SETTLEMENT AGREEMENT

NOW COME Margaret Drew, Deborah Ford, Micheal Hutter, Sandy Splawn, and Rebecca Pettigrew, on behalf of themselves and members of the certified class, ("Plaintiffs") and Richard Brajer, in his official capacity as the Secretary of the North Carolina Department of Health and Human Services ("Department" or "Defendant") (collectively referred to hereinafter as "the parties") and enter in the following Settlement Agreement ("Agreement").

RECITALS

WHEREAS, on May 31, 2011, Plaintiffs filed this lawsuit in the United States District Court for the Eastern District of North Carolina ("the Court");

WHEREAS, Plaintiffs seek declaratory and injunctive relief against Defendant for alleged violations of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act, the Social Security Act, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Specifically, Plaintiffs sought an injunction to prohibit Defendant from implementing revised eligibility requirements for personal care services ("PCS"), an optional Medicaid service;

WHEREAS, Plaintiffs filed a motion for class certification on June 6, 2011;

WHEREAS, on July 11, 2011, Plaintiffs filed an amended complaint;

WHEREAS, on November 17, 2011, the District Court conducted a hearing on Plaintiffs' motions for preliminary injunction and class certification;

WHEREAS, on December 8, 2011, the District Court granted Plaintiffs' motion for preliminary injunction and class certification, enjoining the Defendant from implementing Clinical Coverage Policy No.: 3E;

WHEREAS, on December 9, 2011 Defendant appealed the December 8, 2011 decision to the Fourth Circuit Court of Appeals;

WHEREAS, on March 6, 2012, the Fourth Circuit Court of Appeals granted Defendant's motion for a stay of the District Court order;

WHEREAS, the Division of Medical Assistance adopted effective January 1, 2013, Clinical Coverage Policy No.: 3L, Personal Care Services;

WHEREAS, on March 5, 2013, the Fourth Circuit Court of Appeals issued an opinion affirming the District Court's class certification and preliminary injunction, and remanded the matter to the District Court for clarification on "prohibit[ing] the DHHS from implementing Policy 3E" and the issue of "which eligibility requirements should apply to individuals who sought in-home PCS after IHCA Policy 3E went into effect on June 1, 2011";

WHEREAS, on April 2, 2013, the Fourth Circuit Court of Appeals denied Defendant's Petition for Panel Rehearing or Rehearing En Banc;

WHEREAS, on April 26, 2013, the Defendant filed a Motion to Dismiss and Plaintiffs filed a motion to amend their complaint and to amend the class definition;

WHEREAS, the District Court issued an order on May 6, 2013 clarifying its Preliminary Injunction Order as directed by the Fourth Circuit Court of Appeal's opinion;

WHEREAS, on August 26, 2013, the District Court denied Defendant's motion to dismiss and allowed Plaintiffs' motion to amend their complaint and the class definition;

WHEREAS, on October 9, 2013, Defendant filed his answer to the Plaintiffs' Second Amended Complaint;

WHEREAS, the parties conducted the Rule 26(f) conference on January 24, 2014 and filed the Rule 26(f) Report on January 27, 2014;

WHEREAS, the District Court entered a Scheduling Order requiring discovery to be complete by October 31, 2014;

WHEREAS, the parties submitted their initial disclosures on May 13, 2014;

WHEREAS, the parties commenced discovery;

WHEREAS, the parties resumed settlement discussions and based on the productive settlement discussions, the District Court approved extensions of the discovery deadlines, and then stayed all discovery and filing deadlines;

WHEREAS, the parties recognize that this case involves legal issues that may take a prolonged time to fully litigate and resolve and further recognize that continued litigation would be an expensive, lengthy, and time-consuming matter;

WHEREAS, the parties agree that neither entering into this Agreement nor the terms of this agreement shall be deemed as an admission by any of the parties to this Agreement;

WHEREAS, nothing in this Agreement shall be construed as an acknowledgment, an admission, or evidence of liability of Defendant under the Constitution or any federal or state law, and this Agreement may not be used as evidence of liability in any other civil or criminal proceeding;

WHEREAS, this Agreement does not serve as an admission by Defendant that corrective measures are necessary to meet the requirements of the Medicaid Act, the ADA, or the Constitution or that Defendant is not currently complying with same;

WHEREAS, the parties share a mutual interest in seeing that comparable services are provided consistent with Federal and State law; and

WHEREAS, the parties wish to enter into a contingent Settlement Agreement as is fully set forth herein;

NOW THEREFORE, the parties have decided to resolve this matter in the manner set forth below.

AGREEMENT

I. Scope of Agreement: This Settlement Agreement shall apply solely to the services at issue in this lawsuit, i.e., Medicaid-reimbursable personal care services (PCS) authorized and provided pursuant to Medicaid Clinical Coverage Policies No.: 3E and 3L, Personal Care Services, and any successor to those policies.

II. Definitions:

A. "ACH" as used herein refers to any facility licensed under N.C.G.S. § 131D or § 131E under the category of adult care homes (including family care homes) and combination homes.

B. "ADL" as used herein refers to an activity of daily living for which assistance may be required under Clinical Coverage Policies No.: 3E, 3L, or any successor policy, including eating, toileting, dressing, bathing, and mobility.

