

**SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE STATE OF RHODE ISLAND EXECUTIVE OFFICE OF HEALTH
AND HUMAN SERVICES, ET AL.
USAO # 2018V00088
DJ # 204-66-63**

I. INTRODUCTION

- A. This Agreement is entered into between the United States of America (“United States”) and the State of Rhode Island Executive Office of Health and Human Services, the State Medicaid Director, and the Department within the Executive branch that administers the “Katie Beckett” program (“State”) (collectively “Parties”).
- B. This Agreement arises out of a complaint that parents (“Complainants”) filed with the U.S. Attorney’s Office, District of Rhode Island alleging that the State failed to provide their minor son with authorized home support services under the Rhode Island Executive Office of Health and Human Services (EOHHS) Rhode Island Medicaid/Katie Beckett program (“Katie Beckett,” as further defined below). The complaint alleged that the State found the Complainants’ son eligible for Katie Beckett services and authorized him to receive 25 to 34 hours per week of home-based therapeutic services and/or applied behavior analysis therapy (“HBTS/ABA”) services in his family home since at least 2014. The State provides these services to enable children with disabilities to remain in their own homes and communities. Yet the Complainants alleged that the State continually failed to reasonably modify its policies to provide back-up care when staff became unavailable, and instead provided only half of the hours of services authorized per week, on average. The Complainants alleged that insufficient services placed their son at serious risk of unnecessary segregation.
- C. After the United States opened an investigation of the Complainants’ allegations, the child entered an out-of-state Residential Treatment Facility. The family then removed the child from the residential treatment facility in response to concerns of alleged abuse and neglect. After six weeks at home, the child entered an in-state group home.
- D. In July 2018, the U.S. Department of Justice notified the State that it had opened an investigation under Title II of the Americans with Disabilities Act (the “ADA”), 42 U.S.C. §§ 12131-12134 (“Title II”), as interpreted in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and Title II’s implementing regulation, 28 C.F.R. pt. 35. The United States’ investigation substantiated the allegations described in Section I(B) above. Through its investigation, the United States determined that the State failed to ensure sufficient provider capacity and failed to ensure the Complainants could access sufficient providers, placing the Complainants’ son at serious risk of unnecessary segregation in a residential

setting. In addition, the United States determined that he was unnecessarily segregated in an out-of-state residential treatment facility.

- E. Title II of the ADA prohibits discrimination against qualified individuals with disabilities in the services, programs, and activities of public entities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130. Title II's implementing regulation requires public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d). The most integrated setting appropriate is the setting that enables an individual with a disability to interact with non-disabled persons to the fullest extent possible. 28 C.F.R. pt. 35, app. B. A public entity must make such reasonable modifications to its policies, practices, or procedures as are necessary to avoid disability discrimination, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7)(i). The obligation to provide services in the most integrated setting applies to individuals who are "qualified," defined as people with disabilities who, with or without reasonable modifications, meet the essential eligibility requirements for a community-based program, 42 U.S.C. § 12131(2), and for whom community-based services are "appropriate." *Olmstead*, 527 U.S. at 602-603.
- F. Title II authorizes the United States to initiate investigations, make findings of fact and conclusions of law, and attempt informal resolution when it finds violations. 28 C.F.R. § 35.172. The United States is also authorized to take appropriate action — including commencing a civil action in a United States District Court — should informal resolution efforts fail. 28 C.F.R. § 35.174.
- G. The ADA applies to the State of Rhode Island and its agencies because it is a "public entity" as defined by Title II of the ADA. 42 U.S.C. § 12131(1). "Public entities" are required to comply with 28 C.F.R. § 35.130.
- H. The Parties agree that it is in their interests, and the United States believes that it is in the public interest, to resolve this matter without engaging in protracted litigation. The Parties have therefore voluntarily entered into this Agreement. This Agreement resolves the United States' investigation of the State's alleged violations of Title II of the ADA. The Parties recognize that providing adequate community-based services is the most effective way to enable individuals with disabilities to remain in a community setting. Through this Agreement, the Parties intend to promote and further the goal of community integration.
- I. In consideration of, and consistent with, the terms of this Agreement, the United States agrees to refrain from filing a civil suit in this matter, except as provided in the section entitled "Enforcement." The United States agrees and acknowledges that this Agreement is not, and is not to be construed as, an admission of liability on behalf of the State, by whom liability is expressly denied. The Parties have entered into this agreement for the sole purpose of avoiding the burden, expenses, delay, and uncertainty of litigation. The Parties understand that this Agreement resolves certain disputes between the Parties, which, if pursued, would be contested, and that this Agreement shall not be construed as

