

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEREK WASKUL, *et al.*,

Plaintiffs,

v

WASHTENAW COUNTY
COMMUNITY MENTAL
HEALTH, *et al.*,

Defendants.

No. 2:16-cv-10936-DVP-EAS

HON. LINDA V. PARKER

MAG. ELIZABETH A.
STAFFORD

**STIPULATED ORDER TO
ADJOURN DEADLINES AND
HEARING TO ACCOUNT
FOR AMENDED NOTICE**

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STIPULATED ORDER TO ADJOURN DEADLINES AND HEARING TO ACCOUNT FOR AMENDED NOTICE

This matter is before the Court pursuant to the parties' stipulation. The parties have agreed to adjust the deadlines for submission of comments and objections regarding the proposed Settlement Agreement (ECF No. 300-1) and the parties' supplemental briefing to address the same, as well as to adjourn the hearing scheduled on Plaintiffs' Amended Motion for Approval of Settlement Agreement and Declaration of Binding Effect on Rule 65(D) Entities (ECF No. 316). The adjustment of dates is to allow time for State Defendants to send the attached Amended Notice (Exhibit A) to all individuals entitled to notice by this Court's May 23, 2024 order (ECF No. 333). Through an inadvertent error, not all such individuals received the original notice.

As a result, the parties agree to the following:

1. The attached Amended Notice (Exhibit A) shall be:
 - a. posted on the MDHHS website;
 - b. sent to the CMH_Providers Medicaid Listserv;
 - c. sent to all Community Mental Health Services Programs;
and
 - d. sent to all Prepaid Inpatient Health Plans.

2. Any objections or comments to the Settlement Agreement should be addressed “Attn: Honorable Linda V. Parker,” must include the case number (16-cv-10936), and must be actually delivered to the Clerk’s Office, 231 W. Lafayette Blvd., Detroit, MI 48226 by hand, by mail, or by overnight delivery on or before September 27, 2024, with copies provided to each of the four sets of counsel identified in the Notice by such date.

3. The parties may file supplemental briefs addressing any objections and comments on or before October 29, 2024.

4. An in-person hearing on Plaintiffs’ Amended Motion for Approval of Settlement Agreement and Declaration of Binding Effect on Rule 65(D) Entities (ECF#316) will be held on December 11, 2024 at 10:00 am ET. The hearing will be held in the Courtroom of the Honorable Linda Parker of the United States District Court for the Eastern District of Michigan, Theodore Levin U.S. Courthouse, Courtroom 206, 231 W. Lafayette Blvd., Detroit, MI 48226.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: August 23, 2024

APPROVED AS TO FORM AND SUBSTANCE:

/s/ Edward P. Krugman (w/permission)

Dated: August 22, 2024

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/s/ Stephanie M. Service

Dated: August 23, 2024

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/s/ Margaret T. Debler (w/permission)

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/s/ Neil J. Marchand (w/permission)

Dated: August 23, 2024

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EXHIBIT A

**THIS IS AN AMENDED NOTICE
PLEASE NOTE THAT THE HEARING DATE IS NOW
DECEMBER 11, 2024**

**IF YOU COMMENTED OR OBJECTED IN RESPONSE
TO THE ORIGINAL NOTICE, YOUR COMMENT OR OBJECTION
WILL BE TAKEN UP AT THE DECEMBER 11, 2024 HEARING**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DEREK WASKUL, *et al.*,

Plaintiffs,

v.

WASHTENAW COUNTY COMMUNITY
MENTAL HEALTH, *et al.*,

Defendants.

No. 2:16-cv-10936-LVP-EAS
Hon. Linda V. Parker
Hon. Elizabeth A. Stafford

**AMENDED NOTICE OF PROPOSED SETTLEMENT
AGREEMENT AND HEARING**

PLEASE TAKE NOTICE that a proposed Settlement Agreement (the “Agreement”) has been reached between Plaintiffs and the Michigan Department of Health and Human Services (“MDHHS”) and its Director in the above captioned case. The Court will hold a hearing on December 11, 2024 at 10:00 am ET before deciding whether to approve the Agreement.