C. "Defendant" as used herein refers to the named Defendant in his official capacity, and his successors in office.

D. "Implement" or "implementation" as used herein means adopting and distributing written policy, changing procedures, amending contracts as necessary, training staff, monitoring, and taking corrective action as necessary to assure compliance with this Agreement.

E. "PCS" as used herein refers to personal care services covered under Clinical Coverage Policies No.: 3E, 3L, or any successor policy.

F. "Plaintiffs" or "class members" as used herein refers to the named plaintiffs in this lawsuit and all members of the certified class, as defined in the court's August 20, 2013 and July 23, 2014 Orders, including all current or future North Carolina Medicaid recipients age twenty-one or older who had coverage of in-home PCS denied or terminated under Clinical Coverage Policy 3E or who have or will have coverage of in-home PCS denied or terminated under Clinical Coverage Policy 3L after assessment or investigation by Defendant.

G. "MOS" as used herein refers to the beneficiary's right to maintain their authorized level of PCS pending the outcome of an administrative appeal as set out in 42 C.F.R. 431.200.

H. "Residential setting" as used herein refers to the location where applicants for or beneficiaries of PCS reside while receiving or requesting to receive PCS, including a private

living arrangement, an ACH, or a group home licensed under Chapter 122C.

III. Actions:

A. Defendant will assure that the PCS eligibility criteria used to authorize or reauthorize or determine the number of PCS hours for Medicaid beneficiaries is the same regardless of residential setting, including but not limited to the impact of receipt of Medicare-funded services or of other Medicaid-funded services.

B. Defendant will assure, in authorizing and reauthorizing PCS, including independent assessments of the need for PCS, that the practices, forms, procedures, and instructions shall be comparable to the extent practicable for Medicaid beneficiaries regardless of residential setting, including but not limited to assessment of the following:

1. The need for assistance with any ADL;
2. Whether the need for assistance is met or unmet;
3. Whether informal caregivers are able and willing to provide the needed assistance.

C. The preceding paragraph is not intended to preclude differences in the time spent or specific manner of conducting assessments based on the needs and abilities of the individual being assessed.

D. When scheduling an in-home PCS assessment, Defendant will assure that its contractor contacts the beneficiary or, if appropriate, the beneficiary's authorized representative (including either the attorney in fact or guardian, if known), to schedule the assessment. If the beneficiary requests that the scheduler contact a third person to schedule the assessment, the scheduler will do so. Prior to issuing a technical denial for failure to schedule an in-home PCS assessment or reassessment, Defendant will assure that the contractor makes at least the following efforts to reach the beneficiary/ authorized representative to schedule the in-home PCS assessment: (1) three attempts by telephone on three different days; (2) checking all available data sources (e.g. NCTracks, the Qi- Report, PCS referral form, prior assessment documents, contact with the PCS provider) as needed to obtain the beneficiary's/authorized representative's current telephone number and address; (3) posting an electronic notification through the provider portal of Qi-Reports to the PCS provider that the beneficiary has an upcoming annual reassessment; and (4) in the case of a reassessment, if the scheduler is unable to verify a current working phone number for the beneficiary/authorized representative or to leave a message at that number, contacting the PCS provider. In addition, Defendant will assure that the PCS provider is copied on the notice of termination of PCS for failure to schedule or attend a reassessment. Defendant will assure that if the beneficiary/authorized representative contacts the scheduler within 10 business days of the date of the notice of termination of PCS for failure to schedule or attend a reassessment, the termination of PCS will be set aside provided that the beneficiary has not initiated an appeal.

E. When scheduling the assessment or reassessment for PCS, Defendant will assure that its contractor verbally asks the beneficiary or his or her authorized representative whether he or she wishes to have a trusted person with knowledge of the beneficiary's condition (e.g. family member, friend, social worker, PCS caregiver), present during the assessment. If the beneficiary or authorized representative elects to have one or more additional persons present, Defendant will assure that its contractor makes reasonable efforts with the beneficiary/authorized representative to schedule the assessment for a date and time when the selected person(s) may attend the assessment and provide information to the assessor, except that Defendant's contractor need not unreasonably delay the assessment to accommodate the schedule of the third person(s). With the consent of the beneficiary/authorized representative, Defendant's contractor will make three attempts to contact the third person that has been selected by the beneficiary/authorized representative to notify them of when the assessment has been scheduled and that the beneficiary/authorized representative may reschedule the assessment if needed. Defendant will assure that its contractor informs the beneficiary/authorized representative that relevant medical records that are made available at the time of the assessment will be reviewed by the assessor.

F. If Defendant's contractor has no notice of an authorized representative but the beneficiary's PCS referral form or a prior assessment indicates a diagnosis suggesting a cognitive impairment or difficulty communicating which may result in diminished capacity to remember, understand, or communicate, or if the contact to schedule the assessment suggests that the beneficiary is likely to need assistance in communicating or decision-making, or if both of these conditions exist, Defendant will assure that its contractor makes reasonable efforts, if appropriate based on the totality of this information, to identify an appropriate alternative contact person to schedule the in-home assessment. This paragraph does not require a contact with a third party in all cases where such a diagnosis suggesting a cognitive impairment or difficulty communicating exists. In cases where a cognitive impairment or difficulty communicating is present which may result in diminished capacity to remember, understand, or communicate, including where the assessor determines during the assessment that the beneficiary has a cognitive impairment or difficulty communicating which results in diminished capacity to remember, understand, or communicate, Defendant will assure that its contractor will use all reasonable efforts to schedule or reschedule the assessment, regardless of residential setting, at a time when a third person has indicated that he or she can be present.