a precedent, admission or agreement concerning any factual or legal questions arising from the underlying dispute.

- J. This Agreement cannot be used for any purpose, including, but not limited to, evidence, in any other proceedings, legal or otherwise, except as provided in the section entitled “Enforcement.”
- K. The Effective Date is the date of the last signature to this Agreement. Unless otherwise specified, all time periods designated for an action run from the Effective Date.

II. DEFINITIONS

For purposes of this Agreement, the following terms have the following meanings:

- A. “HBTS/ABA” refers to home-based therapeutic services and/or applied behavior analysis therapy as described in the Rhode Island Certification Standards for Providers of Home-Based Therapeutic Services (July 1, 2016).
- B. “Cedar Family Center” refers to a State-contracted entity that provides evolving, family-centered, intensive care management and coordination in order to assist families of children and youth with special health care needs, as described in EOHHS’ Cedar Fact Sheet (Dec. 15, 2016).
- C. “Informed Choice” refers to the process by which the State ensures that a parent or guardian of a child determined eligible for services under “Katie Beckett” has an opportunity to make an informed decision about where his or her child will receive services. Informed Choice means a choice made after the State has provided Person-centered Planning and information about the various services that the child is eligible and appropriate to receive. Informed Choice also entails making reasonable efforts to identify and address any concerns or objections raised by the parent or guardian of a child determined eligible for services under “Katie Beckett.”
- D. “Katie Beckett” refers to an eligibility category in the Rhode Island Medical Assistance (Medicaid) Program that provides medical assistance coverage for certain children under age nineteen (19) who have long-term disabilities or complex medical needs and who live at home. Children eligible for Katie Beckett services may receive those services at home instead of in an institution.
- E. “Member” refers to a child currently eligible for HBTS/ABA services under “Katie Beckett.”
- F. “Person-centered Planning” is the formal process, consistent with the requirements of 42 C.F.R. § 441.725, that organizes services and supports around a self-directed, self-determined, and goal-directed future. This includes the process by which a child’s family or guardian, with the assistance of appropriate State personnel or contracted entities, Provider Agency staff, and/or healthcare professionals, identifies the most integrated

setting appropriate for the child and the services necessary to enable the child to reside in the most integrated setting.

- G. "Provider" refers to an individual who provides HBTS/ABA services under "Katie Beckett."
- H. "Provider Agency" refers to an agency that employs Providers.

