

AMENDED SETTLEMENT AGREEMENT

I. GENERAL PROVISIONS

- A. This Amended Settlement Agreement (“Amended Agreement”) is entered into between the Cabinet for Health and Family Services (“Cabinet”) and Kentucky Protection and Advocacy (“P&A”) in the interest of Kentuckians with Serious Mental Illness (SMI) currently residing in free-standing Personal Care Homes (PCHs), who receive State Supplementation pursuant to KRS 205.245 and 921 KAR 2:015, and who are not opposed to community placement; or those with SMI at risk of entry into a PCH, who would be eligible for State Supplementation, and who are not opposed to community placement (hereinafter collectively “the Parties”).
- B. The Interim Settlement Agreement (ISA), executed on August 15, 2013, was to begin a process over a three-year period so that, to the extent that the Cabinet offers services to individuals with SMI residing in or at risk of entry into a PCH, such services shall be provided in the most integrated setting appropriate to meet their needs pursuant to Title II of the Americans with Disabilities Act (ADA), 42 USC § 12131, et seq., as interpreted by the United States Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and Section 504 of the Rehabilitation Act of 1973 (“Rehab Act”), 29 U.S.C. § 794(a). Accordingly, through the Interim Settlement Agreement, the Parties intended that the steps to achieve the goal of community integration and self-determination would be undertaken.
- C. At the time of the ISA, P & A, on behalf of individuals with SMI residing in or at risk of entry into a PCH who receive or could receive State Supplementation, was prepared to file a federal lawsuit, with a number of named plaintiffs, asking the Court to certify a class of approximately 2,300 individuals to ensure compliance with the ADA, *Olmstead* and the Rehabilitation Act. Those claims remain viable and the Cabinet acknowledges that PCHs are institutions covered by the ADA, *Olmstead*, and the Rehabilitation Act.
- D. P&A and the Cabinet acknowledge that the relief agreed to in the ISA would not afford relief to all potential class members, and in order to provide relief and services beyond the ISA’s three-year period, the Cabinet is entering into the Amended Agreement in good faith to further provide access to Housing Assistance to seventy-five (75) potential class members in addition to the original six hundred (600) potential class members with necessary behavioral health supports over an additional two year period. Such supports and services shall be expanded to include other individuals in addition to the 675 individuals as stated above through the passage of a regulation incorporating the goals and objectives of this Amended Agreement into the Cabinet’s regulatory program.
- E. The signatures below of the Secretary of the Cabinet and the Executive Director of P&A represent and warrant that the person who has signed this Amended

Agreement on behalf of his or her entity is duly authorized to enter into this Amended Agreement and to bind that Party to the terms and conditions of this Amended Agreement.

- F. This Amended Agreement is binding upon the Parties, by and through their officials, agents, employees, and successors for the terms of this Amended Agreement. If the Cabinet contracts with any outside provider for any of the services provided in this Amended Agreement, the Amended Agreement shall be binding on all contracted parties, including agents and assigns. The Cabinet shall ensure that all contracted parties and agents take all actions necessary for the Cabinet to comply with the provisions of this Amended Agreement.
- G. This Amended Agreement and any documents incorporated by reference constitute the entire integrated Amended Agreement of the Parties. No prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding. Any amendment to this Amended Agreement shall be in writing and signed by both Parties.
- H. The Cabinet acknowledges that in addition to the seven million dollars (\$7,000,000) in State Fiscal Year 2014 (SFY), six million dollars (\$6,000,000) per year in SFYs 2015 and 2016 to meet the terms of this Interim Settlement Agreement, it has pledged an additional six million dollars each (\$6,000,000) in SFY 17 and SFY 18.
- I. During the pendency of this Amended Agreement, P&A agrees not to file any litigation against the Cabinet under the ADA or Rehab Act for any claim or allegation regarding the failure of the Cabinet to meet its obligations under the ADA or the Rehab Act for persons with SMI residing in or at risk of entry into a PCH who receive or could receive the State Supplementation.
- J. The Parties represent and acknowledge that this Amended Agreement is the result of good faith negotiations. The Parties further represent and acknowledge that the terms of this Amended Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of refocusing the Cabinet's use of Personal Care Homes.
- K. This Amended Agreement shall be interpreted in accordance with federal law and the laws of the Commonwealth of Kentucky. The venue for all legal actions concerning this Agreement shall be in the Franklin Circuit Court.