G. Defendant will assure that the need for assistance with the eating ADL will be assessed in a comparable manner regardless of residential setting. Defendant will assure that each PCS applicant or beneficiary will be assessed for each ADL task and IADL task, if applicable, that comprise the eating ADL. Defendant will assure that for in home PCS, meal preparation will be considered a qualifying ADL task, subject to all other remaining Policy criteria, if the beneficiary needs at least limited hands on assistance with meal preparation and that need is not fully met by willing and available informal caregivers seven days a week.

H. Defendant will assure that PCS is authorized in a manner that complies with federal and state law for Medicaid beneficiaries and that the independent assessors will uniformly apply the assessment criteria in the assessment tool irrespective of residential setting.

I. Defendant will assure that a denial, reduction, or termination of prior approval or reauthorization for PCS by Defendant will be communicated to the Medicaid beneficiary in writing with appeal rights except that the notice need not provide hearing rights in the circumstances covered by 42 CFR § 431.220(b). The reason(s) for the decision will be included in the written notice, including, if relevant, identification of the ADLs for which the beneficiary does and does not need assistance. The notice shall be sent by mail that does not require the beneficiary's signature, to the last known address of the beneficiary or, if appropriate, the authorized representative of the beneficiary.

J. For initial requests for PCS, initial authorization for less than 80 hours per month:

(a) After receiving an initial approval for an amount of hours less than 80 hours per month, a beneficiary must wait 30 days to submit a request for reconsideration of the level of service determined during the initial approval. This 30 day requirement does not apply to a beneficiary's submission of a Change of Status request which may be submitted at any time if the change of status criteria are met.

(b) The request for hours in excess of the initial approval not based on a Change of Status must be submitted with supporting documentation that specifies, explains, and supports why more authorized hours of PCS are needed and which ADLs and tasks are not being met with the current hours. The documentation should also provide information indicating why the beneficiary believes that the prior assessment did not accurately reflect the beneficiary's functional capacity or why the prior determination is otherwise insufficient.

(c) Upon receipt of a completed request for additional hours up to 80 hours per month, the Defendant will reconsider the request and at the Defendant's discretion, a re-assessment may be scheduled.

(d) If the reconsideration determines a need for additional PCS hours as requested, additional hours will be authorized according to Policy. This constitutes an approval and no adverse notice or appeal rights are provided. If the reconsideration determines that the PCS hours authorized during the initial assessment are sufficient to meet the beneficiary's needs, an adverse decision will be issued with appeal rights.

(e) A beneficiary must submit a request for hours in excess of the initial approval within 60 days of the initiation of PCS services. A request after the 60 day time period must be in the form of and meet the requirements for a Change of Status request. The non-Change of Status reconsideration request set out above shall be submitted no more than one time during the initial benefit period.

K. For PCS adverse decisions, Defendant will assure that the notice and fair hearing requirements set out in 42 C.F.R. § 431 Subpart E are met, regardless of whether there is a

change in the name of the "PCS" program or name of the service. The notice and other written information concerning appeals will state that the final agency decision is made by OAH.

L. Defendant will assure that a notice of denial or termination of PCS shall provide the same time period, consistent with applicable federal law, for requesting an appeal and for requesting MOS, regardless of setting. When communicating with beneficiaries and providers regarding PCS appeals, Defendant will provide consistent information irrespective of residential setting.

M. After the above paragraphs of Section III have been fully implemented, Defendant will identify, reinstate at the same number of hours prior to termination, if previously receiving PCS and then terminated, and reassess under the above procedures the following members of the Plaintiff class for whom PCS was denied or terminated under Clinical Policy 3L prior to the date upon which Defendant has fully implemented and is in compliance with paragraphs III. A. through L. above, unless the class member is currently receiving PCS, is currently ineligible for Medicaid, or is currently receiving nursing home or home and community-based waiver services: (1) all persons who were determined by Defendant to be ineligible for PCS for whom no third person was present during the PCS assessment or reassessment if there is any indication that the beneficiary had a cognitive impairment or a mental health diagnosis; (2) all persons denied or terminated from PCS because of the receipt of hospice services. The specific means for identifying class members entitled to relief under this paragraph is set out in Addendum A, which is incorporated herein by reference but may be amended at any time by agreement of the parties without court approval. The reassessments conducted pursuant to this paragraph will be conducted pursuant to Clinical Coverage Policy 3L. In conducting the reassessments pursuant to this paragraph, the Defendant retains the option to conduct a reassessment following reinstatement or at the next regularly scheduled annual assessment. The reinstatement notices issued to class members pursuant to this paragraph are set out in Addendum B, which is incorporated herein by reference but may be amended by agreement of the parties without court approval.

