

# **Exhibit 1**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

DAVID MARSTERS, )  
by his next friend, Nancy Pomerleau; )  
LORRAINE SIMPSON, by her guardian, Sara Spooner; )  
SHERRI CURRIN, by her guardian, Sara Spooner; )  
CAROLE CHOJNACKI, by her guardian, Sara Spooner; )  
RICHARD CAOUILLE, by his guardian, Sara Spooner; )  
DONALD GRANT, by his guardian, Sara Spooner, )  
on behalf of themselves )  
and other similarly situated persons; and )  
MASSACHUSETTS SENIOR ACTION COUNCIL, )

Plaintiffs, )

v. )

MAURA HEALEY, in her official capacity )  
as Governor of the Commonwealth of Massachusetts; )  
KATE WALSH, in her official capacity )  
as Secretary, Executive Office of Health and )  
Human Services; )  
MATTHEW GORZKOWICZ, in his official capacity )  
as Secretary of the Executive Office of Administration )  
and Finance; )  
ELIZABETH CHEN, in her official capacity as )  
Secretary, Executive Office of Elder Affairs; )  
and MICHAEL LEVINE, in his official capacity )  
as Assistant Secretary of MassHealth, )

Defendants. )

CIVIL ACTION NO.  
1:22-cv-11715-NMG

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into as of March 22, 2024, by and between, on the one hand, (i) David Marsters by his next friend, Nancy Pomerleau;<sup>1</sup> Lorraine Simpson, by her legal guardian, Sara Spooner;<sup>2</sup> Sherri Currin, by her legal

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<sup>1</sup> Nancy Pomerleau was appointed “next friend” to David Marsters for purposes of the above-captioned litigation, by the Order of this Court dated July 24, 2023 (ECF #96).

<sup>2</sup> Sara Spooner was appointed Permanent Guardian for Lorraine Simpson by Order of the Worcester Probate and Family Court dated May 11, 2022, entered in Civil Action No. WO21P1309GD.

guardian, Sara Spooner;<sup>3</sup> Carole Chojnacki, by her legal guardian, Sara Spooner;<sup>4</sup> Richard Caouette, by his legal guardian, Sara Spooner;<sup>5</sup> and Donald Grant, by his legal guardian, Sara Spooner;<sup>6</sup> on behalf of themselves and on behalf of a plaintiff class requested by the parties and approved by the Court pursuant to Paragraph 74 below; and also the Massachusetts Senior Action Counsel, on its own behalf and on behalf of its members (collectively hereinafter, the “Plaintiffs”), and, on the other hand, (ii) Maura Healey, in her official capacity as Governor of the Commonwealth of Massachusetts (“Commonwealth”); Kate Walsh, in her official capacity as Secretary of the Commonwealth’s Executive Office of Health and Human Services (“EOHHS”); Matthew Gorzkowicz, in his official capacity as Secretary of the Executive Office of Administration and Finance; Elizabeth Chen, in her capacity as Secretary of the Executive Office of Elder Affairs (“EOEA”); Michael Levine, in his official capacity as Assistant Secretary for MassHealth within EOHHS (collectively, the “Defendants”).

WHEREAS, on or about October 11, 2022, the Plaintiffs commenced a civil action in the United States District Court for the District of Massachusetts (the “Court”) by filing a Complaint (the “Complaint”) in the above-captioned action, Docket Number 1:12-cv-11715 (hereinafter the “Action”);

WHEREAS, the Plaintiffs alleged in the Complaint that the Defendants acted or failed to act in violation of various provisions of multiple statutes, including the Americans with Disabilities Act, the Rehabilitation Act, the Medicaid Act, and the Social Security Act, and that the Plaintiffs were harmed or exposed to risk of harm as a result of such actions or failures to act;

WHEREAS, the Defendants denied any and all liability for any and all claims set forth in the Complaint and asserted various defenses thereto and denied that they were or have been in violation of any statute, federal or state;

WHEREAS, the Plaintiffs and the Defendants (collectively, the “Parties”) have agreed to refrain from further litigation of the Plaintiffs’ claims and the Defendants’ defenses, and to refrain from seeking judicial resolution of the factual and legal claims raised in the Complaint; and

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<sup>3</sup> Sara Spooner was appointed Permanent Guardian for Sherri Currin by Order of the Middlesex Probate and Family Court dated December 14, 2021, entered in Civil Action No. MI21P6373GD.

<sup>4</sup> Sara Spooner was appointed Permanent Guardian for Carole Chojnacki by Order of the Essex Probate and Family Court dated November 17, 2021, entered in Civil Action No. ES21P3422GD.

<sup>5</sup> Sara Spooner was appointed Permanent Guardian for Richard Caouette by Order of the Worcester Probate and Family Court dated May 4, 2020, entered in Civil Action No. WO20P1188GD.

<sup>6</sup> Sara Spooner was appointed Permanent Guardian for Donald Grant by Order of the Worcester Probate and Family Court dated July 12, 2022, entered in Civil Action No. WO21P4028GD.

WHEREAS, in consideration of the mutual covenants contained herein, the Parties desire to settle and resolve all differences existing between them, resulting in a stipulated, voluntary Settlement Agreement, and court-approved dismissal with prejudice of the Action in compliance with Rule 23 of the Federal Rules of Civil Procedure;

It is THEREFORE agreed as follows:

**I. Purpose**

1. The purpose of this Settlement Agreement is to facilitate the transition of qualified nursing facility residents with disabilities to community settings by providing enhanced in-reach, information, and assistance to help them make informed choices about whether to leave their nursing facilities; and by providing expanded residential services, supports, and transition assistance to enable them to live in the most integrated setting.

**II. Nursing Facility In-Reach, Informed Choice, and Transition Planning**

2. The Defendants shall implement an expanded nursing facility in-reach, informed choice, and transition planning effort that utilizes EOEAs Community Transition Liaison Program (“CTLP”), the Commonwealth’s Money Follows the Person Demonstration (“MFP Demo”), and the Department of Mental Health’s (“DMH’s”) Pre-Admission Screening and Resident Review (“PASRR”) program, as described in Paragraphs 3 through 35 of this Section.

**A. In-Reach, Informed Choice, and Transition Planning Provided Through EOEAs Community Transition Liaison Program**

3. EOHHS, through EOEAs, shall operate a CTLP that will offer in-reach, informed choice, and transition support to individuals in nursing facilities who are or may be interested in transitioning to the community. The program shall be available to all nursing facility residents ages 22 or older regardless of the individual’s diagnosis or insurance type.

4. EOEAs shall be responsible for the overall operation and performance of the CTLP and shall establish, fund, and fill a full-time position for a qualified person to oversee the CTLP program.

5. EOEAs shall assign, fund, and oversee CTLP teams through contracts with the Commonwealth’s Aging Service Access Points (“ASAPs”). Each CTLP team shall be comprised of a full-time Community Transition Liaison (“CTL”) and a full-time Case Assistant (“CA”), as described in EOEAs contracts with participating ASAPs. EOEAs contracts with the ASAPs

shall specify that ASAP staff employed as a CTL or as a CA shall not be utilized by the ASAP to perform other ASAP functions unrelated to CTLP.

6. To ensure statewide coverage of CTLP teams, each Medicaid-participating nursing facility located in Massachusetts shall have at least one assigned CTLP team. In Year One of this Agreement there shall be at least 45 CTLP teams.

7. Each CTLP team shall be responsible for providing CTLP in-reach and transition activities in their assigned nursing facilities. Each CTLP team shall be required to visit each of their assigned nursing facilities at least once per week and meet with individuals as necessary to provide CTLP in-reach, informed choice, and transition planning assistance. CTLP in-reach and informed choice activities will not be based on a medical model and will not depend on requests from nursing facility residents, but instead, CTLP teams shall proactively engage, and continue to engage, with nursing facility residents. In performing in-reach and transition activities, CTLP teams shall focus their efforts toward individuals other than those individuals who are admitted for short-term rehabilitation stays of 45 days or less, or who have an assigned case manager from the Department of Developmental Services (“DDS”), DMH, or the Massachusetts Rehabilitation Commission, or through the MFP Demo, regardless of the individual’s insurance type.

8. CTLP in-reach activities will include engaging with individuals to ascertain their strengths, needs, and preferences concerning transition; providing information and education about transition options; offering opportunities to visit community programs and service providers, including arranging for transportation to community settings; offering opportunities to meet with peers and families who have transitioned and arranging such meetings, as applicable; and addressing barriers and concerns about transition, including sociocultural barriers to transition (e.g., barriers related to varying perspectives about illness or fears and concerns about medications).