II. DEFINITIONS

- A. "Housing Assistance" shall mean assistance in gaining access to housing in the community, along with voluntary, flexible supports to help people with SMI that meet the requirements of III.C.6 of this Agreement. This shall also mean assistance in gaining access to state or federal housing vouchers or subsidies if

the person so chooses.

- B. "Individual" shall mean a person who is 18 years of age or older or a person in a situation where a guardian (either State or private) has been appointed because the individual has been determined disabled pursuant to KRS 387.500 *et seq*, then "individual" shall mean the person and his or her guardian.
- C. "Serious Mental Illness" ("SMI") shall mean a mental illness or disorder (but not a primary diagnosis of Alzheimer's disease or dementia) that is described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th Edition, or the DSM currently in use, that impairs or impedes functioning in one or more major areas of living and is unlikely to improve without treatment, services and/or supports.
- D. "Tenancy Rights" shall mean rights created by a landlord/tenant relationship, whether through a direct lease or a sublease.
- E. "Providers" shall mean Community Mental Health Centers ("CMHCs") and their affiliate organizations, and any individual or organization qualified to provide behavioral health services. For purposes of this Amended Agreement, any CMHC capable of providing the services required by this Amended Agreement may provide such services regardless of its geographic location or the location of the individual being served.

III. SUBSTANTIVE PROVISIONS

A. FOCUSING ON APPROPRIATE SUPPORTS AND SERVICES IN THE MOST INTEGRATED SETTING

1. The Cabinet agrees to continue to develop and implement effective measures to provide adequate and appropriate public services and supports identified through person centered planning in the most integrated setting appropriate to meet the needs of individuals with SMI, and who are residing in or at risk of entry into in PCH, pursuant to the details and timelines set forth below.
2. All guardians shall receive information from the Cabinet to encourage their wards with SMI who reside in or are at risk of entry into PCHs to participate to the maximum extent of his/her abilities in all decisions that will affect him/her; act in his/her own behalf on all matters in which the ward is able to do so; and develop or regain, to the maximum extent possible, the ward's capacity to meet the essential requirement for his/her physical health or safety. KRS 387.640. Guardians shall be encouraged to permit individuals who have been determined disabled to participate as fully as possible in treatment discussions and discharge planning, to the maximum extent of the individual's capabilities, in accordance with state law. Any decisions made by the guardian about where the individual will

live should reflect the individual's written preferences, to the extent possible.

B. REGULATION

1. Cabinet agrees to promulgate a new regulation encompassing and further describing the services and supports in the ISA and this Settlement Agreement prior to December 1, 2015. This new regulation shall allow individuals with SMI to access the service array described in Section III D. 3 and Housing Assistance described in Section III.C.6. Individuals served under the regulation shall not be limited to those listed in Section III.C.2.(a-c). In addition, following its promulgations and passage/approval, the Cabinet agrees to seek P&A's comments on draft administrative regulations or potential changes to the new regulation relating to any issue that may affect the SMI population, prior to the administrative regulation being submitted for final execution. The Cabinet will give due consideration to P&A's comments and supply written responses articulating the rationale if it declines to adopt those suggestions.

C. COMMUNITY-BASED SUPPORTED HOUSING ASSISTANCE

1. The Cabinet will develop and implement measures to provide individuals outlined in Section III.C.2.a-c access to community-based supported housing. Nothing in this Agreement will require the Cabinet to forgo federal funding or federal program participation, for housing that meets the criteria herein to provide community placements for individuals pursuant to this Amended Agreement.
2. Eligibility for the receipt of Housing Assistance under this Amended Agreement will be given to the following categories of individuals:
 - a. Individuals with SMI who are residing in a PCH and receive state supplementation who have expressed to P&A, prior to the signing of this Amended Agreement, an interest in receiving services and supports in the most integrated setting and who at the time of contact by the Cabinet, with timely follow-up, still wish to move into alternative housing;
 - b. Individuals with SMI who are residing in a PCH and receive the State Supplementation;
 - c. Individuals with SMI who are or will be discharged from a psychiatric hospital who have previously resided in a PCH.
3. The Cabinet will provide Housing Assistance under this Agreement to six hundred seventy-five (675) individuals—approximately three hundred thirty-five (335) individuals who are state wards with SMI residing or at risk of entry into PCHs and receiving state supplement;

and approximately three hundred forty (340) individuals with SMI residing or at risk of entry into PCHs who are not state wards but are receiving state supplement in accordance with the following schedule:

