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

**D.D.**, by his parent and Next Friend **B.N.**; **G.P.**, by her parent and Next Friend **A.P.**; **G.G.**, by his mother and Next Friend **M.G.**; **M.M.**, by his parent and Next Friend **C.C.**; **L.G.**, by her parent and Next Friend **T.G.**; **S.W.**, by his parent and Next Friend **C.W.**; and **K.M.**, by his parent and guardian **L.M.**,

Plaintiffs,

v.

**MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES**; **ELIZABETH HERTEL**, Director of Michigan Department of Health and Human Services, in her official capacity,

Defendants.

No. 18-cv-11795-TLL-PTM

Hon. Thomas L. Ludington

Mag. Patricia T. Morris

**SETTLEMENT AGREEMENT**

**MANTESE HONIGMAN, PC**
Dave Honigman (P33146)
Gerard V. Mantese (P34424)
Theresamarie Mantese (P53275)
Emily S. Fields (P82047)
Attorneys for Plaintiffs
1361 E. Big Beaver
Troy, MI 48083
(248) 457-9200
dhonigman@manteselaw.com
gmantese@manteselaw.com
tmantese@manteselaw.com
efields@manteselaw.com

**DISABILITY RIGHTS MICHIGAN**
Kyle M. Williams (P77227)
Nicholas A. Gable (P79069)
Attorneys for Plaintiffs
4095 Legacy Parkway
Lansing, MI 48911
(517) 487-1755
kwilliams@drmich.org
ngable@drmich.org

**NATIONAL HEALTH LAW PROGRAM**
Kimberly Lewis (CA – 144879)
Attorney for Plaintiffs
3701 Wilshire Blvd., Ste. 750
Los Angeles, CA 90010
(919) 968-6308
lewis@healthlaw.org

**JOHN J. CONWAY PC**
John J. Conway, III (P56659)
Attorney for Plaintiffs
150 West 2nd St., Ste. 250
Royal Oak, MI 48067
(313) 961-6525
jj@jjconwaylaw.com

Stephanie M. Service (P73305)
Kathleen A. Halloran (P76453)
Mark Donnelly (P39281)
Marcy K. Citron (P61930)
**MICHIGAN DEPARTMENT OF ATTORNEY GENERAL**
Attorneys for Defendants
Health, Education & Family Services Division
P.O. Box 30758
Lansing, MI 48909
(517) 335-7603
ServiceS3@michigan.gov
HalloranK1@michigan.gov
DonnellyM@michigan.gov
CitronM@michigan.gov

# SETTLEMENT AGREEMENT

## 1. PURPOSE OF AGREEMENT

1.1 The purpose of this settlement agreement ("Agreement") is to make a final settlement of this case, *D.D., et al. v. Michigan Department of Health and Human Services, et al.*, No. 18-cv-11789-TLL-PTM,[1] in accordance with the terms set out below.

1.2 This Agreement includes the following sections: (1) Purpose of Agreement; (2) Background; (3) Definitions; (4) Jurisdiction and Authority of the Court; (5) Goals; (6) Commitments; (7) Exit Procedure; (8) Exit Criteria; (9) Modification; (10) Contingencies; (11) Dispute Resolution; (12) Scope of Releases and Waivers; (13) Attorney Fees and Costs; and (14) Other Provisions.

## 2. BACKGROUND

2.1 Plaintiffs filed this lawsuit, titled *K.B., et al. v. Michigan Department of Health and Human Services, et al.,* on June 6, 2018 (case number 18-cv-11795-TLL-PTM), as a class action seeking injunctive and declaratory relief against the Michigan Department of

[1] This case was originally filed as *K.B., et al. v. Michigan Department of Health and Human Services, et al.*, but the named plaintiff K.B. is no longer a plaintiff.

Health and Human Services ("MDHHS"), Governor Snyder, and MDHHS Director Nick Lyon[2].

2.2 The Defendants filed a motion to dismiss, which the Court granted in part and denied in part on February 6, 2019. (ECF No. 29.) Thereafter, the Parties have engaged in ongoing, good-faith settlement negotiations.

2.3 The Parties stipulated to allow Plaintiffs to amend the Complaint on February 13, 2022, (ECF No. 70), adding certain named Plaintiffs and removing certain formerly named Plaintiffs. The case was recaptioned *D.D., et al. v. Michigan Department of Health and Human Services, et al.*

2.4 On November 3, 2022, this Court certified this case as a class action and defined the class (hereinafter "the Class") as follows:

> All Medicaid-eligible beneficiaries under the age of 21 in the State of Michigan for whom a licensed practitioner of the healing arts acting within the scope of practice under state law has determined, through an assessment, that intensive home and community-based services are needed to correct or ameliorate their emotional, behavioral, or psychiatric condition.

[2] Pursuant to Fed. R. Civ. P. 25(d), Governor Whitmer was automatically substituted for Defendant Snyder and Director Hertel was automatically substituted for her predecessors, Directors Nick Lyon and Robert Gordon. Thereafter, the Parties stipulated to dismiss Governor Whitmer. (ECF No. 59.) The current Defendants are MDHHS and Elizabeth Hertel, in her official capacity.

2.5 Defendants did not object to class certification but continue to reserve the right to motion the Court to alter, amend, or decertify the Class in the event this Agreement is not approved by the Court.

2.6 Counsel for Plaintiffs and the Class believe that the best interests of the Class will be substantially advanced by this Agreement.

2.7 Defendants and their counsel believe Defendants have meritorious defenses and admit no liability. Given the uncertainties and expense of trial, Defendants and their counsel agree that the interests of the State (or Defendants) will be advanced by this Agreement.

2.8 Accordingly, the Parties believe the settlement is fair, reasonable, and adequate, and hereby enter this Agreement to compromise, settle, and resolve all claims asserted, or which could have been asserted, by Plaintiffs and the Class.

## 3. DEFINITIONS

3.1 The following definitions apply to this Agreement:

> Caregiver: Caregiver as defined in the relevant section of the Michigan Medicaid Provider Manual.

Child Mental Health Professional: Child Mental Health Professional (CMHP) as defined in the Michigan Medicaid Provider Manual.

CMS: The Centers for Medicare & Medicaid Services.

Infant Family Specialist: Infant Family Specialist as will be defined in the Michigan Medicaid Provider Manual.

