IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ERIC STEWARD, *et al.*, *Plaintiffs* v. RICK PERRY, Governor of the State of Texas, *et al.*, *Defendants*	§	Case No. 5:10-CV-1025-OG
THE UNITED STATES OF AMERICA, *Plaintiff-Intervenor* v. THE STATE OF TEXAS *Defendant*	§	

INTERIM SETTLEMENT AGREEMENT

I. Introduction

A. **The Parties**. Plaintiffs are Eric Steward, by his next friend and mother, Lillian Minor; Linda Arizpe, by her next friend and guardian, Rudy Arizpe; Andrea Padron, by her next friend and guardian, Rosa Hudecek; Patricia Ferrer, by her next friend and mother, Petra Ferrer; Benny Holmes, by his next friend and guardian, Priscilla Holmes; Zackowitz Morgan, by his next friend and guardian, Sharon Barker; The Arc Of Texas, Inc.; and the Coalition Of Texans With Disabilities, Inc. ("Plaintiffs"). Plaintiff-Intervenor is the United States ("United States"). Defendants are the State of Texas; Rick Perry, in his official capacity as Governor of The State of Texas ("Governor"); Kyle L. Janek, in his official capacity as Executive Commissioner of the Texas Health and Human Services Commission ("HHSC"); and Jon Weizenbaum, in his official capacity as Commissioner of the Texas Department of Aging and Disability Services ("DADS"). Hereinafter, Defendants the State of Texas, Governor, HHSC, and DADS are referred to collectively as "the State." The Plaintiffs, the United States, and the State are hereinafter referred to collectively as "the Parties."

B. **The Lawsuit.** Plaintiffs filed suit against Defendants HHSC, DADS, and the Governor on December 20, 2010, asserting claims under the Americans with Disabilities Act, 42 U.S.C. § 12132 et seq. ("ADA"), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and several sections of Title XIX of the Social Security Act, 42 U.S.C. § 1396a, et seq. ("Medicaid Act"), including the Preadmission Screening and Resident Review ("PASRR") provisions of the 1987 Nursing Home Reform Act, 42 U.S.C. § 1396r, et seq. ("NHRA").

Plaintiffs' claims were brought under 42 U.S.C. § 1983 ("Section 1983"), and were brought on behalf of themselves and a purported class. Plaintiffs' live pleading is the Amended and Supplemental Complaint, filed October 4, 2011 (Docket # 63). A Second Amended Complaint (Docket # 162-1) to add ten additional named plaintiffs was filed on March 12, 2013 and is pending before the Court. The United States was granted leave to intervene, and filed its Complaint in Intervention against the State of Texas (Docket # 137), on September 20, 2012. The United States asserts claims under Section 504 of the Rehabilitation Act and Title II of the ADA. In general terms, the litigation brought by Plaintiffs and the United States concerns individuals with IDD residing in nursing facilities and at risk of admission to nursing facilities. Hereinafter, the above-styled and referenced litigation, *Steward et al. v. Perry, et al; United States v. Texas*, Case No. 5:10-CV-1025-OLG, United States District Court for the Western District of Texas, San Antonio Division, is referred to as "the Lawsuit."

C. **Interim Agreement and Comprehensive Agreement**. The Parties enter into this agreement ("Interim Agreement" or "Agreement") in order to resolve as many issues as possible related to the Lawsuit for a limited time period, while still seeking to resolve all issues in the Lawsuit pursuant to a comprehensive agreement ("Comprehensive Agreement") without the expense, risks, delays, and uncertainties of litigation.

D. By entering into this Agreement, the State does not admit to the truth or validity of any claim made against it by Plaintiffs and the United States.

E. This Agreement applies only to the Target Population as defined herein.

F. The Parties acknowledge that the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1345; and 42 U.S.C. §§ 12131-12132, and that the Court is empowered to enter this Agreement. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

II. Definitions

A. "CFC" means "Community First Choice Options," a new program that the State intends to create to provide attendant and other services for eligible individuals living in the community. CFC would offer an opportunity for eligible individuals to receive person-centered community-based services to assist in the prevention of placement in a nursing facility. See 42 U.S.C. § 1396n(k); 42 C.F.R. § 441.500 *et seq*. If approved by CMS, the CFC program is targeted for implementation beginning September 1, 2014.

B. "CMS" means the United States Department of Health & Human Services Centers for Medicare & Medicaid Services.

C. "Department of Aging and Disability Services" or "DADS" means the Texas state agency that provides long-term services and supports for individuals who are aging, for individuals with IDD, and for individuals with physical disabilities.

