UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

C.A. through their next friend P.A., **C.B.** through his next friend P.B., and **C.C.** through his next friend P.C., for themselves and those similarly situated,

Plaintiffs,

v.

Kelly Garcia, in her official capacity as Director of the Iowa Department of Health and Human Services.

Defendant.

C/A No. 4:23-cv-00009-SHL-HCA

JOINT MOTION TO APPROVE INTERIM SETTLEMENT, CERTIFY THE CLASS, EXTEND THE STAY OF LITIGATION AND AMEND THE SCHEDULING ORDER

The Parties jointly move this Court to enter the Interim Settlement Agreement as an order of the Court, certify the Parties' agreed-upon class definition, and extend the stay of discovery and other litigation activity.

After engaging in extended negotiations, mediated by the Honorable Judge Walters, the Parties have entered into an Interim Settlement Agreement, attached as Exhibit A to this motion. The Interim Agreement marks a significant milestone in the case and serves as an important step in reaching a final settlement agreement. The terms of the Interim Agreement set forth a process and timeline by which the Parties will work jointly towards a final agreement. The complexity of this case, which involves thousands of children and multiple governmental units, including complex Medicaid services and delivery systems, has meant that additional planning, including

data collection, is necessary for the Parties to define the terms of a final agreement. The Interim Agreement provides a pathway to do so.

The Interim Agreement is not a final settlement, and it does not dispose of Plaintiffs' claims, but it is an important achievement that warrants a continued stay of discovery and litigation deadlines so the Parties may continue to work collaboratively towards a final settlement.

I. Factual Background

Plaintiffs commenced this litigation on January 6, 2023 against Defendant Kelly Garcia, in her official capacity only, as Director of the Iowa Department of Health and Human Services (DHHS). (Compl., ECF No. 1.) Plaintiffs are three children who experience Serious Emotional Disturbances (SED) and require intensive home and community-based mental health services to treat or ameliorate their conditions. Plaintiffs filed suit on behalf of themselves and a putative class of all similarly-situated children. (*Id*.)

Defendant filed a partial motion to dismiss on February 13, 2023. (Def's Partial Mot. Dismiss, ECF No. 22.) The Court denied this motion on May 15, 2023, finding that Plaintiffs plausibly alleged violations of the Medicaid Act's Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") and reasonable promptness provisions and that Plaintiffs' claims were not barred by any statute of limitations. (Order Den. Def's Partial Mot. Dismiss., ECF No. 39.) The Parties exchanged initial disclosures.

Plaintiffs sent Defendant a proposed settlement term sheet on January 27, 2023. On June 27, 2023, the Parties filed a joint motion requesting that the Court approve court-sponsored mediation and stay proceedings for three months pending settlement discussions. (Joint Mot., ECF No. 47.) The Court approved this request on June 29, 2023 and ordered an initial settlement conference for August 11, 2023. (Order Grant. In Part Mot. Settlement Conf. and Stay Proceed.,

ECF No. 49; Order Sch. Settlement Conf., ECF No. 50.) Between August 11 and September 15, the Parties engaged in settlement negotiations mediated by the Honorable Judge Walters. The Parties have now reached consensus on the terms of an Interim Agreement.

The Interim Agreement, while not a final settlement, establishes a process and timeline for the Parties to reach a final agreement. The Interim Agreement establishes a schedule for the Parties to meet and confer, no less than monthly, to exchange information relating to the status of DHHS's efforts under the Interim Agreement and to work towards a final settlement. (Interim Settlement Agreement, Ex. A at 2.) The Parties' contemplate that the terms of the final agreement will be developed through the planning process set forth under the Interim Agreement, which additionally sets out other parameters related to the final settlement. (Ex. A at 7-8.) The Parties have also agreed to a class definition, as described below. (Ex. A at 6.)

A core component of the Interim Agreement is that it requires DHHS to undertake a planning process to ensure members of the putative class receive the intensive home and community-based mental health services described in the Complaint and to ensure such services are provided in the least restrictive setting appropriate to Plaintiffs' needs. (Ex. A at 1-2.) As part of this planning process, DHHS must gather important baseline data about the current deficiencies in provision of the relevant services, make data and information regarding such services publicly-available, and develop a continuous quality improvement system to improve the quality of care, transparency, and accountability to members of the putative class and their families. (Ex. A at 2-5.)

Finally, the Interim Agreement sets out additional structural requirements, including a dispute resolution process. (Ex. A at 8.) The Agreement contemplates that the Parties will file a joint motion with the Court, asking that the Interim Agreement be entered as an enforceable order

of the Court, and that all other case deadlines be stayed until July 1, 2024, during the pendency of the Interim Agreement. (Ex. A at 6.)