"Medically necessary," "medical necessity," and "medical necessity criteria" are interchangeable terms that, for purposes of this Agreement, are defined as consistent with the relevant portions of the Michigan Medicaid Provider Manual and 42 U.S.C. § 1396d(r)(5).

Plaintiffs' counsel: Disability Rights Michigan, National Health Law Program, John J. Conway P.C., Mantese Honigman P.C., and Class Counsel Dave Honigman.

Qualified Intellectual/Developmental Disability Professional: Qualified Developmental Disability Professional (QIDP) as defined in the Michigan Medicaid Provider Manual.

"Revise" in the context of revisions to the contract between MDHHS and managed care entities, means MDHHS's contract amendment and/or execution processes used in the normal course of business.

Substantial compliance / substantially comply with / substantially complied with means that there is no material omission of compliance with any essential part of the Exit Criteria.

## 4. JURISDICTION AND AUTHORITY OF THE COURT

4.1 The United States District Court has jurisdiction to approve this Agreement pursuant to 28 U.S.C. §§ 1331 and 1343(a).

4.2 Within 45 days of the execution of this Agreement, Plaintiffs shall motion the Court for an order regarding preliminary determination of the fairness, reasonableness, and adequacy of the Agreement. That motion to the Court for entry of an order will request that the Court extend the Interim Agreement (ECF No. 50) until the Court's final determination regarding approval of this Agreement, and will be substantially in the following form:

a. Requesting the Court's preliminary approval of the Agreement as being fair, reasonable, and adequate as to members of the Class;

b. Requesting the Court's approval of the proposed procedures for giving notice of this Agreement as described in Paragraph 4.3;

c. Requesting the Court's approval of the form and content of such notice; and

d. Requesting the Court schedule a fairness hearing to determine whether to grant final approval as to the fairness, reasonableness, and adequacy of this Agreement.

4.3 Upon the Court's preliminary approval of this Agreement, class notice will be disseminated by the Parties pursuant to the Court's preliminary approval order. The Parties shall bear their respective costs of providing notice of the Agreement pursuant to the distribution plan.

4.4 After adequate notice of the subject matter of this suit and the proposed settlement terms of this Agreement and an opportunity to be heard regarding those terms has been provided as described in Paragraph 4.3, and after expiration of the time set for comment and the receipt of same, the Court will hold a hearing to determine whether to grant final approval of this Agreement as being a fair, reasonable, and adequate settlement of this litigation. Except as otherwise noted, the terms of this Agreement shall not take effect until the Court issues its order granting final approval of this Agreement.

4.5 If, for any reason, the Court does not grant final approval of this Agreement as a fair, reasonable, and adequate settlement of this litigation, the Parties shall make good faith efforts to modify the Agreement to gain judicial approval. If the Court does not approve the Settlement Agreement, the Parties shall work in good faith to make

modifications to address the Court's concerns, *provided* that no Party is obligated to agree to anything not already agreed-to herein. If the Parties are unable to obtain approval from the Court despite good faith efforts, this Settlement Agreement shall become null and void.

4.6 After the Court grants final approval of this Agreement, the Parties will ask the Court to administratively close this case but retain jurisdiction only for the purpose of enforcement or modification of this Agreement, as described herein, and for the purpose of deciding any motion for attorneys' fees brought pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2).

4.7 This Agreement does not constitute a waiver or otherwise affect or impair Defendants' sovereign immunity under the Eleventh Amendment of the U.S. Constitution.

## 5. GOALS

5.1 The goals are intended to aid in interpreting the meaning and purpose of the Commitments and Exit Criteria. The goals are not Commitments nor Exit Criteria and shall not be measured as such. The goals of this Agreement are to:

a. Identify the Michigan intensive home and

community-based service array (hereinafter referred to as "Michigan Intensive Child and Adolescent Services" or "MICAS" and described in Appendix A);

b. Identify the class members to be served;

c. Establish a consistent statewide screening, assessment, and referral procedure that will facilitate class members' access to medically necessary MICAS services;

d. Establish the foundation for the timely, statewide provision of medically necessary MICAS services to class members to minimize out of home placements; and

e. Identify and develop quality management tools and measures designed to monitor and improve quality of care and to provide transparency to families, children, providers, advocacy organizations, and other stakeholders with interest in the provision of MICAS services.

## 6. COMMITMENTS

6.1 Subject to the contingencies outlined in Section 10 of this Agreement and limitations of the law, MDHHS makes the following commitments to class members. Defendants agree to substantially

comply with the Exit Criteria in Section 8, which are guided by the Goals section (Section 5) and this Commitments section (Section 6) of this Agreement. The Commitments may be modified pursuant to Section 9 of this Agreement:

1. **Michigan Intensive Child and Adolescent Services ("MICAS")**

   Expansion of Service Availability and Quality: MDHHS will expand and maintain a comprehensive Medicaid-covered service array and provide timely access to medically necessary intensive behavioral health services for the class members. MDHHS will provide class members access to the MICAS array in accordance with the MICAS standardized eligibility determination tool, described in more detail in Paragraph 6.1(3) below. The MICAS array includes only the following specific services:

   a. Intensive Crisis Stabilization Services for Children ("ICSS"): ICSS are defined in Appendix A. MDHHS will:

      i. Establish measurable annual targets for access intended to meet the needs of the Class, including 24/7 availability and statewide coverage.

      ii. Monitor and compare utilization against annual targets.

      iii. Establish and/or update service guidelines informed by national best practice approaches.

      iv. Establish a program to provide ICSS to class members in the home or community setting after initial crisis, as medically necessary.

      v. Review/revise/develop as necessary state regulatory or policy language and rates to provide for adequate access statewide.

vi. Review and/or revise managed care contracts to provide these services to class members as medically necessary with network adequacy standards and access standards.

b. Intensive Home-Based Services ("IHBS"): IHBS are defined in Appendix A. MDHHS will:
   i. Establish measurable annual targets intended to meet the needs of the class, including service availability when medically necessary and statewide coverage.
   ii. Monitor and compare utilization against annual targets.
   iii. Expand the availability of IHBS to serve class members who meet medical necessity regardless of other system involvement (e.g., child welfare).
   iv. Review/revise/develop state regulatory or policy language and rates to provide for adequate access statewide.
   v. Review and/or revise managed care contracts to provide these services to class members as medically necessary with network adequacy standards and access standards.