D. "Home and Community-based Services waiver" or "HCS waiver" means the array of services and supports provided under the State's Home and Community-based Services waiver as approved by CMS as of the Effective Date of this Agreement.

E. "ICF/IID" means Intermediate Care Facilities for Persons with Intellectual Disabilities that provide health and habilitation services to individuals with IDD.

F. "IDD" for purposes of this Agreement means an intellectual disability, related condition, or both.

G. "Intellectual disability" or "ID" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating before the age of 18. "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

H. "LAR" means legally authorized representative. A "legally authorized representative" means a person authorized by law to act on behalf of an individual with regard to a matter described in this Agreement, which may be the guardian of an adult individual or a surrogate decision maker under Texas Health and Safety Code §313.004.

I. "Local Authority" means an entity to which the Health and Human Services Commission delegates authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of services to individuals with IDD in one or more local service areas.

J. "PASRR Level I" or "PASRR Level I screening" means the process of identifying individuals who are suspected of having IDD and therefore require a PASRR Level II evaluation. A PASRR Level I screening is further described and defined in 42 C.F.R. §§ 483.112(a) and 483.128.

K. "PASRR Level II" means a face-to-face evaluation performed by a Local Authority to assess: (1) whether the individual's needs could be met in the community through alternate placement options; (2) the individual's need for inpatient care, whether in a nursing facility or other setting such as an ICF/IID; and (3) the individual's need for specialized services. A PASRR Level II evaluation is further described and defined in 42 C.F.R. §§ 483.112, 483.132, and 483.136.

L. "Related condition" means a severe, chronic disability that meets all of the following conditions:

1. It is attributable to—
   a. Cerebral palsy or epilepsy; or
   b. Any other condition, other than mental illness, found to be closely related to Intellectual Disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with intellectual disabilities, and requires treatment or services similar to those required for these persons.
2. It is manifested before the person reaches age 22.
3. It is likely to continue indefinitely.
4. It results in substantial functional limitations in three or more of the following areas of major life activity:
   a. Self-care.
   b. Understanding and use of language.
   c. Learning.
   d. Mobility.
   e. Self-direction.
   f. Capacity for independent living.

M. "Specialized services" means services for the Target Population in nursing facilities identified by the PASRR Level II. Specialized services are further described and defined in 42 C.F.R. §§ 483.116, 483.120(a)(2), 483.136, 483.440(a)(1)), and 42 U.S.C. § 1396r(e)(7)(G)(iii).

N. Target Population:

1. "Target Population" as used in this Agreement means individuals with IDD 21 years of age or older who:

   a. are in a nursing facility for more than 90 days; or

   b. are determined by a PASRR Level I screening to be in need of a PASRR Level II evaluation or are in a nursing facility for 90 days or less.

2. Individuals remain in the Target Population for as long as they are in a nursing facility and until one year after transition or diversion from a nursing facility through enrollment in community-based Medicaid services.

O. "Texas Home Living waiver" or "TxHmL waiver" means the array of services and supports provided under the State's TxHmL waiver as approved by CMS as of the Effective Date of this Agreement.

III. Serving Individuals with Developmental Disabilities In the Most Integrated Setting

A. Expansion of Community Services

1. For the biennium beginning September 1, 2013, the State will request and make all reasonable efforts to obtain from the Texas Legislature the necessary appropriations for the following additional services:

   a. Targeted transition HCS waiver services for at least 360 individuals in Target Population II.N.1.a;

   b. Targeted diversion HCS waiver services for at least 150 individuals in Target Population II.N.1.b; and

   c. Targeted diversion TxHmL waiver services for 125 individuals in Target Population II.N.1.b.

2. With notice to Plaintiffs and the United States, the State may re-allocate HCS waiver slots between III.A.1.a and III.A.1.b.

3. Not later than 180 days after the Effective Date of this Agreement, the State will submit to CMS an application to renew its HCS waiver to include individuals in the Target Population with related conditions. If the renewal is approved by CMS, the State will not exclude any otherwise qualified individual from the Target Population because the individual has a related condition but not an intellectual disability. If the inclusion is not approved by CMS because of a defect in the State's waiver renewal application, the State will use its best efforts to correct the application.

4. The State will not exclude any otherwise qualified individual from the Target Population due to the existence of complex behavioral or medical needs. However, individuals in the Target Population must meet all eligibility requirements of a waiver to enroll in waiver services.