N. If the reassessment required under the previous paragraph demonstrates eligibility for PCS, PCS will be promptly approved (or continued if the class member has already been reinstated) at the level determined through the assessment. If the reassessment does not demonstrate eligibility for PCS under Clinical Policy 3L or its successor and this Agreement, the beneficiary will receive a notice of denial of PCS with appeal rights as provided in paragraph III.I. above, except that such notice is not required if the class member already has a pending OAH appeal of the prior decision that was reassessed under this paragraph. Nothing herein shall be construed to abrogate the right to recoup the cost of any medical assistance to a Medicaid beneficiary pursuant to 42 CFR § 431.230(b).

O. Defendant will require that this Agreement is complied with by his contractor, Liberty Healthcare Corporation of North Carolina, and by any successor agents or contractors performing independent assessment functions for Defendant. Defendant will require that any substantial noncompliance with this Agreement by such contractor is promptly corrected, but

N.C. DHHS remains ultimately responsible as the single state Medicaid agency for assuring substantial compliance with this Agreement.

IV. Court Approval:

A. This Settlement Agreement is contingent and expressly conditioned upon the Court's approval of this Agreement by entering an Order of Approval. In entering into this Agreement, the parties are aware that, pursuant to Rule 23(e), Fed. R.Civ.P., and Local Rule 17.1 of the Eastern District of North Carolina, the Court must approve the terms of this Agreement and make certain findings in support of its approval. The Parties agree to promptly file this Agreement with the Court, together with:

1. Joint Motion and Attached Supporting Memorandum of Law for Preliminary Approval of Settlement Agreement, Notice to Class Members, Scheduling of Fairness Hearing, and Final Approval of Settlement Agreement (Exhibit 1);

2. [proposed] Order Preliminarily Approving Proposed Settlement Agreement and Directing Notice to the Class (Exhibit 2);

3. [proposed] Notice to Class Members of Settlement (Exhibit 3);

5. [proposed] Order of Approval of Settlement (Exhibit 4);

B. The parties will use their best efforts to obtain a prompt scheduling of a Court hearing on this motion and approval of same.

C. The parties further agree that any Order which modifies or alters the understandings of the parties as set forth herein, or which creates additional obligations upon the parties, will render this Agreement voidable at the election of any party to this Agreement, provided notice of voiding the Agreement is given to opposing counsel within ten (10) business days of notice of any such Order.

D. Non-Incorporation: The parties agree that the terms of this Agreement are not to be incorporated into any Order of the Court and that other than the proposed Orders referenced above, no further Orders shall be necessary to effectuate this Agreement.

V. Implementation:

A. The parties recognize that the specified actions in Section III will not be implemented all at once, but will be implemented over varying time periods. Upon mutual agreement of the parties, any timelines in this section may be extended.

1. Within 90 days of Court Approval, to the extent that the terms of this Agreement make already existing written materials inconsistent with this Agreement, Defendant shall review and make any needed changes to written materials published by

Defendant to ensure consistency with the terms of this Agreement, including but not limited to materials provided to beneficiaries and providers, information posted at websites, staff instructions, and training materials. Defendant shall provide reasonable notice to prior recipients of the materials being changed and the content of those changes.

2. Within 120 days of Court Approval, Defendants shall provide training to all assessors and other PCS utilization review staff on the requirements, procedures, and forms required by this Agreement.

3. Defendant's counsel will provide three separate written notices to Plaintiffs' counsel regarding implementation of this Agreement: (a) notice that written instructions and procedures have been completed (with copies of same) within 90 days of Court approval of this Agreement; (b) notice that training of staff has been completed within 120 days of Court approval of this Agreement; (c) notice that the reinstatements and reassessments required by Section III.M above have been completed.

B. In the event Section III cannot be implemented, this Agreement shall become voidable at the election of either party. In that event, this case shall be returned to active status, this Agreement shall be null and void, and the parties shall not be required to perform further thereunder.

VI. Monitoring:

A. Defendant shall maintain documentation that the requirements of this Agreement have been implemented and shall provide such documentation to Plaintiffs' counsel at the time of Defendant's three notices to Plaintiffs' counsel under paragraph V.A above. This documentation shall include Defendant's current PCS instructions, training materials, forms, procedures, and other instructions relevant to this agreement. If any of the provided documentation is materially changed after this Agreement is implemented but prior to dismissal, Defendant shall provide documentation of the change to Plaintiffs' counsel within 30 days of the change.