c. Intensive Care Coordination with Wraparound ("ICCW"): ICCW is defined in Appendix A. MDHHS will:
   i. Establish measurable annual targets intended to meet the needs of the Class, including availability when medically necessary and statewide coverage.
   ii. Monitor and compare utilization against annual targets.
   iii. Revise MDHHS's current Wraparound practice model as necessary to align with best practices.
   iv. Review/revise/develop state regulatory or policy language and rates to provide for adequate access statewide.

v. Review and/or revise managed care contracts to provide these services to class members as medically necessary with network adequacy standards and access standards.

d. Respite Care: Respite Care is defined in Appendix A. MDHHS will:

i. Establish measurable annual targets intended to meet the needs of the Class, including availability when medically necessary and statewide coverage.

ii. Monitor and compare utilization against annual targets.

iii. Review/revise/develop as necessary state regulatory or policy language and rates to provide for adequate access statewide.

iv. Review and/or revise managed care contracts to provide these services to class members as medically necessary with network adequacy standards and access standards.

e. Parent Support Partner ("PSP"): The PSP service is defined in Appendix A. MDHHS will:

i. Establish measurable annual targets intended to meet the needs of the Class, including availability when medically necessary and statewide coverage.

ii. Monitor and compare utilization against annual targets.

iii. Review/revise/develop as necessary state regulatory or policy language and rates to provide for adequate access statewide.

iv. Review and/or revise managed care contracts to provide these services to class members as medically necessary with network adequacy standards and access standards.

f. Youth Peer Support ("YPS"): The YPS service is defined in Appendix A. MDHHS will:
    i. Establish measurable annual targets intended to meet the needs of the Class, including availability when medically necessary and statewide coverage.
    ii. Monitor and compare utilization against annual targets.
    iii. Review/revise/develop as necessary state regulatory or policy language and rates to provide for adequate access statewide.
    iv. Review and/or revise managed care contracts to provide these services to class members as medically necessary with network adequacy standards and access standards.

**2. Beneficiary Information and Education**

MDHHS will undertake the following to better inform and educate class members, providers, and public child-serving agencies about the availability of and eligibility for behavioral health services and the MICAS array:

a. Develop awareness and communication tools to educate about available services, including developing and distributing specific resources on: (1) the MICAS array and how to access the same; (2) mediation, complaint, grievance, and appeals rights and processes pursuant to federal law, including any updates to the same; and (3) recipient rights under chapter 7 of PA 258 of 1974. These tools will be created in a culturally competent manner and will provide meaningful access to consumers with limited English proficiency.
b. Develop a public-facing website to provide information regarding MICAS services.
c. Review and update template beneficiary handbooks for managed care plans to utilize and distribute as required

under federal Medicaid regulations, that include all the MICAS services, eligibility for the services, and how to access them.

**3. Eligibility and Access to Behavioral Health Services**

a. MICAS Standardized Eligibility Determination Tool
MDHHS will implement a standardized, statewide functional behavioral health tool to assist in the determination of eligibility for the MICAS array and to operate as a decision support tool for providers to determine individualized services and intensity of care coordination for class members. MDHHS will:

i. Develop, or contract with an appropriate entity to develop, a standardized tool and corresponding manual(s).
ii. Identify, train, and certify a statewide network of assessors, or contract with an appropriate entity to identify, train, and certify a statewide network of assessors.
iii. Develop a policy and process requiring class members to be assessed through the use of the standardized tool.
iv. Orient key stakeholders including families and youth, providers, system partners, and other stakeholders to the purpose and use of the standardized tool.
v. Implement the standardized tool statewide to support the provision of MICAS services as medically necessary.

b. Access Standards
MDHHS will review and update existing access standards in policy and contracts related to time frames for completion of the statewide functional behavioral health tool and provision of any medically necessary MICAS services.

c. Modifications to Population Eligibility Criteria
MDHHS will establish eligibility criteria for the MICAS service array to be provided to class members based on

medical necessity criteria and incorporate such criteria into managed care contracts.

d. Statewide Service Delivery
MDHHS will build towards statewide capacity to make available the MICAS array to all class members for whom MICAS is medically necessary. MDHHS will establish an initial estimated range of the number of youths that will utilize MICAS services, based on Proxy data. In its Implementation Plan, MDHHS will develop annual targets for increased access to MICAS services.

e. MDHHS will utilize relevant current and historic data (the aggregated data set is called the "Population Proxy") for the following purposes: (1) to determine the size of the Class, and (2) to ensure the capacity to assess all class members and provide them with the MICAS array, as medically necessary.

**4. Workforce Development Training:**
MDHHS will:

a. Workforce Capacity
   i. Establish a capacity building structure that seeks and encourages a cross-system partnership to develop local statewide training and technical assistance to support contracted managed care entities in providing MICAS in accordance with fidelity standards statewide.
   ii. Develop a MICAS workforce development plan to expand the capacity of the MICAS provider network statewide for class members for whom the MICAS services are medically necessary, based on Proxy data.

b. Workforce Flexibility
   i. Review/revise/develop criteria to maximize the use of teams that use a licensed clinician working with paraprofessionals, as allowed by law.

c. Workforce Incentives

i. MDHHS has created a dedicated division within MDHHS that will help serve the behavioral health needs of class members.
    1. MDHHS has implemented a medical education debt repayment program that focuses on incentivizing children's behavioral health care providers to practice in Michigan.
ii. MDHHS has consulted and will continue to consult with children's behavioral health experts to identify opportunities to expand and strengthen the MICAS workforce to meet the Commitments of this Agreement.

**5. Data Collection and Reporting**

a. Medicaid Data Analysis
MDHHS has created a section dedicated to data monitoring and quality improvement to collect and analyze Medicaid child behavioral health utilization and expenditure data. This section will oversee Proxy data collection and evaluation and replicate that data analysis annually to track progress over time against the baseline data.

b. MICAS Array Data Indicators
MDHHS will establish and track the following indicators for the MICAS service array for class members:
    i. Need for MICAS services identified by the standardized, statewide tool.
    ii. Timeliness of access to services.
    iii. Denials of access to MICAS services.
    iv. Racial/ethnic and regional variation in indicators listed under items i. – iii.
    v. Changes in living situation related to hospital-level-of-care treatment options, including psychiatric hospitalization.
    vi. Court-ordered foster care or MDHHS juvenile justice placements, including placement in residential treatment.

c. MDHHS will review and revise managed care contract language for data collection and reporting on the MICAS array and selected measures or indicators as needed or when appropriate.
d. Reporting Data to the Public
MDHHS will establish a mechanism, including a dashboard to make quarterly and annual user-friendly data available to the public regarding the provision of the MICAS array, including the categories of children receiving the MICAS array, by managed care entity.

