

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:21-cv-02381-RMR-STV

Center for Legal Advocacy, d/b/a  
Disability Law Colorado; and A.A. by and  
by and through his grandmother, G.A.,  
C.C. by and through her mother, P.C., and  
D.D. by and through her mother, P.D.,  
individually and on behalf of a class,

Plaintiffs,

v.

KIM BIMESTEFER, in her official capacity as Executive Director of the Colorado  
Department of Health Care Policy and Financing,

Defendant.

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**JOINT MOTION FOR ADMINISTRATIVE CLOSURE OF THIS CASE**

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The Parties jointly move for this Court to administratively close this Case and in support state as follows.

**Background**

1. This case was brought on September 3, 2021 as a putative class action alleging that the Defendant (hereinafter the “Department”) had failed to provide Plaintiffs, as Medicaid-eligible children with mental health or emotional disorders, the necessary services that they require in order to avoid unnecessary hospitalization and institutionalization. [Doc. 1.]

2. Over a year later, on September 28, 2022, the Department’s Motion to Dismiss was granted and Plaintiffs’ initial complaint was dismissed for lack of subject

matter jurisdiction. [Doc. 59.] However, the Court permitted the case to remain open and granted Plaintiffs leave to file an amended complaint to cure pleading deficiencies. *Id.*

3. Since that time, the Parties have been actively engaged in settlement negotiations. After much work and collaboration from both sides, the Parties have successfully entered into a Settlement Agreement as of February 22, 2024. See Exhibit A.

### **The Settlement Agreement**

4. Per the Settlement Agreement terms, the Department has agreed to retain and work with a consultant to develop an implementation plan for delivering intensive behavioral health services to Medicaid-enrolled children, and to ensure substantial compliance with that plan as it is implemented over the next five years. Exhibit A, ¶¶ 5.1-5.3.

5. In order to ensure this framework is successful, the Parties have agreed to work together and maintain ongoing engagement. For example, the Parties have agreed that the Department will communicate with Plaintiffs' counsel as it develops the implementation plan (Ex. A, ¶ 4.1.5); the Department will present the completed implementation plan to Plaintiffs' counsel within twelve months of the effective date (Ex. A, ¶ 4.8); and the Department will consult with Plaintiffs' counsel about any amendments or updates that are needed (Ex. A, ¶ 4.10).

6. Given this collaborative structure, a robust dispute resolution process has been built into the Settlement Agreement—one that necessarily includes a final step

which would invoke this Court's oversight for the limited purpose of resolving disputes related to substantial compliance. Exhibit A, Section 6.

7. Accordingly, to be able to do this, Plaintiffs filed an Amended Complaint on March 6, 2024.<sup>1</sup> [Doc. 102.] This is because this Case is not being settled as a class action, but rather as a negotiated settlement agreement among and between the Parties. As such, an Amended Complaint is necessary for the Court to have jurisdiction to review any disputes related to substantial noncompliance with the Settlement Agreement, should a dispute require such intervention.

8. Then, in order to minimize the impacts to this Court and to the Parties, the Settlement Agreement contemplates that the Parties will request administrative closure of this case pursuant to D.C.COLO.LCivR 41.2. The intent in requiring administrative closure is to allow for this Court to retain jurisdiction, but only for the purpose of providing a forum in which to address any alleged failures by the Department to maintain substantial compliance, as described in Section 6 of the Settlement Agreement.

9. More specifically, this Court's jurisdiction will only be invoked once all other dispute resolution measures outlined in the Settlement Agreement have failed. The Parties are hopeful that we will not need this Court's involvement during the term of

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<sup>1</sup> Initially, the Court denied Plaintiffs' Motion for Leave to File an Amended Complaint and instructed the Parties to file dismissal papers. [Doc. 98.] In response, the Parties filed a joint motion explaining the settlement structure to this Court, as well as the need for an Amended Complaint in this case. [Doc. 99.] As a result, the Court issued a subsequent order granting Plaintiffs' Motion for Leave to File an Amended Complaint and instructing the Parties to file this motion seeking administrative closure, as contemplated by the settlement agreement. [Doc. 101.]

the settlement, given that the Parties have committed to pursuing a problem-solving approach to disputes so that disagreements can be resolved informally and amicably. Exhibit A, ¶ 6.1. However, should a dispute arise, the Parties have agreed first to provide each other notice in writing of the concern and allow for written responses to address the problem. Exhibit A, ¶¶ 6.2.1-6.2.3. If that process does not satisfy the concern, then a meeting and good faith conferral between the Parties is required to discuss the basis of the dispute and possible avenues for resolution. Exhibit A, ¶ 6.2.4. If such conferral is still not successful in addressing the problem, then the Parties have agreed to attend an informal mediation conference with the expert consultant. Exhibit A, ¶ 6.2.5. Only once all of the foregoing dispute resolution tools described above have been attempted in good faith but determined to be unsuccessful may the Parties seek intervention by this Court. Exhibit A, ¶ 6.2.6. Plaintiffs may then file a motion with the Court seeking narrowly tailored relief to the concern raised. *Id.*