II. The Court Should Approve the Parties' Interim Settlement Agreement

The Interim Agreement is in the best interests of both Parties and should be approved. Negotiations were conducted at arms-length and mediated by the Honorable Judge Walters. The Interim Agreement provides immediate benefits to the Named Plaintiffs and putative class members, and paves the way for the Parties to reach a final settlement.

As part of the Interim Agreement, DHHS agrees to undertake immediate steps that benefit the Named Plaintiffs and putative class members. Those immediate steps are discussed above, and include developing a plan to provide the relevant services, engaging in data collection, publicly providing data and information regarding the relevant services, and engaging in quality assurance processes. (Ex. A at 2-5.)

In addition, the Interim Agreement provides a process for the Parties to reach a final agreement. It outlines important steps that must be taken and sets forth strict timelines and processes whereby the Parties will collaboratively develop the necessary remedial plans and reach agreement on the substance of a final settlement. Achieving such a negotiated settlement will significantly reduce the time, risk, and cost associated with litigation and will, far more expeditiously, put in place practices and policies to ensure that Plaintiff children receive the mental health services they need and to which they are statutorily entitled.

Finally, under the terms of the Interim Agreement, the Parties have reached consensus on a class definition and seek certification of the class. *See* discussion *infra* Section III. Even if the Parties are ultimately unable to reach agreement on a final settlement, entry of the class definition benefits the Plaintiff children and provides the Defendant certainty regarding the scope of the

agreement, the claims, and the contemplated remedies. Adoption of the class definition will significantly reduce the costs associated with litigation, should the Parties ultimately have to return to discovery and litigation.

Interim agreements similar to the one currently contemplated by the Parties have been approved by courts in similar cases and have successfully led to final agreements in those cases. In *T.R. v. Dreyfus*, for example, the court approved an interim agreement to "establish the infrastructure and necessary collaboration towards the readiness to provide intensive home and community-based mental health treatment and supports" to class members. Interim Agreement and Proposed Order, *T.R. v. Dreyfus*, 2:09-cv-01677-TSZ (W.D. Wash.), ECF No. 99-1 ¶ 1. This collaborative process successfully paved the way for the parties to reach a final negotiated agreement in that case. *See* Order Grant. Joint Mot. Final Approval Class Action Settlement Agreement, *T.R. v. Dreyfus*, 2:09-cv-01677-TSZ, ECF No. 137. *See also* Katie *A. v. Bonta*, 2:02-cv-05662-JAK-FFM (C.D. Cal.).

Class members will suffer no prejudice as a result of the entry of this agreement. The Interim Agreement is not a final settlement of the claims that binds the class or raises due process concerns. *See* Fed. R. Civ. P. 23(e). Nothing in the Interim Agreement limits the ability of any individual Plaintiff or putative class member to pursue any legal or administrative remedies during the pendency of the case. (Ex. A at 7.) Because the Interim Agreement is not a final settlement and does not bind the members of the class, the Parties believe that notice to the class and a hearing on this proposed order are not required under Federal Rule of Civil Procedure 23 prior to entry of an Order regarding enforcement of this Interim Agreement. *See Alexander v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO*, 565 F.2d 1364, 1374 (6th Cir. 1977), *cert. denied*, 436 U.S. 946 (1978) (prejudgment notice not required for Rule 23(b)(2) class actions)

(collecting cases). Should the Court determine that notice to the broader class is required, the Parties will provide said notice as directed by the Court.

III. The Court Should Certify the Class As Defined in The Interim Agreement

Pursuant to the Federal Rules of Civil Procedure 23(a) and 23(b)(2), the Parties jointly move the court for certification of a class defined as follows:

> All Medicaid-eligible children in the State of Iowa under the age of twenty-one, (i) who have been determined by a licensed practitioner of the healing arts as having a serious emotional disturbance, not attributable to an intellectual or developmental disability, and (ii) for whom there is an assessment that intensive home and community-based services are needed to correct or ameliorate their condition.