9. CTLP transition activities shall include referring nursing facility residents to state agencies, community programs, service providers, housing organizations, and other community supports; assisting in locating, applying for, and qualifying for community services and housing options; assisting individuals who are initially deemed ineligible for public or subsidized housing in appealing those determinations and/or referring those individuals to housing advocacy organizations such as legal services programs, as applicable; participating in transition planning; coordinating activities necessary to accomplish a successful transition to the community; and

helping residents obtain and/or providing small amounts of funding to obtain items necessary to facilitate transition (e.g., a government-issued identification document).

10. EOEa shall ensure that, in providing in-reach, informed choice, and transition assistance, CTLP teams provide culturally and linguistically competent services to all nursing facility residents. EOEa shall incorporate within the ASAP contract a requirement to engage in employment practices designed to recruit CTLP team members with the skills and knowledge to meet the cultural and linguistic needs of residents in the ASAP's region and to ensure CTLP teams have supervisory support with expertise in culturally and linguistically competent service delivery. EOEa shall ensure that ASAPs provide initial and on-going training in the provision of culturally and linguistically competent services to CTLP staff, including persons supervising CTLs and CAs. EOEa shall ensure that ASAPs employ and train a sufficient number of CTLs and CAs to ensure the provision of timely and effective culturally and linguistically competent in-reach, informed choice, and transition assistance by CTLP teams.

11. All training on providing culturally and linguistically competent services provided pursuant to Paragraph 10, above, shall be based on and consistent with the National Standards for Culturally and Linguistically Appropriate Services ("CLAS").

12. EOEa shall develop an informed choice policy that ensures that individuals assisted by CTLP teams are provided with reasonable accommodation for cognitive impairments or other challenges to allow participation in decision-making to the fullest extent possible. EOEa's informed choice policy shall recognize an individual's right to participate and act on their own behalf and acknowledge an individual's right to consult with and include chosen supporters but shall also recognize the authority of guardians in situations where an individual has a guardian. Nothing in the informed choice policy shall conflict with Massachusetts laws. EOEa shall provide drafts of any such policy to Plaintiffs' counsel for review and comment.

13. Within one year of the Approval Date, and then on at least an annual basis thereafter, EOEa shall assess the number of CTLP teams and their capacity to provide timely and effective in-reach, informed choice, and transition support to nursing facility residents who are or may be interested in transitioning to the community and adjust the number of CTLP teams as necessary to meet the requirements of this section of this Agreement. EOEa shall provide a copy of its annual assessment for informational purposes only to counsel for the parties within thirty (30) days of its completion.

14. EOEa shall develop program specifications, agency directives, and/or contract requirements that incorporate the provisions and responsibilities set forth in this Agreement and shall provide drafts of any such documents to Plaintiffs' counsel for review and comment.

15. EOHHS, through a MassHealth Bulletin (a "Bulletin"), shall inform nursing facilities of the CTLP program and their obligation to provide CTLP teams with timely information about and reasonable access to nursing facility residents. The Bulletin shall further inform nursing facilities that they will be subject to sanction pursuant to 130 CMR 450.238-240 for noncompliance with the requirements set forth in the Bulletin. Any proposed Bulletin, or any proposed revisions or updates to existing Bulletins, to be sent after the Approval Date of this Agreement to nursing facilities regarding the CTLP program shall be provided to Plaintiffs' counsel for review and comment prior to distribution.

16. EOEa shall maintain and continue to fund the CTLP for the term of this Agreement.

**B. In-Reach, Informed Choice, and Transition Planning Provided Through the Massachusetts Money Follows the Person Demonstration**

17. EOHHS shall implement the Commonwealth's federal MFP Demo, as already approved by the Centers for Medicare and Medicaid Services, and shall provide in-reach, informed choice, and transition assistance to individuals who have been admitted to a nursing facility for sixty (60) days or longer, who are or could be eligible for MassHealth Standard or CommonHealth, and who are or may be interested in transitioning to the community. Nothing in this paragraph shall be construed as a limitation on the number of transitions to be facilitated by the Commonwealth of Massachusetts under this Agreement.

18. EOHHS through the MFP Demo shall: (1) provide information about community living options that could be accessed through the MFP Demo; (2) engage individuals (and guardians, if any) in discussions about community living; (3) address concerns regarding the transition from a nursing facility to the community, including sociocultural barriers to transition (e.g., barriers related to varying perspectives about illness or fears and concerns about medications); (4) assist individuals in executing an MFP Informed Consent form to enroll in the MFP Demo; (5) assist individuals enrolled in the MFP Demo in applying for a Medicaid Home and Community-Based Services (HCBS) waiver or other MassHealth long-term service and supports; (6) assist individuals enrolled in the MFP Demo in locating, applying for, and

qualifying for housing options; and (7) offer and arrange for visits to community living programs for individuals enrolled in the MFP Demo if they (or their guardian, if any) continue to express concerns about or a lack of familiarity with community living programs and are willing to visit a community program.

19. EOHHS through MassHealth shall ensure that persons providing MFP Demo in-reach, informed choice, and transition assistance who are employed by a state agency or an ASAP provide culturally and linguistically competent in-reach, informed choice, and transition assistance to MFP Demo enrollees. EOHHS shall require employment practices for such individuals providing MFP Demo in-reach, informed choice, and transition assistance that are designed to recruit persons with the skills and knowledge to meet the cultural and linguistic needs of nursing facility residents, that such persons receive initial and on-going training in the provision of culturally and linguistically competent supports and that such persons have supervisory support with expertise in culturally and linguistically competent service delivery.

20. All training on providing culturally and linguistically competent services provided pursuant to Paragraph 19 above shall be based on and consistent with the National Standards for CLAS.

21. EOHHS through MassHealth shall develop an informed choice policy that ensures that MFP Demo enrollees are provided with reasonable accommodation for cognitive impairments or other challenges to allow participation in decision-making to the fullest extent possible. EOHHS's informed choice policy for the MFP Demo shall recognize an individual's right to participate and act on their own behalf and acknowledge an individual's right to consult with and include chosen supporters but shall also recognize the authority of guardians in situations where an individual has a guardian. Nothing in the informed choice policy shall conflict with Massachusetts laws. EOHHS shall provide drafts of any such policy to Plaintiffs' counsel for review and comment.

22. EOHHS through MassHealth shall develop program specifications, agency directives, and/or contract requirements that incorporate the provisions and responsibilities set forth in this Agreement and provide drafts of any such documents to Plaintiffs' counsel for review and comment.

23. EOHHS, through a Bulletin, shall inform nursing facilities of the nursing facilities' obligations under the MFP Demo, including the obligation to provide MFP Demo staff



with timely information about and reasonable access to nursing facility residents. The Bulletin shall further inform nursing facilities that they will be subject to sanction pursuant to 130 CMR 450.238-240 for noncompliance with the requirements set forth in the Bulletin. Any proposed Bulletin, or any proposed revisions or updates to existing Bulletins, to be sent after the Approval Date of this Agreement to nursing facilities regarding the MFP Demo shall be provided to Plaintiffs' counsel for review and comment prior to distribution.

24. EOHHS shall continue to seek federal authority to operate the MFP Demo for the term of this Agreement. Subject to continuing federal authority and federal funding, EOHHS, through MassHealth or other agencies, shall maintain and continue to adequately fund the MFP Demo as set forth in this Agreement.

**C. In-Reach, Informed Choice, and Transition Planning Provided Through DMH's Pre-Admission Screening and Resident Review (PASRR) Program for Persons With Serious Mental Illness (SMI)**

25. DMH shall continue to: (1) screen and evaluate all people suspected of having "serious mental illness" as that term is defined in the PASRR regulations set forth at 42 CFR § 483.102 (hereinafter, "PASRR SMI"); and (2) ensure that this process accurately determines (a) whether the individual has PASRR SMI, (b) whether the individual needs specialized services, and (c) where the individual is residing in a nursing facility, whether the individual's needs can be met in an appropriate community setting. Nothing herein shall be construed to limit the applicability of: (i) exempted hospital discharges as set forth in 42 CFR § 483.106(b), and (ii) categorical determinations, as set forth in 42 CFR § 483.130 and as designated by the Commonwealth.

26. Although not required by federal or state statutory and regulatory requirements, DMH shall conduct annual resident reviews, using the standard Level II evaluation instrument, of all persons in nursing facilities who were determined to have PASRR SMI at any point during their current nursing facility admission.

27. DMH has, and shall continue to implement, expanded authorization for DMH-funded services and supports as described in 104 CMR 29.04(6) to all nursing facility residents who were determined by the Level II evaluation to have PASRR SMI at any point during their current nursing facility admission. In addition, by July 1, 2024, DMH shall identify all nursing facility residents who were determined by a Level II evaluation to no longer have PASRR SMI

during their current nursing facility admission and provide them with an annual review utilizing the Level II evaluation instrument consistent with Paragraph 26 above.

28. Pursuant to 104 CMR 29.04(6), DMH shall offer a DMH case manager and provide case management services for transition assistance to nursing facility residents who have had a positive Level II PASRR SMI determination at any point during their current nursing facility admission and who are or may be interested in transitioning to the community with DMH supports.