5. If CFC is approved by the Legislature, within 180 days of the Effective Date of this Agreement, the State will submit to CMS a State Plan amendment for a Community First Choice Option. If the amendment is not approved by CMS because of a defect in the State's amendment application, the State will use its best efforts to correct the application.

6. During the term of this Agreement, the State will notify Plaintiffs and the United States of any proposed amendments to the HCS and TxHmL waivers at least 90 days prior to submitting the amendments to CMS for approval.

7. The State will include individuals with IDD in nursing facilities as a priority population in its Promoting Independence Plan.

B. Service Planning Team ("SPT")

1. The State will ensure that, through the Local Authorities, all individuals in the Target Population have an SPT.

2. The State will ensure that, through the Local Authorities, the individual's SPT is convened at least quarterly, or more frequently if requested by the individual or LAR, or if there is a change in service needs.

3. For all individuals in the Target Population, the SPT will:

   a. Develop a service plan that:

      i. Is individualized and developed through a person-centered process. The SPT will ensure that individuals, regardless of whether they have an LAR, will participate in the SPT to the fullest extent possible and will receive the support necessary to do so, including, but not limited to, communication supports;

      ii. Identifies the individual's strengths; preferences; medical, nursing, nutritional management, clinical, and support needs; and desired outcomes; and

      iii. Identifies the services and supports that are needed to meet the individual's needs, achieve the desired outcomes, and maximize the person's ability to live successfully in the most integrated setting possible.

   b. Assess the adequacy of the services and supports that the individual is receiving; and

   c. Monitor the individual's service plan to make timely additional referrals, service changes, and amendments to the plan as needed.

4. For individuals in the Target Population in nursing facilities, the SPT will:

   a. Include the following persons: the individual being served; his or her LAR; the service coordinator; nursing facility staff familiar with the individual's needs; persons providing specialized services for the individual; and, if a specific alternate placement provider has been selected, a representative from that provider. The SPT may include: other concerned persons whose inclusion is requested by the individual or the LAR and, at the discretion of the Local Authority, other persons who are directly involved in the delivery of services to individuals with IDD;

b. Identify the specific specialized services to be provided to the individual, including the amount, intensity, and frequency of each specialized service;

c. Be responsible for planning, ensuring the implementation of, and monitoring all specialized services identified in the service plan, and transition planning in coordination with the nursing facility's care planning team; and

d. Ensure that the individual's service plan, including specialized services, is integrated into the nursing facility's plan of care and that specialized services are planned, provided, and monitored in a consistent manner, and integrated with the medical and nursing services, and services of lesser intensity, provided by the nursing facility.

5. For individuals in the Target Population living in the community, the SPT will:

a. Include the persons specified in the rules for the program in which the individual is enrolled;

b. Be responsible for planning, ensuring the implementation of, and monitoring all services identified in the service plan; and

c. Determine the sufficient frequency of face-to-face service coordination contacts based on risk factors including, but not limited to, recent transition from a nursing facility, the assessed need for more intensive monitoring; recent or repeat hospitalizations; recent or repeat emergency room contacts; or factors placing the individual at risk of readmission to a nursing facility due to identified medical, psychiatric, or behavioral conditions.

C. Service Coordinator

1. The State will ensure that, through the Local Authorities, all individuals in the Target Population who do not refuse service coordination receive service planning and coordination by a service coordinator employed by an entity other than the nursing facility, such as a Local Authority, in conjunction with an SPT.

2. The service coordinator will be responsible for (a) convening and facilitating the SPT; (b) facilitating the development of the service plan; (c) facilitating revisions to the service plan, as needed; and (d) facilitating the coordination of services and supports.

3. The service coordinator will meet face-to-face with each assigned individual in the Target Population on a monthly basis, or more frequently if needed.

4. After the individual has transitioned or been diverted from a nursing facility admission into a community program for 180 days, the service coordinator will meet with the individual with the frequency required by the rules for the program in which the individual is enrolled.

5. For individuals in the Target Population in nursing facilities, the service coordinator will:

   a. Discuss with the individual and LAR a range of community options and alternatives, facilitate visits to community programs, and address concerns about community living;

   b. Ensure that the individual receives the educational and informational activities described in VI.A; and

   c. Facilitate coordination between an individual's service plan and the nursing facility's plan of care.

6. For individuals in the Target Population in nursing facilities transitioning to the community, the service coordinator will facilitate the SPT's transition planning responsibilities under IV.B and IV.C, including the development of a Community Living Discharge Plan pursuant to IV.B.2.

