred through the Effective Date. DHS will authorize payment within forty-five (45) days after the Court's approval of this Agreement. The payment shall be made by check, issued

by the Department of Treasury, made payable to Disability Rights Pennsylvania. The payment shall be made as expeditiously as possible after the Court's approval of this Agreement. Nothing in this Settlement Agreement should be construed to preclude Plaintiffs from seeking recovery of attorneys' fees, litigation expenses, and costs incurred after the Court's approval of the Agreement.

58. Nothing in this Settlement Agreement precludes a class member from filing a complaint, grievance, and/or external review or to request a fair hearing to challenge a decision by a BH-MCO or county regarding access to and delivery of mental health or child welfare services in accordance with available procedures.

59. Nothing in this Settlement Agreement is intended to prevent DHS from seeking to change, alter, or terminate this Agreement on that grounds that: the obligations of DHS as alleged by the Plaintiffs are eliminated, reduced, or modified by an amendment to federal or state laws or regulations; by a decision of a court of competent jurisdiction; or changes to the Medical Assistance program or Child Welfare program are necessitated by the federal or state government's funding of the programs. Nothing in this Settlement Agreement is intended to change the jurisdiction of DHS or otherwise limit its authority under the laws of the Commonwealth of Pennsylvania.

60. This Settlement Agreement will terminate 90 days after the Consultant determines that DHS has achieved Final Substantial Compliance

pursuant to Paragraph 45 unless: (a) the termination date is extended by agreement of the Parties or by order of the Court; (b) a motion for specific performance pursuant to Paragraph 54 is pending or on appeal; or (c) a challenge to the Final Substantial Compliance determination has been asserted pursuant to Paragraph 46 and is not yet resolved (including any motion for specific performance or appeal). If a challenge to the Final Substantial Compliance determination or a motion for specific performance is pending at the time the Agreement is scheduled to terminate, only those provisions of the Agreement that are implicated in the challenge or motion will continue in effect until thirty days after final disposition, including appeals, of the challenge to the Final Substantial Compliance determination or motion for specific performance, at which point the Settlement Agreement will terminate.

61. The Parties will file a stipulation of dismissal within 14 days after the Settlement Agreement terminates.

62. The Agreement may be executed in counterparts.

63. By signing below, the signatories represent and warrant that they have full authority to bind the Parties in this matter with respect to all terms contained in this Settlement Agreement.

*Jeni Hergenreder 6/12/25*  
Jeni Hergenreder  
Disability Rights Pennsylvania  
429 Fourth Avenue, Suite 1404  
Pittsburgh, PA 15219-1505

Counsel for Plaintiffs and the Class

Jennifer S. Smith  
Digitally signed by Jennifer S. Smith  
Date: 2025.06.06 12:17:13 -04'00'

Jennifer Smith, Deputy Secretary  
Office of Mental Health & Substance  
Abuse Services  
PA Department of Human Services  
Commonwealth Tower, 11<sup>th</sup> Floor  
303 Walnut Street  
Harrisburg, PA 17101

Laval Miller-Wilson  
Digitally signed by Laval Miller-Wilson  
Date: 2025.06.11 15:02:41 -04'00'

Laval Miller-Wilson, Deputy Secretary  
Office of Children, Youth and Families  
PA Department of Human Services  
131 Health & Welfare Building  
625 Forster Street  
Harrisburg, PA 17120