III. REMEDIAL ACTIONS

- A. Within three (3) months of this Agreement, the State will provide the Complainants' son with a written individualized service plan to determine and document which Rhode Island Medicaid supports and services (as described in the State's Medicaid Plan and waivers), consistent with 28 C.F.R. § 35.130(b)(7)(i), would enable the Complainants' son to live at home with his family, appropriate to his needs and consistent with the Complainants' Informed Choice and Section I(E) of this Agreement.
 - 1. The individualized service plan will be developed through a Person-centered Planning process to determine and document the Complainants' son's care needs. If transition to living in the home or community is consistent with the Complainants' Informed Choice, the service plan will outline the steps necessary to transition Complainants' child; the individual(s) responsible for taking each step; and a timeline for transition. The State will convene one (1) or more meetings with the Complainants and other appropriate individuals, such as Cedar Family Center staff, State decision-makers or their designee, and treating healthcare professional(s), to develop the individualized service plan, and will offer to meet with the Complainants and other appropriate individuals every six (6) months for the duration of this Agreement.
 - 2. The individualized service plan will also reflect the health, safety, and other risk factors for the Complainants' son and his family and strategies to address them and to enable his parents and siblings to have any necessary support and respite to maintain him in the most integrated setting appropriate.
 - 3. The State will fully implement the individualized service plan to provide all identified services, in accordance with Person-centered Planning, in the Complainants' home.
- B. If transition to living in the home or community is consistent with the Complainants' Informed Choice, within forty-five (45) days of the determination, the State will provide the Complainants' son, identified by the United States in Attachment A, with all services determined to be medically necessary and sufficient to keep him safe and secure in his home consistent with 28 C.F.R. § 35.130(b)(7)(i). The State will further ensure that all services determined to be medically necessary for the Complainants' son are provided, including when necessary, utilizing the Cedar Family Centers to arrange for additional

services and/or supports. The State will meet with providers in the event that a provider cannot regularly provide staff at the scheduled days/times and promptly resolve the issue so that the Complainants' son receives scheduled services.

- C. The State agrees to pay a total of \$75,000 as a compromise for any and all alleged damages to the Complainants and the Complainants' son, identified by the United States in Attachment A. The State will make this payment to the Complainants' son or a trust formed for the Complainants' son's benefit within 60 days of the State's receipt of the completed release attached hereto as Attachment B and receipt of a completed IRS Form W-9 for the Complainants' son. The State will make this payment by check made payable to the Complainants' son, or the trust referenced above. Should the Complainants, individually and on behalf of their son, refuse to execute the release within 90 days of the effective date of this Agreement, the State is relieved of any obligation to pay the above amount. Within 15 days of payment to the Complainants' son or the trust referenced above, the State will send the United States proof of payment.
- D. The State agrees to reasonably modify, review, and amend its policies, practices, procedures, guidance, and other materials with respect to its Katie Beckett Program services to ensure that Members eligible for, or who may in the future receive, HBTS/ABA services under the Katie Beckett Waiver receive adequate and appropriate services and supports, including access to multiple Provider Agencies, in the most integrated setting appropriate for their needs, consistent with the requirements of Title II of the ADA and its implementing regulations. The State agrees to:
1. Within 60 calendar days, the State will clarify in a written policy that Members eligible for HBTS/ABA services can use more than one (1) Provider to obtain necessary services if the initial provider is unable to fully deliver the medically necessary services identified in a member's individualized service plan.
 - a) EOHHS shall direct EOHHS staff, Cedar Family Centers, Provider Agencies, and Members that more than one (1) Provider Agency may be used to receive necessary services.
 - b) The State shall assign all Members to a Cedar Family Center to ensure access to the following Cedar Family Center services: Individualized assessment of concerns and needs with family and child; multiple provider care coordination if it is determined that more than one provider is required to provide services; person centered planning; family care plan development that includes a "crisis support care plan" when necessary; referrals to community providers; care coordination and assistance in accessing services; support during transitions through levels of care; and entry into the adult system of care. A "crisis support care plan" details individuals or agencies (e.g., child's Primary Care Physician (PCP), local mental health center) for the family to contact in the event of a specific crisis and actions to take to ensure the safety of the child and family.
 - c) In addition to the above identified services, Cedar Family Center enrollment will support Members by serving as a conflict free independent

agency that shall: implement the multiple provider policy; advocate and assist in ensuring that a beneficiary and family's service needs are met; serve as the coordinator/manager of services to facilitate and coordinate services when families need to access home-based community services; navigate the Medicaid children's services system; and provide oversight of service delivery to Members and their families to ensure accountability and delivery of medically necessary covered services.

d) The State shall clarify current practice and procedures with EOHHS staff, Cedar Family Centers, Provider Agencies, and Members to ensure appropriate access to services from multiple Provider Agencies as written policy is being finalized and implemented.