7. For individuals in the Target Population in the community, the service coordinator will:

   a. Inquire about any recent hospitalizations, emergency department contacts, increased physician visits, or other crises, including medical crises. If an individual experiences an increase in hospitalization, emergency room contacts, and/or crises, the service coordinator will convene the SPT to identify all necessary modifications to the individual's service plan and will work with the SPT to arrange for any additional needed services or supports;

   b. Record health care status sufficient to readily identify when changes in the individual's status occurs; and

   c. Ensure that the individual receives timely initial and ongoing assessments of medical, nursing, and nutritional management needs.

8. Caseload ratios for service coordinators will be sufficient to effectively meet the requirements of this Agreement and will be based on individual needs and the person-centered planning process, recognizing that transitioning an individual from a nursing facility to a community

placement and that serving individuals with complex needs in the community can require intensive service coordination.

D. Medical, Nursing, and Nutritional Management Services and Supports

1. To ensure that medical, nursing, and nutritional management services and supports are available in the community so that individuals in the Target Population living in the community, including those with complex medical needs, can receive such services in the most integrated settings appropriate to their needs, the State will:

   a. Use available outcome data and other information to work with each Local Authority, as well as community providers and stakeholders in each region, to identify gaps in services and to develop and, within available authority and resources, implement a plan to address those gaps, including the capacity of small residential settings that provide intensive clinical services and supports to individuals in the Target Population with the most complex medical needs;

   b. Require each Local Authority to designate one or more qualified registered nurse, advanced practice nurse, and/or medical doctor to provide training, technical assistance, and ongoing support, as needed, to residential and other providers who serve individuals in the Target Population with complex medical needs living in the community; and

   c. Develop collaborative relationships with local healthcare providers to promote timely access to routine, preventative, and emergency clinical services and supports (both general and specialized) for individuals in the Target Population living in the community.

E. Integrated Day Activities

1. All individuals in the Target Population in a nursing facility will be provided opportunities for engaging in community activities to the fullest extent practicable, consistent with their identified needs and preferences.

2. The State will ensure that individuals in the Target Population living in the community have access to the existing array of day activities in the most integrated settings appropriate to their needs and desires. Integrated day activities include supported and competitive employment, community volunteer activities, community learning and recreational opportunities, and other integrated day activities.

3. Goals related to integrated day activities, including integrated employment, must be developed and discussed by the individual's SPT and included in the individual's service plan described in III.B.

F. Community Living Options

1. The State will serve individuals in the Target Population in the most integrated setting consistent with their informed choice and needs by implementing the provisions in III.F.

2. To facilitate individuals in the Target Population living independently in the community, the State will provide information about and make appropriate referrals for individuals to apply for rental or housing assistance through all existing sources, including local, State, or federal affordable housing or rental assistance programs (tenant-based or project-based).

3. No individual in the Target Population who is in a nursing facility will be served in another nursing facility or in a residential setting that serves more than four individuals, and no individual in the Target Population in the community will be served in a residential setting that serves more than four individuals, unless the Diversion Coordinator (see V.F):

   a. In consultation with the individual's SPT, attempted and was unable to address barriers to placement in a more integrated setting pursuant to IV.C.5; and

   b. Verified that the individual, family, and/or LAR made an informed decision regarding alternate living options.

IV. Planning for Transition from Nursing Facilities

A. Identification of Persons for Transition

1. By August 31, 2014, the State will review all current nursing facility residents to identify any residents who may have IDD, and, for any individuals so identified, will conduct a Level II PASRR evaluation if an evaluation was not conducted on or after May 24, 2013.

2. If the State becomes aware of an individual in a nursing facility whose Level I screening should have indicated that the individual needed a Level II evaluation but did not, the State will ensure that the Local Authority conducts a Level II evaluation.

3. The State will provide a monthly report to the Local Authority that identifies each individual in the Target Population currently in a nursing facility whose response in Section Q of the MDS 3.0 indicated that the individual is interested in speaking with someone about returning to the community. The State will ensure that the Local Authority, within 30 days of receipt of this information, contacts the individual to determine whether the individual is interested in transitioning to the community.

4. The State will provide a monthly report to the Local Authority that identifies each individual in the Target Population currently in a nursing facility whose PASRR Level II evaluation reflects that the individual's needs can be met in an appropriate community setting.