B. Plaintiffs' counsel will monitor Defendants' implementation of and compliance with this Agreement beginning with the date that both notices required by paragraph V.A.3(a) and (b) above are provided to Plaintiffs' counsel and continuing for the monitoring period referenced in VI.C below or until this Agreement becomes void, if prior to the expiration of the monitoring period. In order to permit monitoring of compliance with this Agreement, Defendant will provide to Plaintiffs' counsel, within 21 days of the request, certain records regarding Defendant's PCS authorization decisions made during two different calendar months selected by Plaintiffs' counsel, in up to two separate requests staggered during the monitoring period, for a total of 60 (30 for each of the two months) class members and for 60 (30 for each of the two months) ACH PCS recipients. The records to be provided pursuant to this paragraph are: the independent assessment; referral form; notice (if applicable); and scheduling documentation. For

ACH PCS recipients, Defendant shall redact personal identifying information (unless a new protective order permits disclosure to class counsel of same). The 120 PCS applicants and recipients in these two samples will be randomly selected by Defendant. In addition, Defendant will provide to Plaintiffs' counsel, within 21 days of the request, certain records regarding Defendant's reinstatement and reassessment of 30 class members required by section III.M above. The records to be provided are: the independent assessment; referral form; notice (if applicable); and scheduling documentation. Defendant will provide documentation to Plaintiffs' counsel of the methodology used for selecting the samples prior to the first selection. The two samples of 60 must be requested by class counsel at least 30 days prior to the end of the monitoring period described in paragraph VI.C. below.

C. The Court will retain jurisdiction for a period of six months from the date Defendants' notices required under paragraph V.A.3(a) and (b) above are provided to Plaintiffs' counsel, except that this time period will be extended if necessary until the notice required by V.A.3(c) above has been provided. Moreover, if Plaintiffs' Counsel have given notice of noncompliance pursuant to paragraph XI. A. below, jurisdiction will continue until the process described in paragraph XI. B. below has been completed. At the end of this time period of retained jurisdiction, the Court shall enter an order of final dismissal unless this agreement has become void.

VII. Payment of Attorneys Fees: Within 30 days after the final approval of this Agreement by the Court under Section IV.A above, Defendant shall deliver to the National Health Law Program as trustee a check in the amount of $375,000 for expenses, costs and attorneys' fees incurred by Plaintiffs' attorneys in this litigation. These funds are not immediately disbursable to Plaintiffs' counsel and shall be held in trust in an interest bearing trust account (with any interest payable to the N.C. IOLTA program) until the Order of Dismissal with Prejudice is entered by the Court. At that time the trustee shall cause these funds to be disbursed in a manner agreed upon by Plaintiffs' Counsel. The payment of these funds to Plaintiffs' counsel upon entry of a final Order of Dismissal will satisfy in full Plaintiffs' claim for attorneys' fees as the prevailing party in this litigation under 42 U.S.C. § 1988. Alternatively, should the Order of Dismissal with Prejudice not be entered by the Court, then the trustee shall remit the sum of $375,000, to Defendant. Defendant will bear the cost of his own fees and expenses incurred in connection with this litigation and Agreement.

VIII. Case Status:

A. Pending Approval: The parties will request that this case be removed from the active docket to determine if the contingencies outlined in this Agreement occur.

B. Pending Implementation: Upon approval of this Agreement by the Court, this case will remain on the Court's inactive docket, with the Court retaining jurisdiction as specified in paragraph V.C. In the event the Court declines to retain jurisdiction as specified herein, this Agreement shall become null and void. The parties agree to jointly move the Court at the time of approval of this Agreement to stay the Court's existing order setting a deadline for the completion of discovery until 180 days after the date this Agreement becomes null and void.

IX. Dismissal with Prejudice: Counsel for Defendant shall notify the Court when the case is ready for final dismissal. Within ten (10) business days of service upon Plaintiffs' counsel of this notification, Plaintiffs' counsel shall notify the Court of their concurrence or objection to final dismissal. Unless this agreement has become void pursuant to paragraph V.B above or XI.B below, this matter shall be dismissed with prejudice by the Court's entry of the Final Order of Dismissal.

X. Release: If this Agreement is approved by the Court and the case is dismissed with prejudice, upon entry of the Order of Dismissal with Prejudice, it is the Parties' intent that Plaintiffs and Defendants shall release one another from all claims related to the civil action now styled, *Pettigrew, et al. v. Brajer,* No.5:11-cv-273 (E.D.N.C.) ("the Lawsuit").

A. Release by Plaintiffs: Upon entry of the Order of Dismissal with Prejudice, Plaintiffs, on behalf of themselves and the members of the certified class, hereby release Defendant, his officials, employees, agents, representatives, successors and assigns from any and all claims, demands, actions, causes of action, damages, costs and expenses that were raised or could have been raised based upon the factual allegations contained in the amended complaint based upon events or actions occurring prior to the effective date of this Agreement.

B. Release by Defendant: Upon entry of the Order of Dismissal with Prejudice, Defendant hereby releases Plaintiffs, their officials, employees, agents, representatives, successors and assigns from any and all claims, demands, actions, causes of action, damages, costs and expenses which Defendant ever had, now have, or hereinafter can, shall, or may have, by reason of anything occurring, done or omitted to be done by Plaintiffs as of, or prior to, the effective date of this Agreement relating to the Lawsuit.

XI. Dispute Resolution: Throughout the pendency of this Agreement, the Parties will pursue a problem-solving approach so that disagreements can be minimized and resolved amicably.

A. At any time during the period of retained jurisdiction described in paragraph V.C, Plaintiffs' counsel may submit information to Defendant's counsel suggestive of substantial noncompliance with the requirements of this Agreement. Plaintiffs will submit such information no later than 30 days before the end of the 6 month period expires. Substantial noncompliance with this Agreement occurs when there are violations of the Agreement that are significant, repeated, and systemic in nature.