2. Within 60 calendar days, the State will amend its policy(ies) or procedures to require every Member be assigned to a certified Cedar Family Center to work with Provider Agencies for the delivery of medically necessary community-based services and/or supports.
 - a) The Cedar Family Center conducts care coordination to ensure that Members receive all medically necessary community-based services and/or supports.
 - b) The Cedar Family Center will work with certified Provider Agencies to facilitate the delivery of all medically necessary community-based services and/or supports.
 - c) If a Provider Agency cannot meet a Member's needs as determined by the Cedar Family Center and EOHHS, the Cedar Family Center and EOHHS shall convene a meeting with the family in order to determine additional community-based services and/or supports or to transition services to another certified Provider Agency if the family desires a change in providers.
3. With the assignment of Members to the Cedar Family Center, EOHHS shall meet on a monthly basis with the Cedar Family Centers to review performance, utilization of services, compliance, quality assurance, and continuous quality improvement. The State will develop an Active Contract Management (ACM) process by which program oversight will be conducted through quarterly meetings with the Cedar Family Centers and the EOHHS assigned staff to review key performance indicators (KPIs) and deliverables and other metrics that may be identified by EOHHS on a quarterly basis. Deliverables will include monitoring that Members receive staffing for all authorized services that the Member's family agrees to receive, and actions taken if the deliverable has not been achieved. The ACM process will include a monthly review of each certified Cedar Family Center.
4. The State will engage the Cedar Family Centers in the Active Contract Management (ACM) process by applying high-frequency use of data and purposeful management of agency-service provider interactions to improve services and deliverables. Deliverables will include data related to family care

plan goals being met, family care plan coordination, annual family satisfaction surveys and complaints and resolutions.

5. Within 60 calendar days, the State will create an Ombudsman e-mail and phone number for Members, Members' families or responsible representatives of Members to express concerns.
- E. EOHHS will directly mail copies of the policy change described in III.D; and the Ombudsman e-mail and phone number described in III.D.5 to the Provider Agencies and Cedar Family Centers to inform them that changes must be immediately implemented.
 - F. Provider Agencies and Cedar Family Centers will be instructed to provide the informational materials described in IV of this Agreement and the Ombudsman e-mail and phone number described in III.D.5 to Members at the development of the Member's support plan, as required by
<http://www.eohhs.ri.gov/Portals/0/Uploads/Documents/CSHCN/HBTSJuly2016.pdf>.

IV. INFORMATIONAL MATERIALS

- A. Within 90 days of the completion of the policy promulgation in III.D, the State will develop written informational materials to be provided to relevant Provider Agencies, Cedar Family Centers, parent(s)/guardian(s) of Members, children receiving Medicaid services in institutions who may be eligible for home-based services, and EOHHS officials, employees, or staff participating in authorizing or overseeing approval of home-based or residential services for Members who are eligible for Katie Beckett services. The training and informational materials will address:
 1. The terms and obligations contained in this Agreement, including the specific steps EOHHS has taken and will take to comply with this Agreement described at III.D; and
 2. Information to assist Provider Agencies, Cedar Family Centers, and EOHHS officials, employees, staff, and agents with complying with the terms and obligations of this Agreement.
- B. The State will send to the United States for review its proposed informational materials. The State will incorporate any reasonable comments from the United States and submit the revised informational materials to the United States for review within ten (10) business days of receipt of the United States' comments.
- C. For each piece of written informational material developed and distributed under this Agreement, the State will record the date and method of its distribution and the names and titles of the recipients of the material.

