

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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**ROBERT EAGER; DORA OATS,  
through her next friend, Crystal Oats, TERRELL  
KING; GEORGETTE KRAFT through her husband  
and next friend, Roy Kraft; DENNIS LOWE, through  
his guardian, Etta Dahlen; EVELYN G. WRIGHT  
through her son and next friend, Paul Mayzes;  
MICHIGAN DISABILITY RIGHTS COALITION;  
MICHIGAN ASSOCIATION OF CENTERS FOR  
INDEPENDENT LIVING; MICHIGAN CAMPAIGN  
FOR QUALITY CARE; and GRAND RAPIDS  
CENTER FOR INDEPENDENT LIVING,**

CASE NO. 1:02-CV-44  
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HON.  
DAVID W. MCKEAGUE

**Plaintiffs,**

**v.**

**JENNIFER GRANHOLM, in her official capacity  
as Governor of the State of Michigan, and JANET  
OLSZEWSKI in her official capacity as Director  
of the Michigan Department of Community Health,<sup>1</sup>**

**Defendants.**

Mark A. Cody (P42695)  
Michigan Protection & Advocacy Service, Inc.  
4095 Legacy Parkway, Suite 500  
Lansing, MI 48911  
(517) 487-1755  
Attorney for Plaintiffs

Erica Weiss Marsden (P25911)  
Michigan Department of Attorney General  
Social Services Division  
P.O. Box 30037  
Lansing, MI 48909  
(517) 373-7700  
Attorney for Defendants

Alison E. Hirschel (P57623)  
Michigan Poverty Law Program  
611 Church Street, Suite 4A  
Ann Arbor, MI 48104  
(734) 998-6100  
Attorney for Plaintiffs

<sup>1</sup> Pursuant to F.R.Civ. P. 25(d)(1), upon assuming the duties of Governor on January 1, 2003, Governor Granholm was automatically substituted for former defendant Governor Engler. Upon assuming office as the Director of the Michigan Department of Community Health, Janet Olszewski was automatically substituted for former defendant James K. Haveman.

Abraham Singer (P23601)  
Pepper Hamilton, LLP  
100 Renaissance Ctr, Floor 36  
Detroit, MI 48243  
(313) 393-7382  
Attorney for Plaintiffs

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### **STIPULATION FOR SETTLEMENT**

Now come the parties, by and through their respective attorneys, and hereby stipulate as follows:

#### **I. Introduction**

1. The individual named plaintiffs, Robert Eager; Dora Oats, through her next friend Crystal Oats; Terrell King; Georgette Kraft, through her husband and next friend Roy Kraft; Dennis Lowe, through his guardian, Etta Dahlen;<sup>2</sup> and Evelyn Wright, through her son and next friend, Paul Mayzes<sup>3</sup>, and the organizational plaintiffs, Michigan Disability Rights Coalition, Michigan Association of Centers for Independent Living, Michigan Campaign for Quality Care, and Grand Rapids Center for Independent Living<sup>4</sup> and Defendants Jennifer Granholm, in her official capacity as Governor of the State of Michigan,<sup>5</sup> and Janet Olszewski,<sup>6</sup> in her official capacity as Director of the Michigan Department of Community Health, enter into this Stipulation for Settlement (hereinafter “this Stipulation”). The parties will present this Stipulation to the Court for its approval and entry of an order incorporating the terms of the Stipulation.

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<sup>2</sup> On June 18, 2003, Etta Dahlen, sister of plaintiff Dennis Lowe, was appointed to succeed John Munger as Mr. Lowe’s guardian by the Oakland County Probate Court.

<sup>3</sup> Howard Hugger, one of the original individual plaintiffs in this litigation, died on August 1, 2002.

<sup>4</sup> Great Lakes Center for Independent Living, one of the original organizational plaintiffs in this litigation, closed and dissolved on April 11, 2003.

<sup>5</sup> See note 1, *supra*.

<sup>6</sup> See note 1, *supra*.