29. DMH transition case management shall be provided by a dedicated nursing facility team that shall have reasonable caseloads sufficient to provide timely and effective transition case management services. Within one year of the Approval Date of this Agreement and annually thereafter, DMH shall assess the number and capacity of its dedicated nursing facility case manager staff to provide timely and effective transition case management services and shall adjust the number of case managers to meet the requirements of Paragraphs 28-32. DMH shall provide a copy of its annual assessment for informational purposes only to counsel for the parties within thirty (30) days of its completion.

30. DMH's dedicated nursing facility case managers shall meet with each resident receiving transition case management at least monthly, and more often as necessary, to develop, implement, and monitor a DMH transition plan, and to assist in identifying, locating, and obtaining needed community residential services and supports. In providing transition case management, DMH transition case managers shall explore and address nursing facility resident concerns, as applicable, regarding their transition from a nursing facility to the community, including sociocultural barriers to transition (e.g., barriers related to varying perspectives about illness or fears and concerns about medications).

31. EOHHS, through DMH, shall ensure that its dedicated nursing facility transition case managers provide culturally and linguistically competent services. DMH shall implement employment practices for the dedicated nursing facility transition team that are designed to recruit persons with the skills and knowledge to meet the cultural and linguistic needs of nursing facility residents, provide initial and on-going training in the provision of culturally and linguistically competent services to its nursing facility transition case manager staff, and to ensure nursing facility transition managers have supervisory support with expertise in culturally and linguistically competent service delivery. DMH shall employ and train a sufficient number

of nursing facility transition case managers to ensure the provision of timely, culturally, and linguistically competent transition case management services.

32. All training on providing culturally and linguistically competent services provided pursuant to Paragraph 31, above, shall be based on and consistent with the National Standards for CLAS.

33. DMH shall develop an informed choice policy that ensures that nursing facility residents receiving DMH transition case management services are provided with reasonable accommodations for cognitive impairments or other challenges to allow participation in decision-making to the fullest extent possible. DMH's informed choice policy shall recognize an individual's right to participate and act on their own behalf and acknowledge an individual's right to consult with and include chosen supporters but shall also recognize the authority of guardians in situations where an individual has a guardian. Nothing in the informed choice policy shall conflict with Massachusetts laws. DMH shall provide drafts of any such policy to Plaintiffs' counsel for review and comment.

34. EOHHS, through a Bulletin, shall inform nursing facilities of their requirements under the PASRR program, including the obligation of nursing facilities to provide PASRR evaluators and DMH case managers with timely information about and reasonable access to residents with PASRR SMI. The Bulletin shall further inform nursing facilities that they will be subject to sanction pursuant to 130 CMR 450.238-240 for noncompliance with the requirements set forth in the Bulletin. Any proposed Bulletin, or any proposed revisions or updates to existing Bulletins, to be sent to nursing facilities regarding the PASRR SMI program after the Approval Date shall be provided to Plaintiffs' counsel for review and comment prior to distribution.

35. DMH shall maintain and continue to fund the PASRR program as described in this Agreement for the term of this Agreement.

**III. Coordination of Behavioral Health Services, Including Specialized Services, for MassHealth Members with PASRR SMI in Nursing Facilities**

36. The Defendants shall offer behavioral health care coordination provided through Behavioral Health Community Partners (BH CPs) to nursing facility residents with PASRR SMI and to nursing facility residents with a history of having been determined to have PASRR SMI by a Level II review under the State's PASRR program at any point during their current nursing facility admission, who are expected to reside in a nursing facility for longer

than 90 days. For MassHealth members enrolled in Senior Care Options (“SCO”) or the One Care program (“One Care”), behavioral health care coordination is provided through the members’ SCO or One-Care plan, instead of through a BH CP.

37. BH CPs through their BH CP Care Coordinator staff shall be responsible for developing, coordinating, and monitoring a behavioral health care plan for participating nursing facility residents as described in Section III of this Agreement.

38. BH CP Care Coordinators shall conduct an in-person comprehensive assessment for each of their assigned nursing facility clients. BH CP Care Coordinators shall develop, monitor, and modify as necessary an individualized behavioral health care plan (“Care Plan”) that includes all specialized services, behavioral health, and rehabilitative services identified in the PASRR Level II evaluation, as well as other needs identified through the comprehensive assessment. BH CPs shall be responsible for making any necessary referrals and coordinating those referrals for the provision of the services identified in the Care Plan. BH CPs shall be required to offer their nursing facility clients an in-person visit monthly and must complete an in-person visit with their clients quarterly (and make phone calls/telehealth visits as appropriate between in-person visits). Within one year of the Approval Date, EOHHS shall implement contract updates to the SCO and One Care contracts to implement similar requirements for SCO and One Care. During the year after the Approval Date, EOHHS will make reasonable efforts to encourage SCO and One Care to provide timely and appropriate behavioral health coordination consistent with this Paragraph.

39. BH CPs shall ensure that they provide culturally and linguistically competent supports. BH CPs shall implement employment practices for BH CP Care Coordinators that are designed to recruit persons with the skills and knowledge to meet the cultural and linguistic needs of individuals they will serve, provide BH CP Care Coordinators with initial and on-going training in the provision of culturally and linguistically competent supports, and ensure BH CP Care Coordinators have supervisory support with expertise in culturally and linguistically competent service delivery.

40. All training on providing culturally and linguistically competent services provided pursuant to Paragraph 39 above shall be based on and consistent with the National Standards for CLAS.

41. EOHHS, in collaboration with DMH, shall oversee and monitor the BH CP’s

implementation of the activities set forth in Paragraphs 37-40 above. Within one year of the Approval Date, and thereafter on an annual basis, EOHHS together with DMH shall assess the BH CP's staffing capacity to provide BH CP care coordination to nursing facility residents as described in Paragraphs 37-40 above, and shall adjust BH CP contractual staffing requirements as appropriate. EOHHS shall provide a copy of this annual assessment for informational purposes only to counsel for the parties within thirty (30) days of its completion.

42. The Defendants established a new PASRR Specialized Service for persons with PASRR SMI called "Clubhouse Services" ("Clubhouse"). Clubhouse is a psychosocial rehabilitation service that provides daily activities organized around a set structure. Clubhouse service components address an individual's goals related to community linkages, employment, education, life skills, housing, health and wellness, socialization, and recreation. Nursing facility residents with a PASRR determination of PASRR SMI or with a history of PASRR SMI during their current nursing facility admission will be authorized to receive the service when recommended pursuant to a PASRR Level II evaluation or when included in a behavioral health care plan as described in Paragraph 38.

43. EOHHS shall develop a decision-making policy that ensures that individuals receiving BH CP care coordination are provided with reasonable accommodation for cognitive impairments or other challenges to allow participation in the care planning process to the fullest extent possible. EOHHS's decision-making policy shall recognize an individual's right to participate and act on their own behalf and acknowledge an individual's right to consult with and include chosen supporters but shall also recognize the authority of guardians in situations where an individual has a guardian. Nothing in the decision-making policy shall conflict with Massachusetts laws. EOHHS shall provide drafts of any such policy to Plaintiffs' counsel for review and comment.

44. EOHHS, through a Bulletin, shall inform nursing facilities of their obligations under the BH CP program, including the obligation to provide BH CPs and providers of behavioral health services with timely information about and reasonable access to residents. The Bulletin shall further inform nursing facilities that they will be subject to sanction pursuant to 130 CMR 450.238-240 for noncompliance with the requirements set forth in the Bulletin. Any proposed Bulletin, or any proposed revisions or updates to existing Bulletins, to be sent after the Approval Date of this Agreement to nursing facilities regarding the BH CP program shall be

provided to Plaintiffs' counsel for review and comment prior to distribution.

45. EOHHS and DMH shall maintain and continue to fund the BH CP program for the term of this Agreement.

#### **IV. Residential Services and Housing Supports Capacity**

##### **A. Expansion of Residential Services Capacity**

46. EOHHS, through its MassHealth program, shall expand the Residential Services capacity in its Moving Forward Plan-Residential Supports (MFP-RS) waiver by adding 400 slots to the waiver program over the term of this Agreement. For purposes of this Agreement, "Residential Services" is defined as services delivered in a provider-operated setting that provides 24 hours per day, 7 days per week supervision and support, such as in a DDS-operated group home or Shared Living environment.

47. DMH shall increase DMH Group Living Environments (GLEs) by a minimum of 200 beds over the term of this Agreement. DMH shall make reasonable efforts to increase DMH Group Living Environments (GLEs) by an additional 200 beds over the term of this Agreement.

##### **B. Expansion of Non-Residential Services Capacity With Housing Supports**

48. EOHHS, through its MassHealth program, shall expand its Moving Forward Plan-Community Living ("MFP-CL") waiver program by adding 595 slots to the waiver program over the term of this Agreement.