B. Defendant will promptly investigate the information provided by Plaintiffs' counsel under paragraph XI.A. and will meet and confer with Plaintiffs' counsel regarding the investigation findings within 45 days of the date Plaintiffs' counsel submits the information. Thereafter, Plaintiffs' counsel will inform Defendant's counsel within fourteen (14) days

whether they are satisfied with the information provided, such satisfaction not to be unreasonably withheld. If not, Plaintiffs' counsel will give Defendant's counsel written notice which details with specificity the matters alleged to be substantially out of compliance and the facts and information upon which Plaintiffs base their allegations of substantial non-compliance to enable Defendant to attempt to cure the alleged substantial non-compliance. If the alleged substantial non-compliance is not cured to the satisfaction of Plaintiffs' counsel (such satisfaction not to be unreasonably withheld) within 20 days of Plaintiffs' written notice, then either party may then request a conference with a magistrate assigned by the Court for the purpose of attempting to resolve the dispute through mediation. If such efforts at mediation fail and Plaintiffs' counsel continue in good faith to assert substantial noncompliance, this Settlement Agreement shall become void and the underlying litigation shall resume.

C. Nothing herein gives any party a right to attempt to hold any other party in contempt of court.

XII. Merger: The parties agree and acknowledge that this written Agreement sets forth all of the terms and conditions between them concerning the subject matter of this Agreement, superseding all prior oral and written statements and representations, and that there are no terms or conditions between the Parties excepts as specifically set forth in this Agreement.

XIII. Amendment: Any amendment or modification to this Agreement shall be in writing and signed by all Parties.

XIV. No Strict Interpretation Against Draftsman: The Parties have participated in the drafting of this Agreement and have had the opportunity to consult with counsel concerning its terms. This Agreement shall not be interpreted strictly against any one party on the ground that it drafted the Agreement or any part of it.

XV. Third Party Beneficiaries: Other than the Parties, including members of the certified Plaintiff class, no person or entity is intended to be a third party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no third party or entity may assert any claim or right as a beneficiary under this Agreement in any civil, criminal, or administrative action. Neither third parties, nor the Court, shall have the ability to modify the terms set out in this Agreement without consent of all Parties.

XVI. Voluntary Acceptance of Terms: 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 any and all claims, allegations, or defenses set forth by the Parties in the litigation.

XVII. Recitals and Headings: All parts and provisions of this Agreement, including the recitals, paragraph headings, and exhibits, are intended to be material parts of the Agreement.

XVIII. Authority to Settle: Each Party to this Agreement represents and warrants that the person who has signed this Agreement on behalf of the Party is duly authorized to enter into this Agreement and to bind that Party to the terms and conditions of this Agreement, subject to approval of the Court and the other contingencies specified herein. The signatures below of officials or attorneys representing the Parties signify that all Parties have given their approval to this Agreement, subject to approval by the United States District Court for the Eastern District of North Carolina, Western Division ("the Court").

XVIX. Protective Order: The protective order entered by the court on January 19, 2012 and amended on August 11, 2014 shall remain in effect during the implementation and monitoring of this Agreement in order to comply with federal and State patient rights and confidentiality laws, including N.C. Gen. Stat. § 122C-52, N.C. Gen. Stat. § 108A-80, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Standard for Privacy of Individually Identifiable Health Information and Health Insurance Reform: Security Standards, 45 C.F.R. Part 164, alcohol and drug abuse patient records laws codified at 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2, the Health Information Technology for Economics and Clinical Health Act ("HITECH Act") adopted as part of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

XX. Facsimile or Email Signatures Binding: In order to expedite the signing of this Agreement, the Parties stipulate and agree that the delivery of an executed signature page by one party to the other via facsimile transmission or email of a PDF copy shall bind the transmitting party to the same extent as service of the original signature page by hand delivery. The Parties stipulate and agree that a party that sends a signature page via facsimile or email transmission shall mail the original to the other party within five (5) business days after the facsimile or email transmission.

XXI. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Agreement, notwithstanding that each party is not a signatory to the original or the same counterpart. All references to signature or execution of the Agreement shall be calculated from the date on which the last party executed the Agreement.

XXII. Binding Effect: This Agreement is binding upon and shall inure to the benefit of the Parties hereto, including all members of the Plaintiff class, and their successors, and assigns.

XXIII. Law: This Agreement shall be interpreted in accordance with federal law and the laws of the State of North Carolina. The venue for all legal actions concerning this Agreement shall be in the Court.

XXIV. Term; Material Change in Law or Fact: No provision of this Agreement is enforceable subsequent to the dismissal of this action, except that the Parties shall still remain bound by the Release set forth in Section X. During the effective period of this Agreement, all terms of this Agreement shall remain in effect, unless and until there is a material change in the law or facts that are the basis of this Agreement, in which case the parties may agree on an

amendment of this agreement. In the event of a failure to reach such an agreement, either party may declare the settlement agreement void.

XXIV. Failure by any Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver.

IN WITNESS WHEREOF, the parties have executed three (3) original copies of this Agreement.