**6. State Oversight and Monitoring**

a. Monitoring structure
MDHHS will:
   i. Contain a clinical support team to help serve as a statewide resource to managed care entities and children's behavioral health providers.
   ii. Update existing statewide Comprehensive Quality Strategy for managed care entities regarding access utilization of MICAS services.
   iii. Review and revise as necessary managed care contract language for compliance with obligations to provide MICAS and other services in this agreement through corrective action, as needed.
   iv. Require reporting by managed care entities on selected measures or indicators at regular, specific intervals.

b. Advisory Body
MDHHS will establish an advisory body, which will include behavioral health service provider representatives, as well as significant representation from children, youth, and families with lived experience in Michigan's children's behavioral health system, to advise MDHHS on the following:
   i. Key performance data and quality benchmarks for the MICAS service array.

ii. Methods to communicate clearly and transparently to stakeholders through MDHHS's website.

iii. Provide feedback on the efforts under this Agreement.

**7. Due Process for Class Members**

MDHHS will review and revise managed care contracts to require managed care entities to monitor, and collect and maintain data on, grievances, appeals, and denials for services within the MICAS array. MDHHS will monitor compliance and address concerns when they are identified.

a. Adverse Benefit Determinations

i. MDHHS will review and revise as necessary managed care contract language to require class members receive notices of Adverse Benefit Determination when:

1. A class member's request for service in the MICAS array is denied or limited based on type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit.
2. A previously authorized service under the MICAS array is reduced, suspended, or terminated.
3. A class member is assessed and determined to need services in the MICAS array, but the services are not provided in a timely manner.

ii. MDHHS will make publicly available a list of circumstances in which class members have the right to receive notices of Adverse Benefits Determination.

iii. MDHHS will review and revise as necessary managed care contract language for collection of data that tracks Adverse Benefits Determinations issued. MDHHS will monitor compliance of this requirement by the managed care entity.

b. Grievance and Appeals

MDHHS will:

i. Review current processes and revise as necessary to strengthen grievance, appeals, and recipient rights processes.
ii. Review and revise as necessary managed care contracts to improve grievance, appeals, and recipient rights processes.
iii. Communicate any changes in these processes to stakeholders.
iv. Make publicly available the rights class members have to: (1) file appeals, (2) file grievances, and (3) receive a Medicaid fair hearing.
v. Review and revise as necessary managed care contract language for collection of data that tracks grievances and appeals filed. MDHHS will monitor compliance of this requirement by the managed care entity.
vi. Monitor the managed care entity's compliance with enrollee grievance and appeal rights and determine whether corrective action is necessary to address problems identified by monitoring, data analysis, or complaints by class members.

**8. Implementation Plan**

a. MDHHS will develop an Implementation Plan within 12 months of the Court granting final approval of this Agreement demonstrating how MDHHS can substantially comply with the Exit Criteria in this Agreement. The Implementation Plan will:
   i. Identify and sequence tasks necessary to substantially comply with the Exit Criteria;
   ii. Set reasonable timelines to substantially comply with the Exit Criteria;
   iii. Assign responsibility for each task.
b. MDHHS can modify the Implementation Plan without prior approval of Plaintiffs.
c. Until termination of the Court's jurisdiction, MDHHS will provide Plaintiffs' counsel with an annual status

report that describes MDHHS's progress in substantially complying with the Exit Criteria in this Agreement.

**7. EXIT PROCEDURE**

7.1 The Parties anticipate Defendants will complete implementation of this Agreement on or about December 31, 2029. The Parties' obligations herein will terminate when Defendants demonstrate they have substantially complied with the Exit Criteria contained within Section 8 of this Agreement. The Exit Criteria set forth in Section 8 are the sole objective measures of whether Defendants are in substantial compliance with the terms of this Agreement. Upon substantial compliance with the sole objective measures set forth in Section 8's Exit Criteria, the lawsuit herein will be dismissed.

7.2 On or about March 31, 2029 or approximately nine months prior to the date implementation is anticipated to be completed, whichever is sooner, the Parties will meet to determine whether there is any dispute as to whether the Defendants are on track to substantially comply with the Exit Criteria.

7.3 The Parties may stipulate, or any party may bring a motion, to terminate the Court's jurisdiction as to any provision of this

Agreement when Defendants have substantially complied with the Exit Criteria for that provision.

**8. EXIT CRITERIA**

8.1 *MICAS Access and Service Delivery Exit Criteria.* MDHHS:

a. has established measurable annual targets for access to the MICAS services delineated in Section 6.1(1) of this Agreement.

b. is monitoring and comparing utilization to annual targets for all MICAS services delineated in Section 6.1(1) of this Agreement.

c. has revised/developed as necessary state regulatory or policy language and rates to provide for adequate access statewide to all MICAS services delineated in Section 6.1(1) of this Agreement.

d. has reviewed and/or revised managed care contracts to provide these services to class members as medically necessary with network adequacy standards and access standards as delineated in Section 6.1(1) of this Agreement.

e. has established ICSS guidelines for children informed by national best practice approaches.

f. has established a program to provide ICSS to class members in the home or community setting after initial crisis, as medically necessary.

g. has expanded the availability of IHBS to serve class members who meet medical necessity.

h. has expanded ICCW to meet the needs of the Class, including availability when medically necessary.

i. has revised its current wraparound practice model as necessary to align with best practices.

8.2 *Beneficiary Information and Education Exit Criteria.* MDHHS:

a. has developed and distributed specific resources on: (1) the MICAS array and how to access the same; (2) mediation, complaint, grievance, and appeals rights and processes pursuant to federal law, including any updates to the same; and (3) recipient rights under chapter 7 of PA 258 of 1974.

b. has developed a public-facing website to provide information regarding MICAS services; and has updated template beneficiary handbooks for managed care plans to utilize and distribute as required under federal Medicaid regulations, that include all the MICAS services, eligibility for the services, and how to access them.