5. The State will ensure that each Local Authority and nursing facility identifies and reports to the Local Authority the identity of any individual who expresses an interest in transitioning to the community to any employee, contractor, or specialized service provider of the Local Authority or nursing facility.

B. Planning for Transition

1. The State will ensure, through the Local Authorities, that upon admission to the nursing facility and at least every six months thereafter, service coordinators will provide all individuals in the Target Population living in nursing facilities and their LARs information about community services and supports, and will discuss these options with individuals and their LARs in order to better enable the individual and LAR to make an informed decision about transitioning, as described in VI.B.

2. The State will ensure, through the Local Authorities, that the SPT will create a Community Living Discharge Plan ("CLDP") for the individuals in the Target Population identified in IV.A.4 and IV.A.5. The CLDP will describe the activities, timetable, responsibilities, services, and supports involved in assisting the individual to consider community living options, choose a provider, and transition from the nursing facility to the community. The SPT will develop, implement, monitor, and revise the CLDP as necessary.

C. Transition to Community Setting

1. The State will facilitate trial visits (including overnight visits, where feasible) for individuals transitioning to community settings.

2. Enrollment in a community-based waiver program of an individual in the Target Population transitioning from a nursing facility to a community setting will occur within 180 days from when the Local Authority is notified of the availability of a waiver slot for the individual, unless DADS grants an extension to the Local Authority. The State will maintain data about these extensions and will evaluate the data to identify relevant trends and patterns.

3. All essential supports identified in the individual's CLDP must be in place prior to the individual's transition to the community. This determination will be documented.

4. The State will develop and implement a monitoring tool to follow up with individuals in the Target Population after their discharge from a nursing facility to assess whether supports identified in the individual's CLDP are in place, to identify any gaps in care, and to address such gaps to reduce the risk of re-admission, crises, or other negative outcomes. The individual will receive at least three monitoring visits during the first 90 days following the individual's move, including one within the first 7 days. The individual's CLDP will specify the frequency of those monitoring visits.

5. In the event that an SPT makes a recommendation to maintain placement at a nursing facility, the SPT will document the reasons for the decisions, identify the barriers to placement in a more integrated setting, and describe in the service plan the steps the team will take to address those barriers.

V. Nursing Facility Diversion

A. Diversion occurs before admission or within 90 days of admission to a nursing facility when, consistent with the PASRR Level II evaluation, community living options, services, and/or supports provide an appropriate alternate placement to avoid admission to, or a stay beyond 90 days in, a nursing facility, consistent with the individual's choice.

B. The State will develop a system that tracks all referrals to nursing facilities and ensures a PASRR Level I screening is completed for the referred individual prior to admission. The system will notify the Local Authority and the Diversion Coordinator (see V.F) of all referrals once the Level I is submitted electronically to DADS.

C. The State will ensure that the Local Authorities conduct PASRR Level II evaluations for every individual in the Target Population seeking admission to a nursing facility. The PASRR Level II evaluation will be conducted after referral but prior to admission of the individual to a nursing facility except individuals who are determined by the PASRR Level I screening to have either an exempted hospital discharge as defined by 42 C.F.R. § 483.106(b)(2) or a categorical determination that nursing facility services are needed for the individual pursuant to 42 C.F.R. § 483.130, as approved by CMS.

D. The PASRR Level II evaluation will assess whether the individual can live in the community through an alternate placement option as referenced in 42 C.F.R. § 483.132, and each of the fifteen domains listed in the PASRR regulations, 42 C.F.R. § 483.136; evaluate whether the individual would benefit from specialized services; and make recommendations regarding specialized services. A report of the reviewer's determination will be provided to the individual and the individual's LAR.

E. When conducting the PASRR Level II evaluation, the Local Authority will inform individuals referred for admission to a nursing facility, their families, and LAR of community options, services, and supports for which the individual may be eligible. The Local Authority will identify, arrange, and coordinate access to these services in order to avoid, wherever possible and consistent with an individual's informed choice, admission to a nursing facility.

F. The State will ensure that each Local Authority designates a Diversion Coordinator to identify and arrange community services to divert individuals in the Target Population from nursing facilities. The Diversion Coordinator will be a professional who has experience in coordinating and/or providing services to individuals with IDD, including those with complex medical needs, in the community.

G. Individuals in the Target Population will be admitted to a nursing facility only when the individual's needs for specialized services can be met by the Local Authority and by the nursing facility.