A copy of the Agreement is on file with the Court (document #300-1) and is posted at <https://www.drmich.org/wp-content/uploads/2023/12/ECF300-1-executed-settlement.pdf>. The Agreement is also available on MDHHS’s website: <https://www.michigan.gov/mdhhs/keep-mi-healthy/mentalhealth/mentalhealth>.

You should read the Agreement in its entirety, as this notice presents only certain salient features of the Agreement. If there are any discrepancies in the content of this notice and the terms of the Agreement, the terms of the Agreement are controlling.

This notice is provided to you because your legal rights may be affected. If your legal rights are affected, you did not receive the original notice of the Agreement, and you did not already submit an objection in this matter, you may have the right to formally object to the settlement. Anyone who did not receive the original notice of the Agreement and who did not already submit a comment in this matter may comment on the Agreement to the Court, either favorably or unfavorably. *See procedures for objecting and commenting below.*

WHAT IS THIS CASE ABOUT?

This action, filed in March 2016, alleges that a 2015 change in budgeting procedure for Habilitation Supports Waiver (“HSW”) self-determination (“SD”) Community Living Support (“CLS”) services implemented by the Washtenaw Community Health Organization, a predecessor to Defendant Washtenaw County Community Mental Health (“WCCMH”), caused Plaintiffs to be unable to pay for the staff and other CLS services provided for in their Individual Plans of Service (“IPOSs”). The change and its consequences are asserted to violate various federal laws, the Michigan Mental Health Code, and the HSW itself. Defendants deny these claims.

HOW AND TO WHOM DOES THE AGREEMENT APPLY?

*To Fully Understand The Agreement, You Should Read
The Full Agreement. This Is Only a Summary.*

Contingencies

- The Agreement is subject to certain contingencies (§ D(1)), which will determine the path by which the Agreement will be implemented.
 - If the contingencies are met, the “Minimum Fee Provisions” for HSW CLS SD budgets will take effect, as described below.
 - If the contingencies are *not* met, then the Minimum Fee Provisions will not take effect but certain other provisions (the “Costing Out Provisions”) will govern the HSW CLS SD budget process instead.

- The contingencies that will determine whether the Minimum Fees Provisions or the Costing Out Provisions will take effect are:
 - approval and appropriations by the Michigan Legislature;
 - approval by the federal Medicaid authority, the Centers for Medicare and Medicaid Services; and
 - execution of an appropriate contract amendment by Community Mental Health Partnership of Southeast Michigan (“CMHPSM”).
- If these contingencies are met by June 1, 2025 (the “Drop Dead Date”), or an extended Drop Dead Date as laid out in the Agreement, then the Minimum Fee Provisions will take effect. Otherwise the Costing Out Provisions will take effect.

The Minimum Fee Provisions

- If the contingencies (which include appropriations necessary to fund the Minimum Fee Provisions statewide) are met, not only Plaintiffs but *all* SD CLS recipients under the HSW will have their CLS services budgeted and paid for at the rate of \$31 per service hour. (§ C(2)).
- Subject to the contingencies described above, the HSW statewide rate for Overnight Health, Safety, and Support (“OHSS”) will be 70% of the CLS rate, that is, \$21.70 per service hour.
- Both rates will be adjusted yearly for inflation, and both will be in effect at least until September 2029 (§§ E(6), C(10)).

Costing Out Provisions

- If the minimum rate contingencies are not met by the “Drop Dead Date,” or an extended Drop Dead Date as laid out in the Agreement, then MDHHS shall begin and complete within a certain timeframe the process necessary to amend the Medicaid Provider Manual to reflect the contents of “Attachment C.”
- Attachment C is a “costing out” procedure designed to ensure that each component of the CLS budget (*e.g.*, staff wage, community activities,

transportation) is built up separately based on each recipient's IPOS to create a total, individualized HSW SD CLS rate.