49. DMH shall expand its Rental Subsidy Program by 320 slots over the term of this Agreement.

50. EOHHS, in coordination with the Executive Office of Housing and Livable Communities, shall expand subsidized housing capacity targeted to elder and disabled MassHealth members transitioning from a nursing facility to the community by adding 800 new subsidized housing opportunities over the term of this Agreement. The addition of subsidized housing capacity shall be achieved through a combination of increased mobile and project-based vouchers, as well as an increase in funding to create new units of housing targeted to these populations.

##### **C. Expansion of Access to Integrated Care Programs that Provide Supported Housing**

51. Within 90 days of the Approval Date, EOHHS shall issue guidance to entities that operate a Program for All Inclusive Care for the Elderly (PACE) stating that nursing facility residents may enroll in a PACE program if at the time of enrollment, they are able to live in a

community setting without jeopardizing their health or safety (and they meet all other eligibility requirements as specified in 42 CFR 460.150) as determined by the PACE organization. EOHHS will issue similar guidance to One Care and SCO plans reminding them of their ability to enroll eligible nursing facility residents into their plans.

**D. Provision of Home Modifications to Support Transitions**

52. EOHHS, through the MFP-CL waiver, shall provide funding of up to \$50,000 for one or more home modifications per MFP-CL waiver participant, where necessary and as authorized by the care plan, to facilitate the waiver participant's transition from a nursing facility to a home in the community that is owned or leased by the waiver participant or a family member with whom the waiver participant will reside.

53. EOHHS, through the MFP Demo, shall provide funding of up to \$50,000 for one or more home modifications per MFP Demo enrollee, where necessary and authorized by the care plan, to facilitate the MFP Demo enrollee's transition from a nursing facility to a home in the community that is owned or leased by the MFP Demo enrollee or a family member with whom the MFP Demo enrollee will reside. An MFP Demo enrollee who is also an MFP waiver participant may only access this benefit through one program, not both.

54. Over the term of this Agreement, EOHHS, through the MFP-CL waiver and the MFP-Demo, shall complete a minimum of 120 major (i.e., requiring funding in excess of \$5,000) home modifications as described in Paragraphs 52, 53, and 59(c)(3) of this Agreement.

**V. Nursing Facility Admission and Services**

55. MassHealth will not cover the admission of a class member to a nursing facility unless the requirements in duly promulgated regulations set forth at 130 CMR 456.407 and 130 CMR 456.408 are met. The Defendants will assist nursing facilities, long-term care options counseling entities, and other community-based organizations in making available to individuals residing in nursing facilities or planning to enter nursing facilities information about community service options.

56. For class members residing in nursing facilities who are preparing to transition to the community, the Defendants will make payments to therapists in accordance with duly promulgated regulations set forth at 130 CMR 432 and 130 CMR 450 for ongoing therapy services. Any appeal of the denial, suspension, reduction, or termination of payment for therapy services will be pursuant to the fair hearing process described in 42 C.F.R. § 431.200 *et seq.*

57. The case manager from the applicable EOHHS agency or contractor shall make best efforts to communicate with licensed clinicians in the nursing facility who are responsible for the care of a class member in a nursing facility, so that the transitional service component of the class member's transition planning process is coordinated with the class member's medical care, including necessary therapies.

**VI. Nursing Facility Transition Time Frames and Minimum Total Transitions**

58. The Defendants shall transition class members to the community within the following time frames:

- a) For persons transitioning into a provider-operated setting such as a group home: within 18 months of their engagement with state funded transition assistance services, absent reasonable exceptions;
- b) For persons transitioning to their own home or apartment in the community and who need to locate and obtain such home or apartment: within 12 months of their engagement with state-funded transition assistance services, absent reasonable exceptions; and,
- c) For persons transitioning to their own home or apartment in the community and who already have a home or apartment: within 9 months of their engagement with state funded transition assistance services, absent reasonable exceptions.

59. The Defendants will transition a minimum of 2,400 class members from nursing facilities to the community over the term of this Agreement. The Defendants will make reasonable efforts to achieve 20% of these transitions (i.e., 480) by the start of Year 3 of this Agreement, 50% of these transitions (i.e., 1,200) by the start of Year 5 of this Agreement, and 85% of these transitions (i.e., 2,040) by the start of Year 7 of this Agreement. For the purposes of this Agreement a countable transition means a class member who:

- a) received state-funded assistance with their transition to the community, which includes, but is not limited to, transition assistance provided through: the CTLP, DMH, the MFP Demo, or through a MassHealth HCBS waiver;
- b) receives or received state-funded long term services and supports in the community after their transition, which is defined as either: MassHealth HCBS waiver services; or DMH services; or PACE, or SCO services for persons with significant needs (as determined by being in one of the following rating



categories: Community BH, Community NHC, or Institutional, as described in Amendment 8, Appendix N of the SCO Contract, effective January 1, 2023, <https://www.mass.gov/lists/senior-care-organization-sco-contracts#amendment-8-to-2nd-a&r-sco-contracts->); and

c) transitioned to either:

- 1) a provider-operated setting that provides 24-hour supervision and support;
- 2) their own or a family member's home or apartment with a housing subsidy;
- 3) their own or a family member's home or apartment with a major home modification (i.e., requiring funding in excess of \$5,000);
- 4) their own or a family member's home or apartment without a major home modification (no more than 700 persons); or
- 5) a public housing setting or Assisted Living Residence, as defined in 651 CMR 12.02, ("ALR") with services provided through PACE, One Care, or SCO.

60. Nothing in this Agreement shall require EOHHS to purchase a house, apartment, or other dwelling, or to create ALRs for class members.

61. Nothing in this Agreement shall require EOHHS to reserve or designate HCBS waiver slots, rental subsidies, DMH GLE beds, or home modifications for class members.

62. Nothing in this Agreement shall require EOHHS to place class members in HCBS waivers for which they are not eligible.

63. For individuals determined to be ineligible for the MFP-RS or MFP-CL waiver based on their inability to be safely served within the waiver program, EOHHS shall refer the individual to a person designated for facilitating eligibility determinations at DMH, or another appropriate EOHHS agency or MassHealth program so that a determination may be made as to whether the individual is eligible to receive services offered by the agency that could meet their needs and facilitate their transition to the community.

64. The parties agree that, in evaluating whether a person can be safely served in an HCBS waiver program, a public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities, provided they are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities. At the

meetings specified in Paragraph 83, the Plaintiffs may raise for discussion any questions and concerns about the Defendants' process for evaluating whether a person can be safely served in the MFP-RS and MFP-CL waiver programs.

## **VII. Data Collection and Reporting**

### **A. Nursing Facility In-Reach**

65. The Defendants shall develop protocols for collecting, preserving, and reporting quarterly and annual data for CTLP and the MFP Demo on the following nursing facility in-reach related measures:

- a) Number of in-reach visits to nursing facilities conducted through the Defendants' CTLP and MFP Demo in-reach programs, by program, by month.
- b) Number of nursing facility residents enrolled through the Defendants' CTLP and MFP Demo in-reach programs, by program, by month.
- c) Number of CTLP teams.
- d) Annually, the number of CTLP staff, by position, who were trained in cultural and linguistic competency within the relevant year.

### **B. Behavioral Health Care Coordination and Transition Assistance for Persons in Nursing Facilities with PASRR SMI**

66. The Defendants shall develop protocols for collecting, preserving, and reporting quarterly data on a statewide basis on persons designated through the PASRR review system as having PASRR SMI with respect to the following behavioral health care coordination and transition assistance measures:

- a) Number of Level I screens completed.
- b) Number of Level II evaluations completed.
- c) Number of PASRR Level II resident reviews, including initial evaluations, that result in a positive determination of PASRR SMI.
- d) Number of persons who were determined to be appropriate for alternative placement.
- e) Number of persons determined to have PASRR SMI at any point during their admission after the Approval Date;

- f) Number of nursing facility residents with PASRR SMI receiving behavioral health care coordination through BH CPs.
- g) Number of nursing facility residents with PASRR SMI receiving PASRR SMI Specialized Services or MassHealth-covered behavioral health services, by each service.
- h) Number of nursing facility residents with PASRR SMI receiving DMH Case Management for transition support.

**C. Residential Services and Supports Capacity**

67. The Defendants shall develop protocols for collecting, preserving, and reporting annual data on the following residential and community waiver capacity and housing assistance capacity related measures:

- a) Expansion of Residential Services (i.e. group home) capacity
  - 1) Number of MFP-RS waiver slots added each year.
  - 2) Number of DMH GLE beds added each year.
- b) Expansion of Non-Residential Services and housing supports capacity
  - 1) Number of MFP-CL waiver slots added each year.
  - 2) Number of DMH Rental Subsidy slots added each year.
  - 3) Number of subsidized housing vouchers/units administered by the Executive Office of Housing and Livable Communities added each year.
- c) Provision of home modifications
  - 1) The number of major (i.e., requiring funding in excess of \$5,000) home modifications completed each year under the MFP-CL waiver and the MFP Demo programs to facilitate community transitions.