VI. Services for Individuals with IDD in Nursing Facilities

A. Educational and Informational Activities

1. The State will ensure that, at least quarterly, the Local Authorities provide or arrange for the provision of educational or informational activities addressing community living options for individuals in the Target Population in nursing facilities and their families. These activities may include family-to-family and peer-to-peer programs, providing information about the benefits of community living options, facilitating visits in such settings, and offering opportunities to meet with other individuals with IDD who are living, working, and receiving services in integrated settings, with their families, and with community providers.

2. These educational or informational activities will be provided by persons who are knowledgeable about community services and supports.

3. The activities required by VI.A.1 will not be provided by nursing facility staff or others with a contractual relationship with nursing facilities, with the exception of specialized services providers.

4. The State will publish guidelines for individuals and families seeking IDD services on how and where to apply for and obtain services, and make the guidelines available to individuals in the Target Population who are in nursing facilities, and to appropriate agencies, including Local Authorities and referring entities. These guidelines will describe the various services, supports, and programs available to the Target Population to enable them to reside in the community.

B. The State will develop and implement a Community Living Options Information Process ("CLOIP") for all individuals in the Target Population who reside in nursing facilities. The Local Authority will coordinate and ensure consistent implementation of the CLOIP process for individuals in the Target Population in nursing facilities in its service area.

C. For individuals in the Target Population in a nursing facility, the State will ensure that the Local Authority and the nursing facility provide specialized services.

VII. Outcomes and Outcome Measures

A. Within ninety (90) days of the Effective Date of this Agreement, as defined by VIII.A.1, the Parties will jointly agree on an Expert Reviewer who will be retained by the State to assist the Parties in developing and achieving outcomes for the State's obligations under this Agreement.

B. The Expert Reviewer will be knowledgeable concerning the management and oversight of programs and services for individuals with IDD. The Expert Reviewer also will be knowledgeable regarding best practices concerning service and system outcomes for individuals with IDD. The Expert Reviewer will be independent and will not be a current employee of any Party.

C. Within 120 days of identifying the Expert Reviewer, the Expert Reviewer will assist the Parties in completing the following:

1. Developing the outcomes and outcome measures for the State's obligations contained within III-VI of this Agreement.

2. Identifying the information and other data to be collected and reported necessary to determine whether each of the outcomes in VII.C.1 has been met.

3. Developing and implementing processes for analyzing, evaluating, and validating the reported information and other data.

4. Developing and implementing protocols and a sampling methodology for validation reviews that determine the degree to which the needs of individuals in the Target Population are being appropriately identified and met through person-centered planning and services; whether programs and services are based on the individual's strengths, preferences, needs, and goals; whether services and supports are being provided with the requisite intensity, frequency, and duration to meet the individual's needs; whether services and supports are being provided in the most integrated setting appropriate to the individual's needs and consistent with his or her informed choice, and whether the individual has opportunities for integration in all aspects of his or her life, such as living arrangement, integrated meaningful day activities, access to community services, and opportunities for relationships with non-staff persons. The validation

reviews will include face-to-face interviews with individuals in the Target Population, relevant professional staff, and other people involved in the individual's life, along with reviews of the individuals' treatment records and incident data.

5. Developing a schedule for reporting and providing data and information developed pursuant to VII.C.1–4.

D. The Parties will work collaboratively with the Expert Reviewer to complete the items in VII.C.1–5. To develop the processes and protocols described in VII.C.3 and VII.C.4, first the Parties will confer jointly with the Expert Reviewer on the Parties' expectations for these provisions, following which the State will work collaboratively with the Expert Reviewer but will share drafts of documents with Plaintiffs and the United States.

VIII. Approval, Implementation, Termination, and Enforcement

A. Approval and Implementation

1. The Effective Date of the Agreement is the date on which the Interim Agreement is signed by all Parties.

2. Implementation of IV-VII of this Agreement will begin on the Effective Date of the Agreement. Implementation of III of this Agreement will begin on September 1, 2013.

3. The Parties agree that, within 14 days of the Effective Date of this Agreement, they will file with the Court a joint motion to approve the Agreement and to stay this Lawsuit during the term of this Agreement, as set out in VIII.I. The joint motion will request the Court to enter the Agreement as an order of the Court.

B. Comprehensive Agreement

1. The Parties agree that, during the term of this Agreement, they will continue to engage in good faith negotiations regarding all terms and conditions of a Comprehensive Agreement.

2. If the Parties reach a Comprehensive Agreement, the State will submit it as soon as practicable to the Texas Legislature for approval.