8.3 *Eligibility and Access to Behavioral Health Services Exit Criteria.* MDHHS:

a. has implemented a standardized, statewide functional behavioral health tool to assist in the determination of eligibility for the MICAS array and that serves as a decision support tool for providers to determine individualized services and intensity of care coordination for class members.

b. has developed a policy and process requiring class members to be assessed using a standardized tool.

c. has developed, or contracted with an appropriate entity to develop, a standardized tool and corresponding manual(s).

d. has identified, trained, and certified a statewide network of assessors or contracted with an appropriate entity to

identify, train, and certify a statewide network of assessors on the purpose and use of the standardized tool.

e. has oriented key stakeholders, including families and youth, to the purpose and use of the standardized tool and process.

f. has implemented the standardized tool and process statewide to support the provision of MICAS services as medically necessary.

g. has established eligibility criteria for the MICAS service array to be provided to class members based upon medical necessity criteria and incorporated such criteria into managed care contracts.

h. has demonstrated the capacity to provide medically necessary MICAS services to class members.

8.4 *Workforce Development and Training Exit Criteria.* MDHHS:

a. has established a capacity building structure as delineated in Section 6.1(4) of this Agreement.

b. has created a MICAS workforce development plan as delineated in Section 6.1(4) of this Agreement.

c. has established dedicated personnel within MDHHS that will help serve the behavioral health needs of class members, which the Parties agree MDHHS has already substantially complied with.

d. has implemented a medical education debt repayment program that focuses on incentivizing children's behavioral health care providers to practice in Michigan, which the Parties agree MDHHS has already substantially complied with.

e. has reviewed/revised/developed criteria to maximize the use of teams that use a licensed clinician working with paraprofessionals, as allowed by law.

f. has consulted with children's behavioral health experts to identify opportunities to expand and strengthen the MICAS workforce.

*8.5 Data Collection and Reporting Exit Criteria.* MDHHS:

a. has dedicated personnel to monitor data and assess quality improvement as delineated in Section 6.1(5) of this Agreement.

b. has established and is tracking the indicators for the MICAS service array for class members as delineated in Section 6.1(5) of this Agreement.

c. has revised managed care contract language for data collection and reporting on the MICAS array and selected measures or indicators, as needed or when appropriate.

d. has created a dashboard to make quarterly and annual user-friendly data available to the public regarding the provision of the MICAS array as delineated in Section 6.1(5) of this Agreement.

8.6 *State Oversight and Monitoring Exit Criteria*. MDHHS:

a. has created a clinical support team to help serve as a statewide resource to managed care entities and children's behavioral health providers, which the Parties agree MDHHS has substantially complied with.

b. has updated its existing statewide Comprehensive Quality Strategy for managed care entities regarding access utilization of MICAS services.

c. has reviewed and revised as necessary managed care contract language for compliance with obligations under this Agreement.

d. requires managed care entities to report on selected measures or indicators at regular, specific intervals.

e. has established the Advisory Body referenced in Section 6.1(6) of this Agreement.

8.7 *Due Process Exit Criteria.* MDHHS:

a. has reviewed current processes and made any revisions, as necessary, to strengthen grievance, appeals, and recipient rights processes, in compliance with federal law.

b. has made modifications to contracts necessary to establish the due process protocols delineated in Section 6.1(7) of this Agreement.

c. has made publicly available to class members their due process rights as delineated in Section 6.1(7) of this Agreement.

d. has in place a process to monitor and address the managed care entities' compliance with the due process protocols.

8.8 *Implementation Plan Exit Criteria.* MDHHS:

a. has developed an Implementation Plan as delineated in Section 6.1(8) of this Agreement.

**9. MODIFICATION**

9.1 Stipulated modifications. This Agreement may be modified by mutual agreement of the Parties and with approval of the Court. To be binding, such modifications must be in writing, signed by persons authorized to bind the Parties, and approved by the Court. The Parties further agree to work in good faith to obtain Court approval of stipulated modifications.

9.2 Frustration of purpose/force majeure. If the Defendants are unable to substantially comply with any of the Exit Criteria due to events or conditions beyond their reasonable control (such as natural disaster, labor disputes, war, acts of God, or governmental or quasi-governmental action beyond Defendants' control) Defendants shall notify Plaintiffs' counsel of the event or condition and describe its effect on performance. If performance is expected to be delayed or the event or condition frustrates the purpose of the Agreement, the Parties shall negotiate in good faith to modify the Agreement and seek approval of the Court for such modification. In the event the Parties are unable to

agree, Defendants may utilize the dispute resolution process below in Section 11.

9.3 This Agreement shall inure to the benefit of and be binding upon the legal representatives and any successor(s) of Plaintiffs (i.e., future class members) and Defendants.

**10. CONTINGENCIES**

10.1 Defendants' obligation to substantially comply with the Exit Criteria is contingent upon the following:

a. The Court entering an order approving the terms of this Agreement and retaining jurisdiction to enforce or modify the terms of this Agreement as laid out herein;

b. The Michigan Legislature appropriating sufficient ongoing funding to MDHHS to allow Defendants to meet the terms of this Agreement. Defendants, while empowered to enter into this Agreement, do not have the legal authority to bind the Michigan Legislature, which has the authority to appropriate funds for, and amend laws pertaining to, implementation of the Agreement. MDHHS agrees it shall make all reasonable efforts to obtain funding to substantially comply with the Exit Criteria.

Annually after the Court's final approval of this Agreement, and consistent with existing state budgetary practices and legal requirements, Defendants shall request state funds sufficient to allow Defendants to substantially comply with the Exit Criteria. Defendants will also consider available Medicaid federal funding opportunities that would support Defendants achieving substantial compliance with the Exit Criteria.

c. CMS approving any amendments to Medicaid waivers, demonstration authorities, or the state plan, if needed, to allow Defendants to meet the terms of this Agreement;

d. CMS approving necessary managed care contract amendments to allow Defendants to meet the terms of this Agreement;

e. CMS approving capitated rate adjustments necessary to allow Defendants to meet the terms of this Agreement; and

f. The MICAS services remaining eligible for Medicaid coverage.