- a. By October 1, 2015 the Cabinet will provide Housing Assistance to at least 150 individuals with approximately half given to state wards and half to others.
 - b. By October 1, 2016 the Cabinet will provide Housing Assistance to at least 200 additional individuals with approximately half given to state wards and half to others.
 - c. By October 1, 2017 the Cabinet will provide Housing Assistance to at least 250 additional individuals with approximately half given to state wards and half to others.
 - d. By October 1, 2018 the Cabinet will provide Housing Assistance to at least 75 additional individuals with approximately half given to state wards and half to others.
4. Housing Assistance will be allocated on a first come, first served basis following the terms set forth in Section III C 2 based on geographic housing availability and individual preference in accordance with the priorities set forth above.
 5. The Cabinet currently has ongoing programs for housing assistance that will continue in effect. The Cabinet may utilize those programs to fulfill its obligations under this Amended Agreement to provide Housing Assistance to individuals, so long as the Housing Assistance provided using those ongoing programs meets all the criteria herein and the persons served under this Amended Agreement meet criteria for those programs.
 6. Housing Assistance will be provided for individuals to live in settings that meet the following criteria:
 - a. They are permanent housing with Tenancy Rights;
 - b. They include tenancy support services that enable residents to attain and maintain integrated, affordable housing. Tenancy support services offered to people living in supported housing are flexible and are available as needed and desired, but are not mandated as a condition of tenancy;
 - c. They enable individuals with disabilities to interact with individuals without disabilities to the fullest extent possible;

- d. They do not limit individuals' ability to access community activities at times, frequencies and with persons of their choosing;
 - e. They are scattered site housing, where no more than 25% of the units in any development are occupied by individuals with a disability known to the Cabinet;
 - f. They afford individuals choice in their daily life activities, such as eating, bathing, sleeping, visiting and other typical daily activities;
 - g. The priority is for single-occupancy housing.
7. Housing Assistance made available under this Amended Agreement cannot be used in Personal Care Homes, group homes, nursing facilities, boarding homes, assisted living residences, supervised living settings, or any setting required to be licensed.
8. Individuals will be free to choose other appropriate and available housing options, after being fully informed of all options available. Being fully informed means that an individual has been provided information about the option of transitioning to supported housing, its benefits, and the array of services and supports available as set out in this Amended Agreement. However, housing that does not meet the criteria set forth herein will not be considered Housing Assistance for purposes of this Amended Agreement.

D. BEHAVIORAL HEALTH SERVICES

- 1. The Cabinet shall provide access to the array and intensity of services and supports under this Amended Agreement necessary to enable individuals with SMI currently residing in or at risk of entry into in PCHs to successfully transition to and live in community-based settings. The Cabinet shall provide each individual receiving Housing Assistance under this Amended Agreement with access to services for which that individual is eligible that are covered under the Medicaid Program or the Cabinet-funded service array as described in Section III.D.3 of this Agreement.
- 2. The services and supports referenced in Sections III.D.1 above, shall:
 - a. be evidence-based, recovery-focused and community-based;
 - b. be flexible and individualized to meet the needs of each individual;
 - c. help individuals to increase their ability to recognize and