3. The Comprehensive Agreement will be expressly conditioned on obtaining approval by the Texas Legislature in accordance with Texas Civil Practice and Remedies Code, Chapter 111.

4. If the Parties reach a Comprehensive Agreement and the Comprehensive Agreement is approved by the Texas Legislature, all Parties will sign the Comprehensive Agreement by no later than July 1, 2015.

C. Termination Conditions and Timelines

1. The Parties agree that, unless a timeline for achieving a condition in VIII.C.2 is extended by mutual written agreement of the Parties, if a timeline for any one of the conditions identified in VIII.C.2 is not met, then the exclusive remedy is that any Party may file a motion with the Court requesting that the Agreement be voided, the order entering the Interim Agreement be vacated, and the stay of this Lawsuit be lifted.

2. The conditions referenced in VIII.C.1 are:

   a. Agreement on all terms of the Comprehensive Agreement within 150 days of the Effective Date of the Agreement, unless all Parties earlier agree that they have reached impasse. The Parties anticipate the possibility of extending this timeline to no later than July 31, 2014, in order to reach agreement with respect to the number of transition waiver slots in future biennia and the length of the Comprehensive Agreement;

   b. Selection of an Expert Reviewer within 90 days of the Effective Date of the Agreement pursuant to VII.A;

   c. Approval by CMS of the State's amendment to the HCS waiver to include individuals with related conditions by the process outlined in III.A.3; and

   d. Approval of the Comprehensive Agreement by the Texas Legislature no later than June 1, 2015.

D. Noncompliance and Enforcement

1. Except as provided in VIII.C, if Plaintiffs or the United States believes that the State has failed to fulfill any obligation under this Agreement, the Parties agree that the following process constitutes the exclusive means for resolution of any dispute related to any such claim of noncompliance.

2. The party asserting failure of the State to comply with this Agreement ("Complaining Party"), will give written notice to the State that, with specificity, sets forth the details of the alleged noncompliance, including:

   a. the specific provision/s of this Agreement concerning which the alleged noncompliance is asserted; and

   b. the reasons for the alleged noncompliance.

3. The State will have forty-five (45) days from the date of such written notice to respond in writing by denying noncompliance or by proposing steps that the State will take, and by when, to cure the alleged noncompliance.

4. If the State fails to respond within forty-five (45) days or denies noncompliance, the Complaining Party may file a motion with the Court seeking specific performance regarding the alleged noncompliance related to the matters set out in VIII.D.2.a, or, if the Complaining Party has already obtained an order for specific performance regarding the same alleged noncompliance, the Complaining Party may file a motion to ensure compliance with the provisions of the Agreement addressed in the order for specific performance. The Complaining Party will not initiate any such motion without first having obtained an order for specific performance referenced herein and having given the State at least seven (7) business days' notice of the intent to initiate such motion.

5. If the State timely responds by proposing curative action by a specified deadline, the Complaining Party may accept the State's proposal or offer a counterproposal for a different curative action or deadline.

6. The Parties will confer in good faith to resolve any outstanding differences regarding the proposed curative action, but a Party may seek a judicial determination regarding the alleged noncompliance as described in VIII.D.4 thirty (30) days after the State's curative action proposal if the Parties fail to reach agreement on a plan for curative action.

7. If Plaintiffs or the United States believe that the alleged noncompliance poses an immediate and serious threat to life or health of individuals in the Target Population with respect to a provision of this Agreement, then all provisions outlined in VIII.D apply, except that the State will have two (2) business days to respond to the notice in accordance with VIII.D.3, and the time set out in VIII.D.6 for a Party to file a motion described in VIII.D.4 regarding the alleged serious threat to life or health will be two (2) business days after a curative action proposal.

8. In no event will the Complaining Party seek this Court's determination regarding alleged noncompliance until after June 1, 2014 and the time provided for the State to respond under VIII.D.3–4 and VIII.D.7 above , except that proceedings under VIII.D.7 may be initiated before June 1, 2014.

E. In any action brought under VIII.D, the party filing the action will have the burden of proof.

F. Any court order entered in accordance with VIII of this Interim Agreement, and the court's jurisdiction over the order, will expire on the termination of this Interim Agreement, as set forth in VIII.I.

G. Except as provided in VIII.D of this Agreement, during the term of the Agreement, Plaintiffs and the United States will not file suit under the ADA, the Rehabilitation Act, the Medicaid Act, or the NHRA for any claim or allegation set forth in their pleadings in this Lawsuit.