V. REPORTING

- A. Within three (3) months of the effective date of this Agreement, and, thereafter, every six (6) months for the duration of this Agreement, the State will provide the United States with a written status report regarding the Complainants' son's supports and services in the most integrated setting appropriate, including any changes or proposed changes in his individualized service plan. Access will include the complainants' son's medical and other records, unless prohibited by federal law and state law not superseded by federal law.
- B. Within three (3) months of the effective date of this Agreement, and, thereafter, every six (6) months for the duration of this Agreement, the State will provide the United States with a written status report delineating all steps taken during the reporting period to comply with each provision of Section III and IV of this Agreement, including the date(s) on which each step was taken, and, where applicable, information sufficient to demonstrate compliance with each provision.
- C. For the duration of this Agreement, the State will require its certified Providers to provide sufficient records that document when a Provider Agency fails to perform a scheduled service for a Member due to staff unavailability, noting whether the Member receives services from multiple Provider Agencies. The State will maintain records received that include the actions the Provider Agency and/or State took to remedy the issue that are in the State's control or the State has the right by law or contract to obtain.
- D. The State shall provide the United States records within the State's custody or control that demonstrate:
 1. That the State amended its policies as set forth in Section III(D);
 2. That the State developed the ACM and demonstrates that monthly meetings are occurring as set forth in III(D);
 3. That the State established an Ombudsman e-mail and phone number for Members, Members' families or responsible representatives of Members to express concerns as required by III(D)(5); and
 4. The records that were relied upon to compile the data set forth in Section V(B) and (C).
- E. The State will provide a declaration under oath attesting that it has:
 1. Directly mailed copies of the policy change to the Provider Agencies and Cedar Family Center in accordance with III(E); and
 2. Advised Provider Agencies and Cedar Family Centers to provide the information as identified in III(E) and (F).
- F. The State will appoint an Agreement Coordinator who will oversee compliance with this Agreement. The Agreement Coordinator may be a current State employee or contractor.

- G. If the United States concludes that the information and records provided by the State under Section V(D) are insufficient to assess compliance, the United States may pursue enforcement per Section VI.

VI. ENFORCEMENT

- A. The Parties agree to work collaboratively to achieve the purposes of this Agreement. In the event of any dispute over the Agreement's language, requirements, or construction, the Parties will meet and confer (telephonically, electronically, or in-person) in an effort to achieve a mutually agreeable resolution.
- B. The United States and the State will negotiate in good faith to resolve informally any dispute, including disputes concerning interpretation of or compliance with this Agreement. If the United States believes that the State has violated this Agreement, it will notify the State in writing and include reasonably specific information regarding the violation. If the United States and the State are unable to agree on a resolution within ninety (90) days of the United States' notice of violation, then the United States may commence a civil action in the U.S. District Court for the District of Rhode Island to enforce the terms of this Agreement or the ADA. The State maintains all its rights and privileges to contest that it is in violation of this Agreement.
- C. The ninety (90) day negotiation period does not apply to conditions or practices that pose an immediate and serious threat to the life, health or safety of individuals identified pursuant to this Agreement, for which the United States may seek appropriate relief including commencing a civil action in federal court if the United States and the State are unable to agree on a resolution within ten (10) days of the United States' notice of violation.
- D. It is a violation of this Agreement for the State to fail to comply in a timely manner with any of the requirements in this Agreement. The Parties may agree in writing to extend any applicable deadlines specified in this Agreement. The United States will not unreasonably deny requested extensions, if made in advance of any deadline, and following the State's due diligence to meet such a requirement.
- E. Failure by the United States to seek enforcement of any provision or deadline of this Agreement will not be construed as a waiver of the United States' right to enforce any deadlines or provisions of this Agreement.
- F. This Agreement will terminate in 18 months, if the Parties agree that the State has substantially complied with all of its provisions.
- G. For the purposes of this Agreement, substantial compliance will mean something less than strict or literal compliance. Non-compliance with mere technicalities, or isolated or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance.