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FOR THE PLAINTFFS:

Rebecca Pettigrew

11/25/2015
DATE

FOR THE PLAINTFFS:

Margaret F. Drew 11/20/2015

Margaret Drew DATE

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FOR THE PLAINTFFS:

Deborah Ford — 11-18-15

Deborah Ford — DATE

FOR THE PLAINTFFS:

Micheal Hutter _____ 11/20/15

Micheal Hutter DATE

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FOR THE PLAINTFFS:

Sandy Splawn _____ 11-18-15

Sandy Splawn DATE

FOR THE DEFENDANT:

12/1/15

Richard Brajer
Secretary
North Carolina Department of Health and Human Services

DATE

ADDENDUM A

Pursuant to Section III.M of the Settlement Agreement, Defendant will identify class members eligible for reinstatement or reassessment. This Addendum sets forth the process for identifying these class members. The class members to have their PCS reinstated are those that have had their PCS terminated under Clinical Coverage Policy 3L prior to the date upon which Defendant has complied with paragraphs III.A through L. of the Agreement. The class members to have their PCS eligibility reassessed are those that have had their PCS denied under Clinical Coverage Policy 3L prior to the date upon which Defendant has complied with paragraphs III.A through L. of the Agreement. In addition to the immediately previous stated requirement regarding the timing of the denial or termination, the class member must also have been either:

(1) denied or terminated from PCS because of the receipt of hospice services; or
(2) determined by Defendant to be ineligible for PCS based on an assessment or reassessment at which no third person (e.g. family member, provider) was present and there was an indication that the beneficiary had a cognitive impairment or a mental health diagnosis.

Notwithstanding the foregoing Defendant need not reinstate or reassess any class member if that class member is currently:

(1) receiving PCS; or
(2) ineligible for Medicaid; or
(3) receiving nursing home services; or
(4) receiving home and community-based waiver services.

Each class member entitled to reinstatement will be reinstated at the same number of hours he or she was receiving prior to termination.

To identify the subsets of class members identified above, the following criteria will be used:

(1) Class members denied or terminated from PCS because of the receipt of hospice services

To identify the class members to be reinstated or reassessed based on receipt of hospice services, Defendant will identify those recipients who were denied or terminated from In-Home PCS Services while receiving Hospice. Defendant will search all denied claims pursuant to edit codes 51330 and 51340 (In-Home Care Services and Hospice not allowed on same day). Denial based on the recipient receiving Hospice care will entitle the class member who also meets the other criteria under Section III.M to reinstatement or reassessment, as is appropriate based whether the class member's PCS was terminated or denied

(2) Class members determined by Defendant to be ineligible for PCS based on an assessment or reassessment at which no third person (e.g., family member, provider) was present and there was an indication that the beneficiary had a cognitive impairment or mental health diagnosis

To identify the class members who were assessed or reassessed with no third person present, Defendant will search completed assessments during the relevant time period for no indication of a third person present in the field in Section A entitled "Others Present During Assessment."

To identify the class members for whom there was an indication that the beneficiary had a cognitive impairment or a mental health diagnosis, Defendant will search the fields listed below. An entry in any one of these fields will be considered a sufficient indicator of a cognitive or mental health impairment for the purposes of this criteria. Two versions of the assessment form were used for the time period relevant to these searches: the Pre-October 2013 Assessment and the Revised Assessment.:

a. Pre-October 2013 Assessment fields to be searched to identify class members with a cognitive or mental health impairment:
    i. For Sections H-L in the assessment of ADL Self-Performance Capacities:
        1. Any indication of "Cognitively Unable" or "Cog Un" under the column "Demonstrated Ability?" for any individual ADL or IADL task needs; or
        2. An Assessor's Overall Self-Performance Rating of: "Needs verbal cueing or supervision only" for any of the five ADL areas of assessment, or
    ii. Section N:
        1. "Cognitive Impairment" marked as "present," or
        2. Any "Behavioral" condition marked as "present." (The listed behavioral conditions are hyperactivity, combative, verbally abusive, wandering, injurious to others, injurious to self/repetitive behaviors.)
b. Revised Assessment
    i. Section B:
        1. Beneficiary's "Cognitive Capacities to Participate in Assessment?": any entry other than "Fully Able", or
        2. "Legal Guardianship" indicating the person has a guardian, or
    ii. For Sections I-M in the assessment of ADL Self-Performance Capacities:
        1. Any indication of "Cognitively Unable" or "Cog Un" under the column "Demonstrated Ability?" for any individual ADL or IADL task needs, or
        2. An Assessor's Overall Self-Performance Rating of: "Needs verbal cueing or supervision only" for any of the five ADL areas of assessment, or
    iii. Section O:
        1. "Cognitive Impairment" marked as "present," or
        2. Any "Behavioral" condition marked as "present." (The listed behavioral conditions are hyperactivity, combative, verbally abusive, wandering, injurious to others, injurious to self/repetitive behaviors.)

All reassessments conducted for class members for whom services have been reinstated will be conducted pursuant to Clinical Coverage Policy 3L and the provisions of the Agreement. Plaintiffs understand that any provider selected by a reinstated or reassessed eligible for PCS authorization class member, MUST provide DMA with a PCS ICD-10 Transition Form before they can bill DMA for PCS services. The Defendant retains the option to conduct the reassessments for these reinstated class members either within a reasonable time following the reinstatement or at the next regularly scheduled annual reassessment.