**D. Nursing Facility Transitions**

68. The Defendants shall develop protocols for collecting, preserving, and reporting annual data on the number of countable transitions from each nursing facility as described in Paragraph 59. In collecting this data, the Defendants shall categorize countable transitions as follows:

- a) The number of class members transitioned to a provider-operated setting that provides 24-hour supervision and support, by MFP-RS waiver and DMH GLE.

- b) The number of class members transitioned to their own home or apartment with a housing subsidy, by HCBS waiver, SCO, PACE, and DMH rental subsidy.
- c) The number of class members transitioned to their own home or apartment with major (i.e., requiring funding in excess of \$5,000) home modifications.
- d) The number of class members transitioned to a public housing setting or ALR with services provided through PACE or SCO.
- e) The number of class members transitioned to their own home or apartment without a major home modification or rental subsidy.
- f) Time to Transition:
  - 1) For persons transitioning into a provider-operated setting such as a group home, the average time in months between engagement with state-funded transition assistance services and transition.
  - 2) For persons transitioning to their own home or apartment in the community and who need to locate and obtain such home or apartment, the average time in months between engagement with state-funded transition assistance services and transition.
  - 3) For persons transitioning to their own home or apartment who already have a home or apartment, time in months between engagement with state-funded transition assistance services and transition.
- g) Each quarter, for the MFP-RS waiver and MFP-CL waiver:
  - 1) Number of persons who applied.
  - 2) Number of persons denied, by reason.
  - 3) Number of persons determined eligible.

The Defendants shall develop protocols for reporting data on countable transitions by race, ethnicity, and primary language within two years of the Approval Date.

### **VIII. Funding**

69. The Defendants' obligations under this Agreement are subject to appropriations by the Legislature and, as applicable, the availability of federal financial participation in the Commonwealth's Medicaid program and the MFP Demo. In order to implement this Agreement, which resolves all federal and state-law based claims set forth in the Complaint, the Defendants

will submit budget requests as needed and will, consistent with Art. 63 of the Massachusetts Constitution, make best efforts to obtain the funding necessary to implement this Agreement.

**IX. Approval, Implementation, and Termination**

**A. Approval**

70. Promptly after the execution of this Agreement, the Parties shall jointly move the Court for preliminary approval of this Agreement. The Parties' joint motion shall include a copy of this Agreement and shall request that the Court: (a) approve a draft notice of settlement, a draft summary notice, and a proposed order granting preliminary approval to be attached to the motion; (b) provide that the notice of settlement and summary notice state that any class member (other than named class representatives) may object to this Agreement by mailing a written objection to the Court and Plaintiffs' counsel at least 10 days before the fairness hearing described below; (c) approve mailing of the notice of the settlement by the Defendants to: (i) nursing facilities, with instructions to distribute copies to all residents; (ii) ASAPs; (ii) Independent Living Centers; and (iv) advocacy and service organizations working with people with disabilities identified by the Plaintiffs; (d) the publication of a summary notice in the major newspapers throughout the state within 10 days after the entry of an order granting preliminary approval; and (e) request a date for a fairness hearing pursuant to Fed. R. Civ. 23(e) that is no fewer than 45 days, and no more than 60 days, after the entry of the order granting preliminary approval of this Agreement.

71. Plaintiffs' counsel shall maintain copies of any objections to this Agreement and, on a weekly basis, shall provide copies of such objections to counsel for the Defendants. The notice of settlement and the summary notice shall set out the mailing address of Plaintiffs' counsel. Plaintiffs' counsel shall maintain a telephone number that may be called during normal business hours by any class member who has questions about this Agreement. The notice of settlement and the summary notice shall set out this telephone number and state that class members with questions about this Agreement may call the number during normal business hours.

72. Once the notice process described herein is complete, the Parties will promptly file a joint motion for final approval of this Agreement in a form substantially similar to the form attached hereto as Appendix 1, including the draft approval order attached hereto as that form's Exhibit A.

73. The Parties agree to take such actions as are reasonably necessary to obtain final approval of this Agreement by the Court pursuant to Fed. R. Civ. P. 23(e).

74. As part of the approval process, the Parties will also submit a joint motion to certify a class. The parties agree to request that the Court certify the following class:

“All present or future Medicaid-eligible persons who: (i) are Massachusetts residents, (ii) have attained age 22, (iii) reside (at any time before the Termination Date) in a nursing facility within the Commonwealth for 60 days or more, and (iv) either (a) have a “disability” as defined in the ADA and are qualified for and would not oppose transition to a community-based setting, or (b) have PASRR SMI as determined pursuant to a Level II PASRR evaluation.”

75. The Defendants agree to pay Plaintiffs’ counsel the following amount in attorneys’ fees and costs for legal work related to this matter up to and through the Approval Date: ONE MILLION EIGHT HUNDRED THOUSAND and 00/100 U.S. dollars (\$1,800,000). Nothing herein will require the Defendants to pay any amount of fees generated or incurred for any legal services provided by any counsel to the Plaintiffs at any time after the Approval Date, with the exception that the Defendants will pay reasonable attorneys’ fees and costs for legal work associated with any motion brought pursuant to Paragraphs 89-90, and/or Paragraph 94 below.

76. If the Court does not enter final approval of this Agreement in all respects (including certification of the class described in Paragraph 74, above), this Agreement shall be null and void and of no force and effect, unless otherwise agreed by the Parties and resubmitted to and approved by the Court. In the event that this Agreement becomes null and void, nothing herein shall be deemed to prejudice the position of any of the Parties with respect to the Action or otherwise, and neither the existence of this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be admissible in evidence, referred to for any purpose in the litigation or in any other litigation or proceeding, or construed as an admission, presumption or concession by any party to the litigation.

77. The Parties hereto waive any right to appeal or collaterally attack the Order approving this Agreement or the Judgment of dismissal with prejudice to be entered by the Court upon allowance of the Parties’ joint motion as described in Paragraph 72 above.

78. The Defendant’s obligations under this Agreement may be enforced only by the Plaintiffs. Nothing contained in this Agreement is intended to confer any rights or remedies on any person other than the Parties hereto.

**B. Stipulation of Dismissal**

79. In the event that the Court enters an order of final approval of this Agreement as requested by the Parties, or in a substantially similar form, the Parties shall, within ten (10) calendar days, sign and file the Stipulation of Voluntary Dismissal With Prejudice pursuant to Fed. R. Civ. P. 41(1)(a)(1) that is attached hereto as Appendix 2.

80. The Parties agree that they will take such actions as are reasonably necessary to obtain a final judgment of dismissal with prejudice of the Action once this Agreement has been finally approved pursuant to Fed. R. Civ. P. 23(e).

81. The Parties' Stipulation of Dismissal shall include a Stipulation that this Court shall retain jurisdiction to enforce, modify, and resolve any disputes that arise in connection with this Agreement, subject to the requirements for Dispute Resolution set forth herein.

**C. Implementation**

82. EOHHS will designate a senior staff person to serve as the Implementation Coordinator in connection with this Agreement, with the responsibility to oversee the activities and responsibilities required herein. The Implementation Coordinator will coordinate, facilitate, and monitor compliance by the various agencies and divisions within EOHHS responsible for providing the activities, programs, services, and information required by this Agreement.

83. The Parties shall meet quarterly to discuss any issues relevant to implementation of this Agreement, unless otherwise agreed to by the Parties. The first quarterly meeting will occur no later than 90 days after the Approval Date of this Agreement. The Defendants will provide to the Plaintiffs' counsel, at least seven days prior to each meeting, recent information relevant to implementation, including data reports described in Paragraphs 65-68 above. Nothing herein will require the Defendants to produce any data in accordance with Paragraphs 65-68 above on any different or faster timetable than that set forth in Section VII above.

84. With respect to individuals who have transitioned pursuant to Paragraph 59, the Plaintiffs' counsel will be provided on request from the Defendants: (i) the names, addresses, and telephone numbers of persons who have transitioned from a nursing facility into a community residential program or service, and of their guardians, if any, and (ii) the transition plan of such persons in whatever form the agency uses.

85. The Defendants shall notify nursing facilities that the Plaintiffs' counsel represent a class of persons in nursing facilities and that the United States District Court has entered a

protective order (which shall be attached to the notification) with respect to that class. The Defendants will facilitate access to these programs and providers for the Plaintiffs' counsel, in order that they may meet with individual class members, unless the individual objects.