10.2 If any of these contingencies is not met, the Parties shall make good faith efforts to modify this Agreement and obtain judicial approval of the modified agreement.

**11. DISPUTE RESOLUTION**

11.1 Except as otherwise provided for in this Agreement, any dispute arising out the breach of this Agreement shall be resolved according to the procedure set forth below. The Parties may not bring a new action for breach of this Agreement.

11.2 The Parties have agreed on Kathleen Noonan as mediator for the purpose of resolving potential future disputes. If Kathleen Noonan becomes unavailable or unwilling to serve as mediator, and the Parties cannot agree on a replacement mediator, the Parties will each select three potential candidates. Each side will be given two strikes, then a coin flip will determine which of the two remaining individuals will serve as the mediator. Defendants shall pay the fees and costs of Kathleen Noonan or any other mediator.

11.3 In the event of a dispute, the Parties shall provide by email to opposing counsel written notice specifying with particularity the basis for the dispute. No later than 15 days thereafter, or another

mutually agreed upon timeline, the Parties shall convene at a mutually agreeable time and place and use their good-faith, best efforts to discuss and resolve the dispute. This initial meeting will be a direct negotiation between the Parties without the assistance of a mediator or other non-party, and it may take place virtually.

11.4 After 15 days of the initial meeting, if the Parties are unable to resolve the dispute, they shall retain the mediator to conduct a mediation for the purpose of resolving the dispute. The mediation will be at a mutually agreeable time and may take place virtually. With the assistance of the mediator, the Parties will use their good-faith, best efforts to discuss and resolve the dispute. Any subsequent terms or agreement reached in this forum will be formalized as an addendum to the Parties' Agreement and submitted to the Court for approval.

11.5 If, after participating in good faith at the mediation, all disputes are not resolved, any party may file a motion regarding any remaining dispute. Such a motion may not be filed until at least 7 days after providing written notice to the other party of the intent to file such a motion. No Parties may file motions requesting contempt of court without first seeking to resolve the dispute in accordance with Section

11.3 and 11.4 above and any such request shall comply with Section 11.6.

11.6 Motions relating to alleged non-compliance will not seek to hold Defendants in criminal contempt of court. Motions relating to alleged noncompliance will not seek to hold Defendants in civil contempt of court, unless the motion seeks civil contempt of court based on an allegation of Defendants' willful noncompliance of a previous order of enforcement on the same subject matter. If Plaintiffs do bring a motion to hold Defendants in civil contempt of court under the limitations in this Section 11.6, the Parties agree the Court may only hold Defendants in civil contempt of court if the Court makes a finding of Defendants' willful noncompliance of a previous order of enforcement on the same subject matter. Nothing in this Section 11.6 shall preclude Plaintiffs from seeking attorneys' fees and costs on a motion to enforce for work performed or costs incurred after December 31, 2027, whether under 42 U.S.C. § 1988 or otherwise.

**12. SCOPE OF RELEASE/WAIVER**

12.1 This Agreement is not to be construed as an admission of liability or wrongdoing by Defendants. Defendants assert that they

have meritorious defenses in response to the allegations in the Amended Complaint. Defendants have entered into this Agreement solely for the purpose of settling and compromising claims by Plaintiffs and class members, to avoid the expense and diversion of resources caused by protracted litigation, and to further terminate the claims asserted, or that could have been asserted, against Defendants.

12.2 In consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, it is agreed by Plaintiffs and Defendants, represented by their authorized signatories, that all of Plaintiffs' and class members' claims for class-wide injunctive and declaratory relief against the Defendants which were, or could have been, asserted in the Complaint filed on June 6, 2018, or First Amended Complaint filed on February 13, 2022, shall merge into this Agreement upon the Court's final approval of the Agreement, and Plaintiffs and class members shall have no further recourse against Defendants in respect of such claims except pursuant to the terms hereof. Nothing herein shall preclude a Plaintiff or class member from exercising their Medicaid fair hearing rights as otherwise allowed by law.

12.3 Nothing in this Agreement shall be deemed to limit the ability of Disability Rights Michigan to fulfill its federal mandates pursuant to the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act, 42 U.S.C. § 10801, *et seq*., and the regulations promulgated thereto, 42 C.F.R. § 51 *et seq*., and the Developmental Disabilities Assistance and Bill of Rights (DD) Act, 42 U.S.C. § 15041, *et seq*., and the regulations promulgated thereto, 45 C.F.R. § 1326 *et seq*.

**13. ATTORNEY FEES AND COSTS**

13.1 The Parties agree that, as a full and final settlement of claims Plaintiffs or the Class have made or could have made for past and future attorney fees and costs for work performed and to be performed by Plaintiffs' counsel and any of their agents, employees, or contractors through December 31, 2027, Defendants will pay $3,500,000.00 (Three Million and Five Hundred Thousand Dollars) in total for attorney fees and costs to Mantese Honigman, P.C. Pursuant to Fed. R. Civ. P. 23(d) and 54(d)(2), Plaintiffs shall file a motion seeking Court approval of this amount of attorney fees and costs. Prior to payment being issued, Mantese Honigman, P.C. must successfully register as a vendor on the Statewide Integrated Government

Management Application System (SIGMA). The State of Michigan's SIGMA Vendor Self-Service website can be found at www.michigan.gov/sigmavss. Mantese Honigman, P.C. must provide its SIGMA vendor account number to Defendants before the payment can be processed. Within 30 days of final Court approval of this Agreement or SIGMA registration, whichever is later, Defendants shall remit $3,500,000.00 to Mantese Honigman P.C., through SIGMA. Mantese Honigman P.C. will allocate the award of attorney fees and costs amongst Plaintiffs' counsel in accordance with the agreement amongst them.

13.2 Beginning no sooner than April 1, 2028, Plaintiffs' counsel will submit detailed billings, if any, on a quarterly basis to Defendants, through their counsel, for fees and costs incurred by Plaintiffs' counsel and any of their agents, employees or contractors after December 31, 2027. For work performed by Plaintiffs' counsel after December 31, 2027, the Parties will make good faith efforts to negotiate the amount of reasonable attorney fees and costs to be paid by Defendants to Plaintiffs' counsel. If the Parties cannot agree on reasonable attorney fees and costs incurred by Plaintiffs' counsel after December 31, 2027,

Plaintiffs may file a motion with the Court. Plaintiffs' counsel will determine how to allocate amongst themselves any attorney fees and costs paid after December 31, 2027.