H. This Interim Agreement is expressly conditioned on obtaining subsequent approval by the Texas Legislature in accordance with Texas Civil Practice and Remedies Code, Chapter 111.

I. **Termination Date.** Unless earlier terminated pursuant to VIII.C, this Interim Agreement, and the Court's jurisdiction over it, will terminate on July 1, 2015.

IX. General Provisions

A. This Agreement constitutes the entire integrated Agreement between the Parties. Any modification of this Agreement will be executed in writing by the Parties and will be filed with the Court.

B. The Agreement is applicable to, and binding upon, all Parties, their employees, assigns, agents, and contractors charged with implementation of any portion of this Agreement, and their successors in office. If the State contracts with an outside provider for any of the services provided in this Agreement, the Agreement will be binding on any contracted parties, including agents and assigns.

C. The State agrees that it will not retaliate against any person because that person has filed a complaint, provided assistance or information, or participated in any other manner related to this Agreement.

D. The Parties will promptly notify each other of any court or administrative challenge to this Agreement or any portion thereof, and will defend against any challenge to the Agreement.

E. Each Party to this Agreement represents and warrants that the person who has signed this Agreement on behalf of his or her entity is duly authorized to enter into this Agreement and to bind that Party to the terms and conditions of this Agreement.

F. Nothing in this Agreement will be construed as an acknowledgement, an admission, or evidence of liability of the State under federal or state law, and this Agreement will not be used as evidence of liability in this or any other civil or criminal proceeding.

G. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any other civil, criminal, or administrative action, and, accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement in any separate action. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the State or their officials, employees, or agents.

H. 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.

I. Provision of any information to the Expert Reviewer, Plaintiffs, or the United States pursuant to this Agreement will not constitute a waiver of any privilege that would otherwise protect the information from disclosure to third parties.

J. "Notice" under this Agreement will be provided to the following or their successors:

For the State:
Attorney General of Texas

For Plaintiffs:
Center for Public Representation
Disability Rights Texas
Weil, Gotshal & Manges LLP

For the United States:
United States Department of Justice

[SIGNATURES ATTACHED]

FOR THE PLAINTIFFS:

7-19-2013
date

Amy Mizcles, Executive Director
The Arc of Texas
Plaintiff

7.19.2013
date

Dennis Borel, Executive Director
Coalition of Texans with Disabilities, Inc.
Plaintiff

7-19-2013
date

GARTH A. CORBETT
SEAN JACKSON
Disability Rights Texas

YVETTE OSTOLAZA
ROBERT VELEVIS
CASEY A. BURTON
Weil, Gotshal & Manges LLP

STEVEN J. SCHWARTZ
DEBORAH DORFMAN
BETTINA TONER
Center for Public Representation

Counsel for Plaintiffs

FOR THE UNITED STATES:

7/23/13
date

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

EVE L. HILL
Deputy Assistant Attorney General
Civil Rights Division

ALISON N. BARKOFF
Special Counsel for *Olmstead* Enforcement
Civil Rights Division

JONATHAN SMITH, Chief
Special Litigation Section
Civil Rights Division

BENJAMIN O. TAYLOE, JR.
Deputy Chief
Special Litigation Section
Civil Rights Division

7/23/13
date

ROBERT A. KOCH
REGAN RUSH
ALEXANDRA SHANDELL
Trial Attorneys
Special Litigation Section
Civil Rights Division
U.S. Department of Justice

Counsel for Plaintiff-Intervenor

FOR THE DEFENDANTS:

8.2.13
date

DAVID MORALES
General Counsel, for
RICK PERRY
Governor of Texas
Defendant

8/1/13
date

KYLE L. JANEK, M.D.
Executive Commissioner, Texas Health and
Human Services Commission
Defendant

7-30-13
date

JON WEIZENBAUM
Commissioner, Texas Department of Aging and
Disability Services
Defendant

HONORABLE GREG ABBOTT
Attorney General

DANIEL T. HODGE
First Assistant Attorney General

DAVID MATTAX
Deputy Attorney General for Defense Litigation

JAMES "BEAU" ECCLES
Chief, General Litigation Division

8-5-13
date

NANCY K. JUREN
DARREN G. GIBSON
ANGELA V. COLMENERO
AMANDA COCHRAN-McCALL
ANDREW B. STEPHENS
MICHAEL PATTERSON
AMY PENN
MARK RIETVELT
Assistant Attorneys General

Counsel for Defendants