Rule 23 gives courts broad discretion to determine whether a class should be certified. *Prof'l Firefighters Ass'n of Omaha, Local 385 v. Zalewski*, 678 F.3d 640, 645 (8th Cir. 2012). To obtain class certification, the putative class must satisfy all four prerequisites of Federal Rule of Civil Procedure 23(a) and, if that is met, must fall within one of the three categories set forth in Rule 23(b). *Postawko v. Missouri Dep't of Corr*., 16-cv-04219, 2017 WL 3185155 (W.D. Mo. July 26, 2017), *aff'd*, 910 F.3d 1030, 1036. Rule 23(a) requires demonstrating that 1) the class is "so numerous that joinder of all members is impracticable," 2) "there are questions of law or fact common to the class," 3) "the claims . . . of the representative parties are typical of the claims . . . of the class," and 4) "the representative parties will fairly and adequately protect the interests of the class."

For the reasons set forth below, the stipulated class definition satisfies the requirements of Rule 23(a) and Rule 23(b)(2) and, therefore, the class should be certified.

First, the class is sufficiently numerous to make joinder impracticable. Fed. R. Civ. P. Rule 23(a)(1). At a minimum, there are approximately 13,000 children in the defined class. (Compl., ECF No. 1 at 42.) Recent data from DHHS's public data dashboard indicates that as of the third

quarter of state fiscal year (SFY) 2023, there were 58,903 Medicaid eligible children determined to have an SED.[1]

Second, there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). These questions include: whether Defendant's alleged failure to ensure that medically necessary intensive home and community-based services are available, and the resulting risk that class members will be unable to obtain such services or to obtain such services with reasonable promptness, violates the Medicaid Act; whether Defendant's alleged failure to implement adequate policies and practices to reasonably monitor and ensure that class members are able to obtain intensive home and community-based services, and to receive them promptly, violates the Medicaid Act; whether Defendant's alleged failure to make available intensive home and community-based services to members of the class in the most integrated setting appropriate to their needs, thereby segregating members of the class or placing them at risk of institutionalization and lack of community integration, violates the ADA and the Rehabilitation Act; and whether Defendant's methods of administering their mental and behavioral health system violate the class members' rights under the ADA and the Rehabilitation Act. (Compl., ECF No. 1 at 45-46-50.) It is not necessary that "every question of law or fact be common to every member of the class." *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 561 (8th Cir. 1982); *see also Huyer v. Wells Fargo & Co.*, 295 F.R.D. 332, 337 (S.D. Iowa 2013). All that is required is "a single common question." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011). Such common questions arise from class-wide policies and practices, which serve as "the 'glue' that holds together the putative class." *Postawko* 2017 WL 3185155 at *7; *Murphy v. Piper*, No. CV 16-2623 (DWF/BRT), 2017 WL 4355970, at *8 (D. Minn. Sept. 29, 2017) (state Medicaid agency's "oversight authority and

[1] Iowa Department of Health and Human Services, Iowa Medicaid Dashboard, *available at* https://hhs.iowa.gov/Iowa-Medicaid-dashboard (last accessed 9/27/2023).

responsibility" for administering disability services provided common questions sufficient for Rule 23(a)(2)).

Third, Plaintiffs' claims are typical of those of class members; Rule 23(a)(3)'s typicality requirement is therefore satisfied. Fed. R. Civ. P. Rule 23(a)(3). This requirement is "fairly easily met so long as other class members have claims similar to the named plaintiff[s]." *Postawko*, 910 F.3d at 1039 (internal quotation marks and citation omitted). Here, the Named Plaintiffs and putative class members have alleged the same injury (failure to receive medically necessary home and community-based services or to receive such services timely, and failure to be receive such services in the most integrated setting appropriate to meet their needs), and such injuries are based on the same alleged government practice (the alleged systematic failure by Defendant to ensure children receive the medical services to which they are statutorily entitled). The remedies sought by the Named Plaintiffs are also the same remedies that would benefit the class: that Defendant act to cure ongoing violations of law by providing or arranging for sufficient intensive home and community-based services to correct or ameliorate the mental health conditions of Plaintiff children. (Compl., ECF No. 1 at 46-47.)

Fourth, the Named Plaintiffs and Plaintiffs' counsel will adequately represent the interests of the class. Fed. R. Civ. P. Rule 23(a)(4). There are no conflicts between the Named Plaintiffs and members of the class. *See Murphy*, 2017 WL 4355970, at *13; (Compl., ECF No. 1 at 47.) Putative class counsel are four highly experienced firms, who have extensive experience in litigating civil rights and class action lawsuits, including suits on behalf of children and individuals with mental and behavioral health conditions and disabilities. (Compl., ECF No. 1 at 47.)