**D. Dispute Resolution**

86. If, at any time, the Plaintiffs believe that any one or more of the Defendants or their agents are not in substantial compliance (i.e., are in substantial noncompliance) with any provision of this Agreement, the Plaintiffs shall notify the Defendants of the specific reasons for the alleged noncompliance, referencing the specific provision or provisions of this Agreement as to which they allege the Defendants have not complied. An allegation that the Defendants are not in substantial compliance with this Agreement (i.e., they are in substantial noncompliance) shall not be based on any minor and/or isolated delays in compliance. The Plaintiffs will give such notice in a writing to be delivered by certified mail to the Massachusetts Attorney General's Office (the "AGO") and to EOHHS. The notice required herein will be referred to hereinafter as a "Dispute Notice."

87. Within thirty (30) days of receipt of the Dispute Notice, EOHHS shall send a response in writing. Within fifteen (15) days of the Plaintiffs' receipt of EOHHS's response, the Parties will meet to confer for the purpose of resolving the alleged problems identified by the Plaintiffs in the Dispute Notice. The requirement to "meet and confer" may be accomplished by remote video communication via the Internet.

88. Should the Parties fail to resolve any differences between them with respect to any allegation of a failure by the Defendants to substantially comply (i.e., that the Defendants are in substantial noncompliance) stated in the Dispute Notice, the Parties shall refer the matter to a mutually agreeable mediator for nonbinding mediation. The Plaintiffs and the Defendants shall each propose three potential mediators for purposes of selecting a neutral and mutually agreeable mediator.

89. Should the Parties fail to resolve, through mediation, any allegation of a failure by the Defendants to substantially comply (i.e., that the Defendants are in substantial noncompliance) stated in the Dispute Notice, the Plaintiffs may seek a judicial determination that the Defendants are not substantially complying (i.e., are in substantial noncompliance) with this Agreement. The Defendants shall have no fewer than thirty days (30) to respond to any such motion. If the Court finds that the Defendants have failed to substantially comply (i.e., are in



substantial noncompliance) with this Agreement, it may enter an order consistent with equitable principles, but not an order of contempt, that is designed to achieve compliance.

90. If the Plaintiffs contend that the Defendants have not complied with an order entered under Paragraph 89, they may, after reasonable notice to the Defendants, move for further relief from the Court to obtain compliance with the Court's prior order. In ruling on such a motion, the Court may apply equitable principles and may use any appropriate equitable or remedial power then available to it.

91. If the Defendants intend to file a motion of any kind related to the terms and conditions of this Agreement and/or the implementation of this Agreement, they shall provide the Plaintiffs written notice of the nature of the motion and the relief to be requested. The Plaintiffs will have thirty days from the date of the written notice from the Defendants to meet and confer with the Defendants and propose any actions that they will take to resolve the dispute and make the filing of the motion unnecessary. If no resolution has occurred within thirty days of the Defendants' written notice, the Defendants may file the motion with the Court.

92. This Agreement shall be governed by Massachusetts law.

93. By mutual agreement, the Parties may change the terms of this Agreement, but only if such mutual agreement is memorialized in a writing that is signed by the Parties (or authorized representatives thereof) and approved by the Court.

#### **E. Termination**

94. Except as otherwise set forth in this Paragraph or Paragraph 95, on the eighth anniversary of the Approval Date (which date will be referenced herein as the "Termination Date"), this Agreement shall terminate and the Defendants shall have no other or further obligations under this Agreement unless: (i) the Plaintiffs have provided written notice to the Defendants of a failure to substantially comply with this Agreement within at least 90 days prior to the Termination Date, and (ii) the alleged failure to substantially comply has not yet been resolved pursuant to the Dispute Resolution terms set forth in Paragraphs 86-93 above; or (iii) the Parties have agreed to another Termination Date that was approved by the Court; or (iv) the Court has otherwise modified or extended the Termination Date. In the event the Court determines that the Defendants have failed to substantially comply with this Agreement, the obligations of this Agreement that are related to remedying the noncompliance (and only those obligations) shall continue until either: (i) the Court has determined that the Defendants have

substantially complied with this Agreement; or (ii) the Parties have reached mutual agreement as to resolution of the allegation that the Defendants have failed to substantially comply with this Agreement.

95. If the Defendants believe that they have met the requirements related to the total transitions set forth in Paragraph 59 and are otherwise in substantial compliance with this Agreement prior to its eighth anniversary, they may provide the Plaintiffs with a notice of compliance at any time, together with all available evidence of such compliance. If the Parties agree that the Defendants are in compliance with all provisions of this Agreement, the Parties will designate a mutually agreeable Termination Date that will replace the Termination Date described above for all purposes of this Agreement. The Plaintiffs will not unreasonably withhold their agreement to designate a new Termination Date based on the Defendants' substantial compliance with this Agreement. If the Parties disagree on the status or existence of substantial compliance as asserted by the Defendants, the Defendants may seek from the Court a determination of substantial compliance.

**X. Release**

96. As defined above, the term "Plaintiffs" includes all members of any class certified by the Court. All terms of this Agreement, including the release and dismissal terms in this section, are entered on behalf of all members of any class certified in this Action.

97. The Plaintiffs and the Defendants represent and warrant that they have authority to enter into this Agreement and that this Agreement shall be binding upon, and inure to the benefit of, their successors, agents, and assigns. Each person executing this Agreement on behalf of a Plaintiff or Defendant represents and warrants that they have authority to do so.

98. The Plaintiffs, individually and for and on behalf of all class members, fully, finally, and forever release, relinquish, discharge, and waive any and all claims for injunctive and/or declaratory relief that were or could have been brought against the Defendants and/or against any other agency or official of the Commonwealth concerning the subject of this Action, from the beginning of time until the Termination Date, excepting claims related to enforcing the provisions of this Agreement, subject to the Dispute Resolution requirements set forth herein. For the avoidance of doubt, the Plaintiffs do not release, relinquish, discharge, or waive any specific claim of any individual in the context of administrative and/or judicial review of an action by EOHHS or its agencies that may be litigated in an administrative proceeding and/or in

the Superior Court of the Commonwealth pursuant to Mass. G.L. c. 30A. Nothing in this Agreement shall be construed or interpreted to create any right to administrative and/or judicial review of any action by the Defendants that was not subject to such review prior to the Approval Date of this Agreement.

99. This Agreement is in settlement of all claims that have been or might have been asserted in the Action and shall not be construed in any way as an admission, presumption, or concession by any one or more Defendants (or any other one or more agencies or officials of the Commonwealth) of any liability or wrongdoing whatsoever. By entering into this Agreement, the Defendants do not admit any wrongdoing, or violation of law, or liability to the Plaintiffs, and this Agreement shall not be construed as, and is not evidence of, an admission of wrongdoing or violation of law. This Agreement may not be relied upon as precedent in any future claim, other than claim(s) brought to enforce this Agreement.

**XI. Miscellaneous**

100. This Agreement contains all of the agreements, conditions, promises, and covenants between the Plaintiffs and the Defendants and among their respective counsel regarding the matters set forth in this Agreement and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of this Agreement and with respect to the subject matter of the Complaint and the Action.

101. All Parties hereto have all participated in the drafting of this Agreement and, accordingly, any claimed ambiguity may not be presumptively construed for or against any of the Plaintiffs or the Defendants.

102. In this Agreement, a period of days shall be deemed to begin on the first business day after the event which began the period. References to a “day” or “days” shall be construed to mean calendar days unless otherwise specified.

103. This Agreement may be executed in one or more counterparts each of which shall constitute an original instrument and all of which together shall constitute one and the same Agreement. Copies will be enforceable to the same extent as the original.

104. The date on which the Court approves this Agreement and enters its Order will be the “Approval Date.”

105. This Agreement shall not be, or be construed as, a Consent Decree or any other order of the Court.

106. In no event are the Defendants required under this Agreement to make any one or more expenditures in excess of the amount legally available to it under state law.

107. Nothing in this Agreement constitutes a waiver of the sovereign immunity that may be asserted by the Commonwealth of Massachusetts and its instrumentalities, agencies, and officials.

108. Force Majeure: Any failure to perform any obligation under this Agreement shall not be considered a breach of or noncompliance with any term of this Agreement if such failure results from any act of God, riot, war, civil unrest, flood, fire, earthquake, pandemic or epidemic, or other natural disaster.