13.3 Nothing in this section shall be interpreted as an express agreement or denial by Defendants that Plaintiffs or class members are prevailing Parties under 42 U.S.C. § 1988 or that Plaintiffs or class members are or are not entitled to any attorney fees or costs.

**14. ENTIRETY OF AGREEMENT**

14.1 This Agreement constitutes the entire, complete, and integrated agreement among Plaintiffs, class members, and Defendants pertaining to the settlement of the Amended Complaint and, upon final approval by the Court, replaces any and all prior and contemporaneous undertakings of Plaintiffs, class members, and Defendants in connection therewith, including the previous August 11, 2020 Interim Agreement and any stipulations or orders extending the same.

14.2 This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

14.3 The Parties have participated in and had an equal opportunity to participate in the drafting and approval of this Agreement. No ambiguity shall be construed against a party based upon a claim that the party drafted the ambiguous language.

14.4 Each of the undersigned attorneys represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of their respective clients.

14.5 This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail which shall be deemed the same as an original signature. The Agreement is deemed executed when all counsel for the Parties have signed the Agreement.

/s/ Dave Honigman
**DATED:** 12/9/24
**COUNSEL FOR THE CLASS**
Dave Honigman (P33146)
1361 E. Big Beaver
Troy, MI 48083
(248) 457-9200
dhonigman@manteselaw.com

/s/
**DATED:** 12/9/24
**DISABILITY RIGHTS MICHIGAN**
Kyle M. Williams (P77227)
Nicholas A. Gable (P79069)
Attorneys for Plaintiffs
4095 Legacy Parkway
Lansing, MI 48911
(517) 487-1755
kwilliams@drmich.org
ngable@drmich.org

/s/ Gerard V. Mantese
DATED: December 10, 2024
MANTESE HONIGMAN, PC
Gerard V. Mantese (P34424)
Theresamarie Mantese (P53275)
Emily S. Fields (P82047)
Attorneys for Plaintiffs
1361 E. Big Beaver
Troy, MI 48083
(248) 457-9200
gmantese@manteselaw.com
tmantese@manteselaw.com
efields@manteselaw.com

/s/
DATED: 12.12.2024
JOHN J. CONWAY PC
John J. Conway, III (P56659)
Attorney for Plaintiffs
150 West 2nd St., Ste. 250
Royal Oak, MI 48067
(313) 961-6525
jj@jjconwaylaw.com

/s/ Kimberly Lewis
DATED: December 10, 2024
NATIONAL HEALTH LAW PROGRAM
Kimberly Lewis (CA – 144879)
3701 Wilshire Blvd., Ste. 750
Los Angeles, CA 90010
(919) 968-6308
lewis@healthlaw.org

/s/ Stephanie Service
DATED: 12/16/2024
Stephanie M. Service (P73305)
Kathleen A. Halloran (P76453)
Mark Donnelly (P39281)
Marcy K. Citron (P61930)
MICHIGAN DEPARTMENT OF ATTORNEY GENERAL
Attorneys for Defendants
Health, Education & Family Services Division
P.O. Box 30758
Lansing, MI 48909
(517) 335-7603
ServiceS3@michigan.gov
HalloranK1@michigan.gov
DonnellyM@michigan.gov
CitronM@michigan.gov

**/s/** _____

**DATED**: 12/06/2024
Elizabeth Hertel
Director,
Michigan Department of Health
and Human Services

# APPENDIX A

## Michigan Intensive Child and Adolescent Services

The MICAS services available to class members will be determined based upon medical necessity criteria. Class members may be eligible, based upon medical necessity criteria, for multiple MICAS services. The determination of eligibility for MICAS services will be supported by the standardized, statewide functional behavioral health tool as identified in the Commitments section of the Agreement. The complete list of MICAS services governed by the Agreement is as follows.

### 1. Intensive Crisis Stabilization Services ("ICSS")

Service Description/Components: ICSS (including mobile response services and other crisis response and stabilization services) are Medicaid-covered structured treatment and support activities provided by certified programs that are designed to proactively respond to and address a crisis situation at home and in community settings and provide ongoing stabilization services. The purpose of ICSS is to maintain a class member in their home or present living arrangement and to avert a psychiatric admission or other out of home placement. ICSS are utilized to proactively de-escalate a behavioral health crisis situation through the use of a crisis team that is on call and available to respond. In addition to assisting the child and family to resolve the crisis, the team works with them to identify potential triggers of future crises and teach them strategies for effectively dealing with potential future crises that may arise.

Setting: The setting of ICSS is the home or community, where the crisis occurs. Ongoing stabilization services may be provided in office-based settings at the request of the family. ICSS will not be provided in: (1) inpatient settings; (2) jails or detention centers; (3) residential settings (e.g., Child Caring Institutions, Crisis Residential); or (4) emergency departments.

Availability: ICSS programs will have the capacity to deploy mobile response teams on a 24 hour, 7 days per week basis. Post-crisis follow-up services (stabilization services) may be provided after the initial crisis occurs to ensure continued safety, support linkages to ongoing services if necessary, and prevent future crises.

Provider: ICSS programs must include staffing for mobile crisis response teams and stabilization services. Team members must include a Child Mental Health Professional (or Qualified Intellectual Disabilities Professional, if applicable) and may include paraprofessionals or peers, (including a Parent Peer or Young Adult Peer) with relevant experience. Paraprofessionals must have at least one year of satisfactory work experience providing services to children with serious emotional disturbance and/or intellectual/developmental disabilities. Peers must have (1) lived experience and (2) at least one year of satisfactory work experience providing services to children with serious emotional disturbance and/or intellectual/developmental disabilities. Team members must operate within their scope of practice. Team members must have access to an on-call psychiatrist by telephone, as needed. At a minimum, all team members must be trained in crisis intervention and de-escalation techniques.

When an ICSS program deploys a mobile response team, the mobile response team must consist of at least two staff. One team member must be a Child Mental Health Professional (or Qualified Intellectual Disabilities Professional, if applicable) and the second team member may be another professional, paraprofessional, or peer (including a Peer Parent or Young Adult Peer) with relevant experience, under appropriate supervision.