Finally, Rule 23(b)(2)'s requirement that class members seek uniform injunctive or declaratory relief from policies or practices generally applicable to the class as a whole are met

here. Fed. R. Civ. P. Rule 23(b)(2). Plaintiffs do not seek individualized relief, but rather systemic changes to Defendant's policies and practices to ensure the provision of medically necessary services to all members of the putative class. The Interim Agreement contemplates such system changes "that would respond to the alleged harm on a uniform, generally applicable basis." *Postawko*, 910 F.3d at 1040.

In light of the above, and the parties stipulated agreement that the case should proceed as a class action under the definition described, the Parties jointly move the court to certify the class.

IV. The Parties Jointly Request to Extend the Litigation Stay and Amend the Scheduling Order

The Parties jointly move this Court to extend the litigation stay until July 1, 2024, to strike the trial dates, and to amend the Scheduling Order accordingly. Such an extension will allow the Parties to engage in their agreed upon process to reach a final agreement.

As discussed above, the Interim Agreement significantly increases the Parties' likelihood of reaching a final settlement agreement that resolves this litigation and establishes reforms addressing the Plaintiff children's claims. It is thus also in the best interest of both Parties.

Staying discovery deadlines will not prejudice the Parties' ability to receive information important to settling Plaintiffs' claims. Although the Interim Agreement proposes to stay formal discovery, it explicitly contemplates an ongoing informal exchange of information. The Parties have an obligation under the Agreement to exchange information related and necessary to the implementation of the Interim Agreement. Indeed, a key purpose of the Interim Agreement is the joint pursuit of data and information needed to understand the scope of the current problems in DHHS mental health care delivery and to determine a sufficient and effective remedy.

This Court will also have ongoing involvement and oversight of the case pending the entry of any final agreement. The Parties have proposed a schedule that requires quarterly joint status

reports to the Court describing the status of work conducted pursuant to the Interim Agreement and progress towards achieving a final settlement agreement. (Ex. A at 6.) In the event no final settlement is reached by July 1, 2024, the Interim Agreement expressly contemplates that litigation activities shall resume, unless the Parties mutually agree to extend the stay and such an extension is approved by the Court. (Ex. A at 6.)

V. Conclusion

For the reasons stated above, the Parties respectfully request that this Court: (1) enter the Interim Settlement Agreement as an enforceable Order of the Court; (2) certify the Parties' class definition; (3) extend the stay of the litigation; and (4) amend the Scheduling Order accordingly.

DATED: Oct. 2, 2023

Respectfully Submitted,

DISABILITY RIGHTS IOWA

/s/ Catherine Johnson
Catherine Johnson
Cynthia A. Miller
Disability Rights Iowa
666 Walnut Street, Suite 1440
Des Moines, IA 50309
(515) 278-2502
cmiller@driowa.org
cjohnson@driowa.org

CHILDREN'S RIGHTS
/s/ Harry Frischer
Harry Frischer*
Madeleine M. Kinney*
Stephanie Persson*
Aarti Iyer*
Jessica Zou*
88 Pine Street, Suite 800

BRENNA BIRD
Attorney General of Iowa

/s/ Stan Thompson
Stan Thompson
Deputy Attorney General
Department of Justice
Hoover State Office Building, 2nd Floor
1305 E. Walnut Street
Des Moines, IA 50319
Ph: (515) 281-4951 / 725-5390
Fax: (515) 281-4902
stan.thompson@ag.iowa.gov

ATTORNEYS FOR DEFENDANT

New York, New York 10005
(212) 683-2210
hfrischer@childrensrights.org
mkinney@childrensrights.org
spersson@childrensrights.org
aiyer@childrensrights.org
jzou@childrensrights.org

NATIONAL HEALTH LAW PROGRAM

/s/ M. Geron Gadd
M. Geron Gadd*
Arielle Linsey*
1512 E. Franklin Street, Suite 110
Chapel Hill, NC 27514
(984) 278-7660
gadd@healthlaw.org
linsey@healthlaw.org

Kimberly Lewis*
3701 Wilshire Blvd., Suite 750
Los Angeles, CA 90010
(310) 204-6010
lewis@healthlaw.org

ROPES & GRAY LLP

/s/ *Timothy R. Farrell*
Timothy R. Farrell*
ROPES & GRAY LLP
191 North Wacker Drive, 32nd Floor
Chicago, IL 60606
(312) 845-1209
timothy.farrell@ropesgray.com

***** admitted *pro hac vice*

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically with the Clerk of Court on October 2, 2023 to be served by operation of the Court's electronic filing system upon all parties.

*/s/ Cynthia A. Miller*_______

Cynthia A. Miller
Disability Rights Iowa
666 Walnut St., 1440
Des Moines, IA 50309
(515) 278-2502
cmiller@driowa.org