Procedural and Process Relief

- Regardless of whether the settlement is implemented via the “Minimum Fee” provisions or the “Costing Out” provisions, certain procedural relief will start to be implemented 30 days after approval of the Agreement by the Court.
- This procedural relief will include a notification to the Michigan Office of Administrative Hearings and Rules that it is MDHHS policy for Administrative Law Judges to grant effective relief in cases involving budget or service authorization disputes. (§ C(8)).
- The procedural relief also includes clarification of the process of forming IPOSs and their related budgets for certain recipients, including:
 - Clarification of “medical necessity.” (§ C(9)(a) & Attachment B).
 - Requiring discussion during the person-centered-planning process of the various components of CLS services in relation to a beneficiary's specific needs. (§ C(9)(b)).
 - Protections against Prepaid Inpatient Health Plans (“PIHPs”) or Community Mental Health Service Providers (“CMHSPs”) delegating to fiscal intermediaries the final determination on the amount, scope, and duration of services or any aspect of creating self-determination budgets. (§ C(9)(c)).
 - Requiring CMHPSM to offer recipients the option to self-determine (§ C(7)).
 - Protections against termination of self-determination arrangements. (§§ C(9)(d), C(8)(d)).
 - Requiring PIHPs, or CMHSPs acting on a PIHP's behalf, to provide notice of budget or service reductions. (§ C(9)(f, g)).

No Provision for Damages

The Agreement does not provide for any monetary damages.

Attorneys' Fees

Plaintiffs have asserted that by reason of the Agreement, they are “prevailing parties” who are entitled to attorneys’ fees and costs under 42 U.S.C. § 1988 and related statutes. MDHHS has not yet taken a position on the amount or entitlement to fees. Fees and costs will be negotiated separate and apart from the Agreement, and Plaintiffs may file a motion for attorneys’ fees and costs if they are unable to reach an agreement with MDHHS. (§ F(1), (2)).

Plaintiffs have moved to have the Agreement determined to be binding on the Local Defendants (WCCMH and CMHPSM). If that occurs, Plaintiffs will also seek fees from these Defendants.

POSITION OF THE PLAINTIFFS AND THE STATE DEFENDANTS REGARDING THE SETTLEMENT

The Plaintiffs support the Agreement and have moved for its approval, together with certain related relief regarding enforcement of the Agreement against the Local Defendants. The State Defendants (MDHHS and its Director, Elizabeth Hertel) support the motion for approval and take no position on the related relief sought by Plaintiffs. Persons who wish to learn more about the Agreement may reach out to counsel for the Plaintiffs and/or counsel for the State Defendants, who are:

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**POSITION OF THE LOCAL DEFENDANTS
REGARDING THE SETTLEMENT**

The “Local Defendants”—WCCMH and CMHPSM—support the idea of the State providing additional funding to the public behavioral health system and oppose approval of the Agreement for various reasons. They invite persons interested in learning more about their position to reach out to their counsel, who are:

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WHAT ARE THE NEXT STEPS?

If you commented or objected in response to the original notice, your comment or objection will be taken up at the December 11, 2024 hearing. If your legal rights are affected, if you did not receive the original notice of the Agreement, and if you did not previously submit an objection in this matter, you may have the right to formally object to the Agreement. Your objection should set forth (1) a detailed description of how you expect the Agreement to affect your interests, and (2) the basis and reasons for the objection.

Anyone who did not receive the original notice of the Agreement and who did not previously submit a comment in this matter may comment on the Agreement to the Court, either favorably or unfavorably.

Any such objection or comment (which must include the case number, 16-10936) must be ***actually delivered to the Clerk’s Office***, by hand, by mail, or by overnight delivery, with copies to each of the four sets of counsel identified above, on or before ***September 27, 2024***. Objections or comments should be addressed “Attn: Honorable Linda V. Parker” and delivered to 231 W. Lafayette Blvd., Detroit, MI 48226.

The Local Defendants filed their responses to the Agreement on June 24, 2024. You are encouraged to review the papers on file with the Court and incorporate portions of them by reference. The parties will file supplemental briefs addressing any objections and comments by October 29, 2024.

HEARING

On December 11, 2024 at 10:00 am ET, the Court will hold an in-person hearing in the Courtroom of the Honorable Linda Parker of the United States District Court for the Eastern District of Michigan, Theodore Levin U.S. Courthouse, Courtroom 206, 231 W. Lafayette Blvd., Detroit, MI 48226, to determine whether the Agreement is fair, reasonable, adequate, and in the public interest.

You may attend this hearing. If you filed a formal objection with the Court as described above, the Court may allow you to speak at this hearing.

If you have any questions, please contact one of the counsel listed above.

PLEASE DO NOT CONTACT THE CLERK'S OFFICE

**By Order of the Court
United States District Court
Eastern District of Michigan
August 23, 2024**