**2. Intensive Home-Based Services ("IHBS")**

Service Description/Components: IHBS are Medicaid-covered services designed to provide medically necessary intensive individualized interventions to address the needs of class members with behavioral health conditions that interfere with their functioning. IHBS are designed to: (1) help the class member with building skills necessary for successful functioning in the home and community, and (2) improve their family's or caregiver's ability to support the class member with successful functioning in the home and community. IHBS are delivered in accordance with a family-driven, youth-guided plan developed by the family, clinician, and the treatment team identified by the family. The family-driven, youth-guided plan will identify specific goals and objectives that seek to maximize the child's ability to live and participate in the community. IHBS will use the service planning process through Intensive Care Coordination with Wraparound when the class member concurrently receives Intensive Care Coordination with Wraparound. The goal of this service is to provide effective interventions and supports to address class members' behavioral health needs to increase the likelihood they remain in the home and community and to avoid out-of-home placements, including hospitalization.

Setting: The setting of IHBS is the class member's residence or community. IHBS are not provided in: (1) inpatient settings; (2) jails or detention centers; (3) out-of-

home residential settings (e.g., Child Caring Institutions, Crisis Residential); or (4) emergency departments.

Availability: The Individual Plan of Service identifies the amount, scope, and duration of IHBS needed for a class member. Class members who receive IHBS will have access to crisis intervention services 24 hours a day, 7 days a week through home-based services staff or other crisis service providers.

Provider: IHBS providers must have properly credentialed staff, including Child Mental Health Professionals (to meet the needs of class members with Serious Emotional Disturbance) and Qualified Intellectual Disability Professionals (to meet the needs of class members with Intellectual/Developmental Disability).

For IHBS provided to class members who are birth through age three, staff must be trained in infant mental health interventions and must minimally be Infant Family Specialists.

Trained paraprofessionals may provide services and support under supervision of professional staff to implement the treatment plan.

**3. Intensive Care Coordination with Wraparound ("ICCW")**

Service Description/Components: ICCW is a Medicaid-covered, evidence-informed service for class members. It is a team-based, collaborative planning process for developing and implementing individualized care plans for class members. ICCW includes:

- Facilitating assessments, evaluations, care planning, and accessing and arranging for services and supports;
- Coordinating multiple services and supports, including crisis services;
- Assisting the child and family with identifying needs and resources to address those needs;
- Advocating for the child and family; and
- Monitoring progress in meeting the goals of the individualized care plan.

The ICCW Facilitator is the intensive care coordinator who organizes, convenes, and facilitates this process. ICCW employs low ratios of ICCW Facilitators to class members, close clinical supervision, and ongoing training for ICCW Facilitators and supervisors. ICCW utilizes a Child and Family Team (CFT) and care coordination process that is individualized and strengths-based and is accountable for coordinating care across multiple providers and systems in close collaboration with the class member. The CFT members may include, but are not limited to, the class member and their caregivers, identified members of their support network, and the

class member's service providers and system partners. The CFT supports the development, implementation, and/or monitoring of the service plan.

Setting: ICCW may be provided to class members in the home or community. Additionally, for the purpose of supporting transitions back to home or community settings, ICCW may also be provided to class members in residential, hospital, or other MDHHS-approved settings.

Availability: The amount, scope, and duration of ICCW will be determined by the needs of the class member.

Provider: A provider of ICCW must have a bachelor's degree and either: (a) meet the qualifications to be a Child Mental Health Professional or Qualified Intellectual Disability Professional, or (b) be supervised by a Child Mental Health Professional or Qualified Intellectual Disability Professional.

4. **Respite Care**

Service Description/Components: Respite Care is a Medicaid-covered service intended to assist class members in maintaining their ability to live and participate in the community. Respite Care services are provided on a short-term, intermittent basis when medically necessary to relieve the class member's family or other primary caregiver(s) from care demands based upon the class member's behavioral health needs.

Setting: Respite care may only be provided in any of the following locations:

- A beneficiary's home or place of residence
- A community-based setting
- A Licensed Family Foster Home
- A Licensed Children's Therapeutic Group Home

Availability: The Individual Plan of Service identifies the amount, scope, and duration of Respite Care available to class members.

Provider: An individual who provides Respite Care must be a responsible adult at least 18 years of age. The individual must also meet all other training, supervision, and standards for delivery of Respite Care as established by MDHHS. Respite Care may not be provided by: (1) a parent, guardian, or caregiver of the class member receiving Respite Care, or (2) other adult member of the class member's household.

5. **Parent Support Partner ("PSP")**

Service Description/Components: PSP is a Medicaid-covered parent-to-parent peer-delivered service that supports and empowers the parent voice as part of the family-driven, youth-guided approach to treatment and occurs as part of the class

member's treatment process. PSP is designed to increase self-advocacy skills through a relationship based upon shared lived experience. PSP is designed to be delivered with a non-judgmental approach for parents or caregivers of class members. PSP is provided in a 1:1 setting, in the home or community. The goals of PSP services shall be included in the class member's Individualized Plan of Service.

Setting: PSP services may only be provided in the home or community.

Availability: The Individualized Plan of Service identifies the amount, scope, and duration of PSP services available to class members.

Provider: An individual who provides PSP services must:

- have lived experience as a parent/primary caregiver of a child with behavioral and mental health needs, and/or intellectual/developmental disability, including autism; and
- have completed MDHHS-approved curriculum.

6. **Youth Peer Support ("YPS")**

Service Description/Components: YPS is a Medicaid-covered peer-to-peer support service designed to support and empower the class member's voice as part of the family-driven, youth-guided approach to treatment and occurs as part of the treatment process. YPS is designed to increase the participation of class members in identifying and voicing their needs and increasing their confidence to speak with and self-advocate with providers, family members, and others. YPS is based on relationships built on shared lived experience. YPS is provided in a 1:1 setting, in the home or in the community. The goals of YPS services shall be included in the class member's Individualized Plan of Service.

Setting: YPS services may only be provided in the home and community.

Availability: The Individual Plan of Service identifies the amount, scope, and duration of YPS services available to class members.

Provider: An individual who provides YPS must:

- Have had lived experience as a youth who had mental health needs; and
- Have completed the MDHHS approved curriculum.