109. Any notice required by this Agreement shall be sent to:

- (i) Center for Public Representation  
Steven J. Schwartz  
Jennifer Hotchkiss Kaplan  
5 Ferry Street  
Easthampton, MA 01027  
sschwartz@cpr-ma.org  
jkaplan@cpr-ma.org
- (ii) Greater Boston Legal Services  
Deborah Filler  
197 Friend Street  
Boston, MA 02114  
dfiller@gbls.org
- (iii) Justice in Aging  
Regan Bailey  
Carol Wong  
1444 I Street, NW, Suite 1100  
Washington, DC 20005  
rbailey@justiceinaging.org  
cwong@justiceinaging.org
- (iv) Foley Hoag LLP  
Kristyn DeFilipp  
Andrew London  
155 Seaport Boulevard  
Boston, MA 02210  
kbuncedefilipp@foleyhoag.com

alondon@foleyhoag.com

- (v) Executive Office of Health and Human Services  
Office of the General Counsel  
Attn: Sharon Boyle  
One Ashburton Place  
Boston, MA, 02108
  
- (vi) Massachusetts Office of the Attorney General  
Government Bureau  
Constitutional and Administrative Law Division  
Attn: Division Chief  
One Ashburton Place  
Boston, MA 02108


**SIGNATURES BEGIN ON NEXT PAGE**

IN WITNESS HEREOF, the Parties hereto have executed this Agreement as of March 22, 2024.

**FOR THE PLAINTIFFS:**

  
STEVEN J. SCHWARTZ  
Center for Public Representation

  
DEBORAH FILLER  
Greater Boston Legal Services

  
REGAN BAILEY  
CAROL WONG  
Justice in Aging

  
KRISTYN DEFILIPP  
Foley Hoag LLP

DAVID MARSTERS,

By his Next Friend

  
NANCY POMERLEAU

(See Order of the United States District Court in 1:22-cv-11715-NMG, ECF # 96)

RICHARD CAOUILLE,

By his Permanent Guardian

---

SARA SPOONER

(See Order of the Worcester Probate and Family Court  
dated May 4, 2020, entered in  
Civil Action No. WO20P1188GD)

CAROLE CHOJNACKI

By her Permanent Guardian

---

SARA SPOONER

(See Order of the Essex Probate and Family Court  
dated November 17, 2021, entered in  
Civil Action No. ES21P3422GD)

**SIGNATURES CONTINUED ON NEXT PAGE**

DAVID MARSTERS,

By his Next Friend


---

NANCY POMERLEAU

(See Order of the United States District Court in 1:22-cv-11715-NMG, ECF # 96)

RICHARD CAOQUETTE,

By his Permanent Guardian



---

SARA SPOONER

(See Order of the Worcester Probate and Family Court  
dated May 4, 2020, entered in  
Civil Action No. WO20P1188GD)

CAROLE CHOJNACKI

By her Permanent Guardian



---

SARA SPOONER

(See Order of the Essex Probate and Family Court  
dated November 17, 2021, entered in  
Civil Action No. ES21P3422GD)

**SIGNATURES CONTINUED ON NEXT PAGE**



SHERRI CURRIN

By her Permanent Guardian



SARA SPOONER

(See Order of the Middlesex Probate and Family Court dated December 14, 2021, entered in Civil Action No. MI21P6373GD)

DONALD GRANT

By his Permanent Guardian



SARA SPOONER

(See Order of the Worcester Probate and Family Court dated July 12, 2022, entered in Civil Action No. WO21P4028GD)

LORRAINE SIMPSON

By her Permanent Guardian



SARA SPOONER

(See Order of the Worcester Probate and Family Court dated May 11, 2022, entered in Civil Action No. WO21P1309GD)

**SIGNATURES CONTINUED ON NEXT PAGE**

MASSACHUSETTS SENIOR ACTION COUNSEL

By:

  
\_\_\_\_\_  
CAROLYN VILLERS  
Executive Director

**As to Fees and Costs:**

CENTER FOR PUBLIC REPRESENTATION

\_\_\_\_\_  
STEVEN J. SCHWARTZ,  
Partner

GREATER BOSTON LEGAL SERVICES

\_\_\_\_\_  
DEBORAH FILLER

JUSTICE IN AGING

\_\_\_\_\_  
REGAN BAILEY

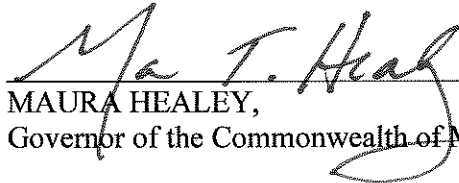
FOLEY HOAG LLP

\_\_\_\_\_  
KRISTYN DEFILIPP,  
Partner



**FOR THE DEFENDANTS:**

MAURA HEALEY,  
In her capacity as Governor  
of the Commonwealth of Massachusetts

  
MAURA HEALEY,  
Governor of the Commonwealth of Massachusetts

EXECUTIVE OFFICE OF HEALTH AND  
HUMAN SERVICES

---

KATE WALSH, in her official capacity as Secretary,

OFFICE OF MASSHEALTH

---

MICHAEL LEVINE, in his official capacity  
as Assistant Secretary for MassHealth  
of the Executive Office of Health and Human Services

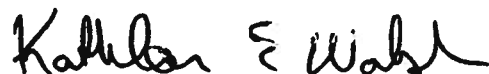
**FOR THE DEFENDANTS:**

MAURA HEALEY,  
In her capacity as Governor  
of the Commonwealth of Massachusetts

---

MAURA HEALEY,  
Governor of the Commonwealth of Massachusetts

EXECUTIVE OFFICE OF HEALTH AND  
HUMAN SERVICES



---

KATHLEEN E. WALSH, in her official capacity as  
Secretary,

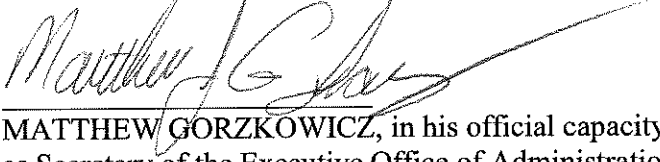
OFFICE OF MASSHEALTH



---

MICHAEL LEVINE, in his official capacity  
as Assistant Secretary for MassHealth  
of the Executive Office of Health and Human Services

EXECUTIVE OFFICE OF  
ADMINISTRATION AND FINANCE

A handwritten signature in black ink, appearing to read "Matthew Gorzkowicz", is written over a horizontal line. The signature is fluid and cursive, extending to the right of the line.

MATTHEW GORZKOWICZ, in his official capacity  
as Secretary of the Executive Office of Administration and Finance

EXECUTIVE OFFICE OF  
ADMINISTRATION AND FINANCE

---

MATTHEW GORZKOWICZ, in his official capacity  
as Secretary of the Executive Office of Administration and Finance

EXECUTIVE OFFICE OF  
ELDER AFFAIRS

A handwritten signature in black ink, appearing to read "Elizabeth Chen", written over a horizontal line.

---

ELIZABETH CHEN, in her official capacity as  
Secretary, Executive Office of Elder Affairs

# **Appendix 1**



**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

DAVID MARSTERS, )  
by his next friend, Nancy Pomerleau; )  
LORRAINE SIMPSON, by her guardian, Sara Spooner; )  
SHERRI CURRIN, by her guardian, Sara Spooner; )  
CAROLE CHOJNACKI, by her guardian, Sara Spooner; )  
RICHARD CAOUILLE, by his guardian, Sara Spooner; )  
DONALD GRANT, by his guardian, Sara Spooner, )  
on behalf of themselves )  
and other similarly situated persons; and )  
MASSACHUSETTS SENIOR ACTION COUNCIL, )

Plaintiffs, )

v. )

MAURA HEALEY, in her official capacity )  
as Governor of the Commonwealth of Massachusetts; )  
KATE WALSH, in her official capacity )  
as Secretary, Executive Office of Health and )  
Human Services; )  
MATTHEW GORZKOWICZ, in his official capacity )  
as Secretary of the Executive Office of Administration )  
and Finance; )  
ELIZABETH CHEN, in her official capacity as )  
Secretary, Executive Office of Elder Affairs; )  
and MICHAEL LEVINE, in his official capacity )  
as Assistant Secretary of MassHealth, )

Defendants. )

CIVIL ACTION NO.  
1:22-cv-11715-NMG

**JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT,  
CERTIFICATION OF SETTLEMENT CLASS AND AWARD OF ATTORNEYS' FEES**

The Plaintiffs and Defendants (hereafter “the Parties”) jointly move for final approval of the Settlement Agreement, for certification of a settlement class, and for an award of attorneys’ fees. In support of this Motion, the Parties state as follows:

1. On April \_\_ 2024, the Court preliminarily approved the Settlement Agreement, provisionally certified a settlement class, approved a Notice to Class Members and a Summary Notice, and established a schedule for the fairness hearing. *See* ECF ##.

2. On or before April \_\_ 2024, the Defendants disseminated the Notice and arranged for the publication of the Summary Notice, as required by the Court’s Order and as provided by ¶70 of the Settlement Agreement.