#### **Administrative Closure**

10. As such, in order to effectuate the dispute resolution framework described above, the Parties request that this Court administratively close this case pursuant to D.C.COLO.LCivR 41.2. This will allow for this Court to retain jurisdiction only for the purpose of providing a forum in which to address any alleged failures by the Department to maintain substantial compliance, as described in Section 6 of the Settlement Agreement.

11. The Court has authority to administratively close this case. Pursuant to D.C.COLO.LCivR 41.2, “[a] district judge or a magistrate judge exercising consent

jurisdiction may order the clerk to close a civil action administratively subject to reopening for good cause.” Only in instances where the Parties have been through the dispute resolution process and have determined they are unable to resolve the issue without Court intervention, can Plaintiffs file a motion to reopen the matter for good cause—i.e., for the limited purpose of resolving the dispute.

12. This Court routinely utilizes Rule 41.2 in order to administratively close cases, especially in instances where a case might otherwise be stayed for an indefinite period of time. See *Mauchlin v. Zhon*, No. 12-cv-01449-RM-BNB, 2015 WL 479042, at \*1 (D. Colo. Feb. 3, 2015); see also *San Juan Cable LLC v. DISH Network LLC*, No. 14-mc-00261-RM-MJW, 2015 WL 500631, at \*1 (D. Colo. Jan. 23, 2015) (administratively closing case “to be reopened only if the U.S. District Court for the District of Puerto Rico refers a related enforcement matter to this Court”); *Workalemahu v. Heritage Club*, No. 14-cv-02396-RM-MEH, 2015 WL 293261, at \*1 (D. Colo. Jan. 21, 2015) (administratively closing case pending arbitration). Indeed, the Tenth Circuit has construed an administrative closure to be “the practical equivalent of a stay.” *Cocorilla, Ltd. v. Kline*, No. 18-cv-00798-WJM-NRN, 2019 WL 10270260, at 1–2 (D. Colo. Mar. 19, 2019) (quoting *Quinn v. CGR*, 828 F.2d 1463, 1465 n.2 (10th Cir. 1987)).

13. “Administrative closings comprise a familiar, albeit essentially ad hoc, way in which courts remove cases from their active files without making any final adjudication. The method is used in various districts throughout the nation in order to shelve pending, but dormant, cases. We endorse the judicious use of administrative closings by district courts in circumstances in which a case, though not dead, is likely to

remain moribund for an appreciable period of time. Properly understood, an administrative closing has no effect other than to remove a case from the court's active docket and permit the transfer of records associated with the case to an appropriate storage repository [and] ... d[oes] not terminate the underlying case, but, rather, place[s] it in inactive status until such time as the judge, in his discretion or at the request of a party, [chooses] either to reactivate it or to dispose of it with finality." *Lehman v. Revolution Portfolio LLC*, 166 F.3d 389, 392 (1st Cir. 1999) (internal citations and quotation marks omitted).

14. Given that there are no definite timelines here for Court involvement and the Parties all agree that administrative closure is the best mechanism for ensuring that the case is not creating an administrative burden for the Court, but still allows the Court to have oversight if it becomes necessary, it is appropriate for this case to be administratively closed. See *Mauchlin*, No. 12-cv-01449-RM-BNB, 2015 WL 479042, at \*2 (court administratively closed the case subject to reopening for good cause subsequent to Plaintiff's vision problems being addressed); *Garcia v. State Farm Mut. Fire & Cas. Co.*, No. 20-cv-02480-PAB-MEH, 2021 WL 4439792, at 6 (D. Colo. Sept. 27, 2021) (ruling that the case should be administratively closed because the arbitration proceedings would last for an indefinite period of time); *Talmadge v. Berkley Nat'l Ins. Co.*, No. 22-cv-00178-PAB-SKC, 2023 WL 5310112, at \*3 (D. Colo. Aug. 17, 2023) (where a case was to be stayed for an unknown period of time pending a Colorado Supreme Court decision on a certified question of law, administrative closure was appropriate).

WHEREFORE, the Parties respectfully request that this Court administratively close this Case and retain jurisdiction only to provide a forum to address any alleged failure to maintain Substantial Compliance with the Settlement Agreement.

Respectfully submitted this 13th day of March, 2024.

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