- H. Notwithstanding Section VI.F, this Agreement will terminate earlier than 18 months if the United States determines that the State has demonstrated durable compliance with Title II of the ADA with respect to its HBTS/ABA services for Katie Beckett Members.
- I. Notwithstanding Sections VI.F and VI.H, if the United States determines that the State has demonstrated durable compliance with a part of the Agreement and that part is sufficiently severable from the other requirements of the Agreement, the Parties agree to terminate that part of the Agreement. In determining whether the State has demonstrated durable compliance with a part of the Agreement, the United States may assess collectively all the requirements of the Agreement to determine whether the intended outcome of the part has been achieved. Regardless of this Agreement's specific requirements, substantive sections of this Agreement may terminate upon a showing by the State that it has come into compliance with the requirements of the ADA that gave rise to this Agreement and maintained that compliance for one year. In any dispute regarding compliance with any provision of this Agreement, the State will bear the burden of demonstrating that it is in compliance with this Agreement.
- J. Nothing in this Agreement is intended to override the right of an individual Member to refuse offered services.
- K. This Agreement constitutes the entire integrated agreement of the Parties.
- L. Any modification of this Agreement will be executed in writing by the Parties.
- M. The United States and the State will each bear the cost of their own attorneys' fees and expenses incurred in connection with reaching this Agreement. This provision does not apply to any litigation related to this Agreement.

VII. GENERAL PROVISIONS

- A. This Agreement is binding on all successors and employees of the State to implement the terms of this Agreement. The State acknowledges that "[a] public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of disability." 28 CFR § 35.130(b)(1).
- B. The Parties will promptly notify each other of any court or administrative challenge to this Agreement, or any portion thereof. The State will work in good faith to uphold and defend this Agreement, including any relevant rules or regulations that codify or memorialize policies that comply with this Agreement, against any challenge by any third party.
- C. The State will not retaliate against any individual for opposing any act or practice that violates this Agreement, for making (or potentially making) a complaint relating to this Agreement, or for testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing related to this Agreement. The State will timely and thoroughly

investigate any allegations of such retaliation and take any necessary corrective actions identified through such investigations.

- D. The State will take all necessary measures to ensure that no private or public entity or individual coerces, intimidates, threatens, interferes with, or retaliates against any person relating to his or her exercise of any protection of this Agreement, or to his or her aid to, or encouragement of, others to exercise any protection of this Agreement.
- E. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement will nonetheless remain in full force and effect.
- F. The Parties represent and acknowledge that this Agreement is the result of extensive, thorough, and good faith negotiations. The Parties further represent and acknowledge that the terms of this Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of making a full and final compromise and settlement of the United States' allegations under Title II and its implementing regulations. Each Party to this Agreement represents and warrants that the person who has signed this Agreement on behalf of a Party is duly authorized to enter into this Agreement and to bind that Party to the terms and conditions of this Agreement.
- G. This Agreement may be executed in counterparts, each of which will be deemed an original, and the counterparts will together constitute one and the same Agreement, notwithstanding that each Party is not a signatory to the original or the same counterpart.
- H. The performance of this Agreement will begin immediately upon the Effective Date.
- I. The State will maintain sufficient records and data to document the State's implementation of the Agreement's requirements and will make information and documents available to the United States as described in Section (V)(D). Such action is not intended, and will not be construed, as a waiver, in litigation with these parties or third parties, of any applicable statutory or common law privilege associated with such information. Other than to carry out the express functions as set forth herein, the United States will hold such information in strict confidence as permitted by federal law.
- J. This Agreement will be interpreted in accord with federal law and the laws of the State of Rhode Island. Where there is a question about choice of law, federal law will govern. The venue for all legal actions concerning this Agreement will be in the United States District Court for the District of Rhode Island.
- K. "Notice" under this Agreement will be provided by overnight courier, or by any other agreed upon method, to the following or their successors:

For the United States of America:

/s/

Rebecca B. Bond, Chief
Victoria Thomas, Trial Attorney
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Date: 5/17/22

For the State of Rhode Island

/s/

Ana Novais, Acting Secretary
Executive Office of Health and Human
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3 West Road, Virks Building
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ana.p.novais@ohhs.ri.gov

Date: 5/16/22

/s/

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Date: 5/18/22