3. In response to the Notice, \_\_ class members submitted written objections.  
[SUMMARIZE OBJECTIONS IF ANY].

4. The Settlement Agreement was entered into through arms-length negotiations, by highly experienced counsel for the Parties, and provides significant benefits for the Plaintiffs and members of the class, without the risk and expense of further litigation. As such, it is a fair and reasonable resolution of the litigation. [Because these objections do not undermine the appropriateness or reasonableness of the Settlement Agreement,] the Court should approve the Settlement Agreement as fair and reasonable. [for the reasons set forth in their separate Memoranda of Law]

5. The Court should permanently certify a settlement class, as agreed to by the Parties and as provisionally certified pursuant to its April \_\_ Order, which is defined as follows:

“All present or future Medicaid-eligible persons who: (i) are Massachusetts residents, (ii) have attained age 22, (iii) reside (at any time before the Termination Date) in a nursing facility within the Commonwealth for 60 days or more, and (iv) either (a) have a “disability” as defined in the ADA and are qualified for and would not oppose transition to a community-based setting, or (b) have PASRR SMI as determined pursuant to a Level II PASRR evaluation.”

6. The settlement class satisfies all of the requirements of Fed. R. Civ. P. 23, as more fully discussed in the Plaintiffs’ Memorandum of Law, ECF ##.

7. Pursuant to ¶75 of the Settlement Agreement, the Parties have agreed that the Defendants will pay the Plaintiffs the amount of \$1,800,000 in attorneys' fees and costs, for legal work and litigation expenses incurred through the Approval Date of the Agreement. The Court should approve this amount as fair and reasonable for the reasons set forth in the Plaintiffs' Memorandum of Law, filed herewith.

WHEREFORE, the Parties request that the Court finally approve the Settlement Agreement, permanently certify the settlement class and appoint Plaintiffs' counsel to represent the class, and award Plaintiffs \$1,800,000 in attorneys' fees and costs.

Respectfully submitted,

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*Attorneys for the Defendants*

June \_\_, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that the above document has been served this day upon all counsel of record for the Defendants by electronic mail:

\_\_\_\_\_  
Steven Schwartz

June \_\_, 2024

# **Exhibit A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

DAVID MARSTERS, )  
by his next friend, Nancy Pomerleau; )  
LORRAINE SIMPSON, by her guardian, Sara Spooner; )  
SHERRI CURRIN, by her guardian, Sara Spooner; )  
CAROLE CHOJNACKI, by her guardian, Sara Spooner; )  
RICHARD CAOUILLE, by his guardian, Sara Spooner; )  
DONALD GRANT, by his guardian, Sara Spooner, )  
on behalf of themselves )  
and other similarly situated persons; and )  
MASSACHUSETTS SENIOR ACTION COUNCIL, )

Plaintiffs, )

v. )

MAURA HEALEY, in her official capacity )  
as Governor of the Commonwealth of Massachusetts; )  
KATE WALSH, in her official capacity )  
as Secretary, Executive Office of Health and )  
Human Services; )  
MATTHEW GORZKOWICZ, in his official capacity )  
as Secretary of the Executive Office of Administration )  
and Finance; )  
ELIZABETH CHEN, in her official capacity as )  
Secretary, Executive Office of Elder Affairs; )  
and MICHAEL LEVINE, in his official capacity )  
as Assistant Secretary of MassHealth, )

Defendants. )

CIVIL ACTION NO.  
1:22-cv-11715-NMG

**[PROPOSED] ORDER APPROVING SETTLEMENT AGREEMENT,  
CERTIFICATION OF SETTLEMENT CLASS AND AWARD OF ATTORNEYS' FEES**

The Court, having reviewed the proposed Settlement Agreement in this matter and the Parties' Joint Motion for Final Approval, hereby Orders that:

1. The Settlement Agreement is finally approved as fair, reasonable, and adequate.
2. In making the final determination that the Settlement Agreement is fair,

reasonable, and adequate, the Court has considered the factors set forth in Fed. R. Civ. P.

23(e)(2) and balanced the advantages and costs of the settlement against continued litigation. *See Robinson v. Nat'l Student Clearinghouse*, 14 F.4th 56, 59 (1st Cir. 2021); *Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009). The relief provided in the Settlement Agreement to Class Members is comprehensive and detailed; fairly, reasonably, and adequately remedies the injuries alleged; and treats class members equitably relative to one another. Class counsel conducted an initial investigation of the Commonwealth's services system before filing the litigation, and adequate discovery thereafter, prior to engaging in arm's length negotiations. Class counsel are competent attorneys with significant experience in litigating, negotiating, and implementing class action system reform cases, and the class representatives adequately represent the class. The litigation risks and legal uncertainty associated with continued litigation for both parties support the conclusion that settlement is preferable. Finally, considering the above findings, any objections filed regarding the Settlement Agreement cannot overcome the presumption of reasonableness. *See Cohen v. Brown Univ.*, 16 F.4th 935, 951 (1st Cir. 2021).

3. The proposed class is permanently certified as a settlement class pursuant to Fed.

R. Civ. P. 23(e), comprised of:

“All present or future Medicaid-eligible persons who: (i) are Massachusetts residents, (ii) have attained age 22, (iii) reside (at any time before the Termination Date) in a nursing facility within the Commonwealth for 60 days or more, and (iv) either (a) have a “disability” as defined in the ADA and are qualified for and would not oppose transition to a community-based setting, or (b) have PASRR SMI as determined pursuant to a Level II PASRR evaluation.”

4. The Court, having considered the factors required by Fed. R. Civ. P. 23(g) and the qualifications, experience, and knowledge of each class counsel, as set forth in their Memorandum in Support of Class Certification, ECF 76, hereby appoints the Center for Public Representation, Greater Boston Legal Services, Justice in Aging, and Foley



Hoag LLP as class counsel. The Court further finds that class counsel will fairly and adequately represent the interests of the class.

5. The Court retains jurisdiction to enforce and modify the Settlement Agreement, and resolve any disputes that arise in connection therewith, consistent with its terms.

6. The Plaintiffs are awarded \$1,800,000 in attorneys' fees and costs for legal work and expenses through this date, as is agreed upon by the Parties and as determined by the Court to be fair and reasonable. In making the foregoing award, the Court finds that: (1) the amount of time expended by class counsel, as significantly reduced in the agreed-to amount, is reasonable in light of the complexity and novelty of this case; (2) class counsel's hourly rates, as reduced in the agreed-to amount, are reasonable in the context of this case; (3) that the lodestar, as further reduced in the agreed-to amount, is fair and reasonable given the results obtained for the class; and (4) that the costs included in the agreed-to amount are reasonable and necessary in light of the litigation. The Defendants shall make reasonable efforts to obtain funds to pay the agreed-to amount of attorneys' fees and costs (i.e., \$1,800,000) to the Center for Public Representation at the earliest possible date.

SO ORDERED.

DATED:

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Honorable Nathaniel M. Gorton

## **Appendix 2**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

DAVID MARSTERS, )  
by his next friend, Nancy Pomerleau; )  
LORRAINE SIMPSON, by her guardian, Sara Spooner; )  
SHERRI CURRIN, by her guardian, Sara Spooner; )  
CAROLE CHOJNACKI, by her guardian, Sara Spooner; )  
RICHARD CAOUILLE, by his guardian, Sara Spooner; )  
DONALD GRANT, by his guardian, Sara Spooner, )  
on behalf of themselves )  
and other similarly situated persons; and )  
MASSACHUSETTS SENIOR ACTION COUNCIL, )

Plaintiffs, )

v. )

MAURA HEALEY, in her official capacity )  
as Governor of the Commonwealth of Massachusetts; )  
KATE WALSH, in her official capacity )  
as Secretary, Executive Office of Health and )  
Human Services; )  
MATTHEW GORZKOWICZ, in his official capacity )  
as Secretary of the Executive Office of Administration )  
and Finance; )  
ELIZABETH CHEN, in her official capacity as )  
Secretary, Executive Office of Elder Affairs; )  
and MICHAEL LEVINE, in his official capacity )  
as Assistant Secretary of MassHealth, )

Defendants. )

CIVIL ACTION NO.  
1:22-cv-11715-NMG

**JOINT STIPULATION OF DISMISSAL**

The Plaintiffs and Defendants (hereafter “the Parties”) hereby stipulate and agree, through their respective counsel, that this action shall be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).

Notwithstanding the dismissal of the case with prejudice, the Parties hereby stipulate, pursuant to Paragraph 81 of the Settlement Agreement approved by the Court in the above-captioned matter, that: “this Court shall retain jurisdiction to enforce, modify, and resolve any

disputes that arise in connection with this Agreement, subject to the requirements for Dispute Resolution set forth [therein].”

Respectfully submitted,

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Jennifer Hotchkiss Kaplan (Bar No. 658213)  
Kathy Walker (Pro hac vice)  
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*Attorneys for the Defendants*

June \_\_, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that the above document has been served this day upon all counsel of record for the Defendants by electronic mail:

\_\_\_\_\_  
Steven Schwartz

June \_\_, 2024