ADDENDUM B

LETTER # 1-REINSTATEMENT OF SERVICES UNDER POLICY 3L

You previously received Medicaid Personal Care Services (PCS) from the provider agency named above. Your services were terminated effective DATE based on a reassessment under N.C. Medicaid Clinical Policy 3L.

On DATE, a federal court judge approved a class action settlement in Pettigrew v Brajer, (previously, Pashby v Wos) Civ. No. 5:11-cv-00273-BO. As part of the settlement, you are entitled to immediate reinstatement of your PCS services. **Medicaid's authorization for your personal care services has been reinstated effective the date of this notice.**

Your PCS is **approved** at the level of _____ hours per month, the number of PCS hours you were approved to receive at the time of your PCS termination. This approval is effective until the next assessment completed by the North Carolina Division of Medical Assistance (DMA) or the Independent Assessment Entity (IAE) designated by DMA to conduct independent assessments for personal care services under the PCS program.

In order to start receiving personal care services again, you need to select a PCS provider agency. Please contact Liberty Healthcare Corporation of North Carolina (Liberty Healthcare) at 1-855-740-1400 to select a PCS provider. A Liberty customer service representative will assist you in selecting a PCS provider. If available, you may select your previous PCS provider. Please be advised, the PCS provider you select MUST provide Medicaid with a PCS ICD-10 Transition Form before the provider can bill Medicaid for your PCS services. However, this does not need to happen before your services start again.

To restart your PCS services, contact Liberty Healthcare at 1-855-740-1400. If you have any questions about this notice or if you have problems getting your services started again, you can call Disability Rights North Carolina toll free at 1-877-235-4210.

LETTER #2- NEW ASSESSMENT UNDER POLICY 3L

You were previously denied Medicaid Personal Care Services (PCS) on DATE, under an assessment for PCS services performed pursuant to N.C. Medicaid Clinical Policy 3L.

On DATE, a federal court judge approved the class action settlement in Pettigrew v Brajer, (previously, Pashby v Wos) Civ. No. 5:11-cv-00273-BO. As part of the settlement, you are entitled to a new assessment of your eligibility to receive PCS services under Clinical Policy 3L. The assessment will be completed by the North Carolina Division of Medical Assistance (DMA) or the Independent Assessment Entity (IAE) designated by DMA to conduct independent assessments for personal care services under the PCS program.

Your assessment for eligibility to receive PCS needs to be scheduled as soon as possible. **To schedule your assessment, please contact Liberty Healthcare Corporation of North Carolina (Liberty Healthcare) at 919-322-5944 or 855-740-1400 (toll free), press 3 to speak with a Scheduling Coordinator.**

In addition, Liberty will be calling you to assist in scheduling your assessment. Failure to schedule your assessment will result in a denial of your eligibility to receive PCS. For any general questions, you may

contact Liberty at 919-322-5944 or 855-740-1400 (toll free), press option 1 to speak with a Customer Support Specialist who will address any questions you may have.

If you are determined to be eligible for PCS services, the PCS provider you select MUST provide DMA with a PCS ICD-10 Transition Form before they can bill DMA for your PCS services. However, this does not need to happen before your services start again.

To schedule your assessment for PCS, contact Liberty Healthcare at 1-855-740-1400. If you have any questions about this notice or if you have problems getting your services started again, you can call Disability Rights North Carolina toll free at 1-877-235-4210.

LETTER # 3- HOSPICE REINSTATEMENT OF SERVICES UNDER POLICY 3L

You previously received Medicaid Personal Care Services (PCS) from the provider agency named above. Your services were terminated effective DATE, because we determined that your PCS services were duplicative of hospice services you were receiving.

On DATE, a federal court judge approved the class action settlement in Pettigrew v Brajer, (previously, Pashby v Wos) Civ. No. 5:11-cv-00273-BO. As part of the settlement, you are entitled to reinstatement of your PCS services. **Medicaid's authorization for your personal care services has been reinstated effective the date of this notice**.

Your PCS is **approved** at the level of _____ hours per month, the number of PCS hours you were approved to receive at the time of your PCS termination. If you are still receiving hospice services, your PCS services will need to be used in conjunction with your Hospice services to avoid duplicative services. This approved number of hours is effective until the next assessment completed by the North Carolina Division of Medical Assistance (DMA) or the Independent Assessment Entity (IAE) designated by DMA to conduct independent assessments for personal care services under the PCS program.

In order to start receiving personal care services again, you need to select a PCS provider agency. Please contact Liberty Healthcare Corporation of North Carolina (Liberty Healthcare) at 1-855-740-1400 to select a PCS provider. A Liberty customer service representative will assist you to identify a new provider. If available, you may select your previous PCS provider. Please be advised, the PCS provider you select MUST provide DMA with a PCS ICD-10 Transition Form before they can bill DMA for your PCS services However, this does not need to happen before your services start again.

To restart your PCS services, call Liberty Healthcare at 1-855-740-1400. If you have any questions about this notice or if you have problems getting your services started again, you can call Disability Rights North Carolina toll free at 1-877-235-4210.