deal with situations that may otherwise result in crises;
and

- d. increase and strengthen individuals' networks of community and natural supports, as well as their use of these supports for crisis prevention and intervention.
3. The Cabinet will rely on the following behavioral health services to satisfy the requirements of this Amended Agreement: Assertive Community Treatment ("ACT") teams, case management services, crisis services, peer support services, and Supported Employment services.
 4. All ACT teams shall operate to fidelity to either, at the Cabinet's determination, the Dartmouth Assertive Community Treatment ("DACT") model or the Tool for Measurement of Assertive Community Treatment ("TMACT") or any fidelity models listed in the Substance Abuse and Mental Health Services Administration (SAMHSA) Tool Kits. All providers of behavioral mental health services shall adhere to requirements of the applicable service definition.
 5. A person-centered service plan shall be developed for each individual, which will be implemented by a qualified professional who is clinically responsible for ensuring that all elements and components of the plan are arranged for the recipient in a coordinated manner. Individualized service plans will include psychiatric advance directives and/or crisis plans so that such measures can be incorporated into the response to any behavioral health crisis.
 6. Case Management Services bring services, agencies, resources and people together to help an individual achieve his or her goals.
 7. Crisis Services
 - a. The Cabinet shall ensure that a crisis service system exists for individuals served under this Amended Agreement that includes crisis services sufficient to offer timely and accessible services and supports to those individuals experiencing a behavioral health crisis. The services shall include mobile crisis teams, community-based residential crisis services, and 24 hour per day/7 day per week crisis telephone lines.
 - b. The Cabinet will monitor crisis services and identify service gaps. The Cabinet will develop and implement effective measures to address any gaps or weaknesses identified.
 - c. Crisis services shall be provided in the least restrictive setting (including at the individual's residence whenever practicable), consistent with an already developed individual community-based crisis plan or in a manner that develops such a plan as a

result of a crisis situation, and in a manner that prevents unnecessary hospitalization, incarceration or institutionalization.

8. Peer Support Services will be provided. Peer Support Services are the social and emotional support provided by persons with a mental health condition to others sharing a similar mental health condition to bring about a desired social or personal change. The job of a Peer Specialist is not to replace current clinical mental health staff, but to offer additional and/or alternative options to help people in their efforts to recover.
9. Supported Employment
 - a. The Cabinet will develop and implement measures to provide Supported Employment Services to individuals under this Agreement who are residing in or at risk of entry into a PCH, that meet their individualized needs. Supported Employment Services are defined as services that will assist individuals in preparing for, identifying, and maintaining integrated, paid, competitive employment. Services offered may include job coaching, transportation, assistive technology assistance, specialized job training, person centered employment plans, job development and individually-tailored supervision.
 - b. Supported Employment Services will be provided with fidelity to an evidence-based supported employment model for supporting people in their pursuit and maintenance of integrated, paid, competitive work opportunities. Supported Employment Services will be assessed by an established fidelity scale such as the scale included in the SAMHSA supported employment toolkit.

E. DISCHARGE AND TRANSITION PROCESS

1. The Cabinet will implement procedures for ensuring that individuals residing in or at risk of entry into a PCH will be accurately and fully informed in writing and signed by the individual about the community-based options provided under this Amended Agreement.
2. DBHDID will create an overall transition team at the Cabinet level, which will include a representative from P&A, to provide oversight and assist local transition teams in addressing and overcoming identified barriers preventing individuals from transitioning to an integrated setting. The members of the transition team will include individuals with experience and expertise in how to successfully resolve problems that arise during discharge planning and implementation of discharge plans.
3. Implementation of In-Reach, Discharge and Transition Process

- a. DBHDID will develop requirements and materials for in-reach and transition coordinators and teams.
- b. DBHDID will ensure that ongoing in-reach to individuals in PCHs and Cabinet owned and operated psychiatric hospitals and continues for individuals meeting the requirements of this Amended Agreement.
- c. Within 15 days of initial contact, individuals who have indicated they do not want to receive services in a PCH shall be assigned to a transition team.
- d. The Cabinet shall share the in-reach and education materials with P&A, the Department of Aging and Independent Living, the MCOs, and Clerks of Court to ensure the guardians of individuals with SMI understand the options available to individuals served under this Amended Agreement.
- e. P&A shall be permitted to offer its assistance to individuals with SMI who are state wards in accessing services under this Amended Agreement. State guardians shall cooperate with P&A and case managers so that they might find the most integrated setting appropriate to meet the individual's needs, and shall allow P&A to represent those wards that request P&A's assistance in accessing services under this Amended Agreement.
- f. Transition and discharge planning for an individual meeting the qualifications of this Amended Agreement will be completed within 45 days of assignment to a transition team. Discharge if appropriate for an individual served under this Amended Agreement will occur within 90 days of assignment to a transition team provided that Housing Assistance is then available. If Housing Assistance is not available for an individual within 90 days of assignment to the transition team, the transition team will maintain contact and work with the individual on an ongoing basis until the individual transitions to community-based housing as described in Section IIIC.

F. QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

1. The Cabinet will develop and implement a quality assurance and performance improvement monitoring system to ensure that community-based placements and services are developed in accordance with this Amended Agreement, and that the individuals who receive services or Housing Assistance pursuant to this Amended Agreement are provided with the services and supports they need for their health, safety, and welfare. The goal of the Cabinet's system will be that all mental health

and other services and supports funded by the Cabinet are of good quality and are sufficient to help individuals achieve increased independence, gain greater integration into the community, obtain and maintain stable housing, avoid harms, and decrease the incidence of hospital contacts and institutionalization.

2. Quality Assurance System: The Cabinet will regularly collect, aggregate and analyze data related to in-reach and person-centered discharge and community placement efforts, including but not limited to information related to both successful and unsuccessful placements, as well as the problems or barriers to placing and/or keeping individuals in the most integrated setting. The Cabinet will review this information on a semi-annual basis and develop and implement measures to overcome the problems and barriers identified.
3. Information obtained from the Quality Assurance System shall be shared with P&A on least a quarterly basis, unless request sooner.

G. OTHER REQUIREMENTS

1. The Cabinet will use its best efforts to memorialize the goals and objectives of this Amended Agreement with an appropriate regulation as specified in III. B. 1.
2. Independent Reviewer. The Parties have selected Diane Brewer to continue to be the independent reviewer to monitor the Cabinet's implementation of this Amended Agreement and shall have authority to independently assess, review, and file quarterly status reports to all parties to the Amended Agreement.
3. The Parties have chosen to monitor the Cabinet's implementation of this Amended Agreement through quarterly status reports on the Cabinet's implementation of and compliance with the provision of this Amended Agreement. A quarterly report on the individuals meeting the criteria of Section III.C. 2. a. of this Amended Agreement shall be prepared that indicates exactly where the individuals are in the process of being transitioned from the PCH in which they currently reside to community-based housing.
4. The implementation of this Agreement as an ISA began on September 1, 2013. The Parties anticipate that the Cabinet will have substantially complied with all provisions of this Amended Agreement by September 1, 2018, unless the Amended Agreement is otherwise extended. Substantial compliance is achieved if any violations of the Amended Agreement are minor and occasional and are not systemic. Any Amended Agreement deadline may be extended by mutual agreement of both Parties.
5. Throughout the pendency of this Amended Agreement, the P&A and the

Cabinet will coordinate and discuss areas of disagreement and attempt to resolve outstanding differences. In the event of any dispute over the language or construction of this Amended Agreement or its requirements, the Parties agree to meet and confer in an effort to achieve a mutually agreeable resolution prior to terminating the Amended Agreement.

6. If the Cabinet responds by proposing a curative action by a specified date, the P&A may accept the Cabinet's proposal or offer a counterproposal for a different curative action or deadline. If the Parties reach an agreement that varies from the provisions of this Amended Agreement, the new agreement shall be in writing and signed. If the Parties fail to reach agreement on a plan for curative action, the P&A may seek an appropriate judicial remedy.
7. Failure by any Party to enforce this entire Amended Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver.
8. The Cabinet shall maintain sufficient records to document that the requirements of this Amended Agreement are being properly implemented and shall make such records available to P&A for inspection and copying upon request.
9. "Notice" under this Amended Agreement shall be provided by overnight courier to the following or their successors:

For the Cabinet:

Commissioner
Department for Behavioral Health, Developmental and
Intellectual Disabilities
275 E. Main Street
Frankfort, Kentucky 40621

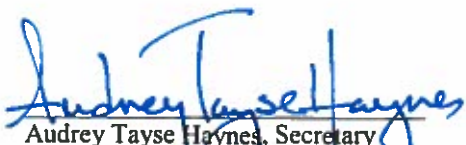
Office of General Counsel
Cabinet for Health and Family Services
275 E. Main Street
Frankfort, Kentucky 40621


For P & A:

Director
Protection and Advocacy
200 Fair Oaks Lane, 5th Floor
Frankfort, Kentucky 40601


10. The precise acts to be done by the Parties under this Amended Agreement are clearly ascertainable and any breach of this Amended Agreement may result in significant and irreparable damage to either Party for which they will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that they may immediately seek enforcement of this Amended Agreement by means of specific performance and that specific performance will be an available equitable remedy.

Signatures:


Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services


Approved as to Form

10/15/15
Date


Jeff Edwards, Director
Kentucky Protection and Advocacy


Approved as to Form

10/19/15
Date