## **II. Admission of the Named Plaintiffs to the MI Choice Program**

2. As of the date of the signing of this Stipulation, each of the named Plaintiffs has been assessed by a local waiver provider and found eligible for services under the MI Choice program or is being assessed. For some named Plaintiffs, plans of care have already been developed and implemented. For other named Plaintiffs, the parties anticipate plans of care will be developed and implemented. In signing this Stipulation, Plaintiffs do not waive any rights or remedies that would otherwise be available to them with respect to their eligibility for services under the MI Choice program or their receipt of services in the program.

## **III. Definitions**

As used herein, the following terms are to be given the meanings set forth below:

3. “Centers for Medicare and Medicaid Services (CMS)” is the branch of the United States Department of Health and Human Services charged with the responsibility of the oversight and administration of Medicaid programs, including home and community based waiver programs.
4. “Transition Services” are one-time, set-up expenses that may be paid for by the State and which are incurred to assist an individual in moving from a nursing facility to a home or apartment in the community. Examples of transition services that the Department could choose to provide as authorized waiver services include, but are not limited to:
  - a. Security deposits that are required to obtain a lease on an apartment or home;
  - b. Essential furnishings and moving expenses required to occupy and use a community domicile;
  - c. Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating);
  - d. Health and safety assurances, such as pest eradication, allergen control or one-

time cleaning prior to occupancy;

- e. Purchase of durable medical equipment.
- f. Case management for coordination and planning of transition services.

5. “Department” means the Michigan Department of Community Health (MDCH) or its successor agency. The Medical Services Administration within MDCH has been designated as the single state agency responsible for administering the Michigan Medicaid Program, pursuant to 42 U.S.C. § 1396a.

6. “MI Choice Program” means those home and community based services for the elderly and disabled as well as the administrative and programmatic activities of the state and its waiver agents which are provided by the State, under the authority of 42 U.S.C. § 1396n and M.C.L. 400.109c, or which may be required of the State pursuant to federal regulation, the terms and conditions of its waiver application, or other authority. As used in this Stipulation, reference to “MI Choice” also includes any amended or new waiver program for home and community based services for the elderly or disabled.

7. A “nursing facility” is the type of institution referred to in 42 U.S.C. § 1396r(a) and its implementing regulations.

8. “Waiver agents” are any and all entities approved by the Department to accept applications for MI Choice program services, assess applicants for MI Choice program services, and provide and/or arrange for MI Choice program services.

9. “Waiver slots” refers to the unduplicated number of individuals that may be served by Defendants through the MI Choice waiver program in a waiver contract year, in accordance with the authority granted to the Michigan Department of Community Health by the Centers for Medicare and Medicaid Services.

#### **IV. Waiver Slots for FY03**

10. Pursuant to agreement of the parties, MDCH opened MI Choice enrollment to approximately 1745 new participants during FY 03. The division of Waiver slots among Waiver Agents, reimbursement for Waiver services, and other details pertaining to the operation of the program was substantially similar to the manner in which the program operated prior to such agreement and in conformity with the State's representations in the waiver application recently approved by CMS.

#### **V. Waiver Funding for FY04**

11. Defendants shall allocate to waiver agents not less than \$100 million for the MI Choice waiver for FY 2003-2004. MDCH shall in good faith seek legislative approval and approval from CMS to convert certain expenditures to personal care expenditures. In the event that the necessary approvals are obtained, Defendants shall allocate to waiver agents for the MI Choice waiver for FY 2003-2004 not less than \$100 million plus the additional funds generated by this conversion. Such conversion is anticipated to make an additional \$25 million available for the MI Choice program. Defendants shall also make a good faith effort to increase the MI Choice waiver budget by an additional \$25 million through reallocation of funds from other long term care (LTC) services. Nothing in this Stipulation shall prohibit or discourage Defendants from allocating funds in excess of \$150 million for the MI Choice program in FY04.

#### **VI. Public Information, Training, and Education**

12. a. Within six months, MDCH shall develop and distribute public information and educational materials about long term care options to consumers, families, providers, and other interested parties. These materials will include information about long-term care services including, in particular, the MI Choice program, eligibility requirements, and application

processes. In addition, they will include contact information for a variety of provider and advocacy groups (e.g., the Long Term Care Ombudsman, centers for independent living, area agencies on aging, etc.).

These materials will be distributed widely with a one-time mailing to current Medicaid funded LTC consumers and to all Medicaid-enrolled providers. Thereafter, these materials or similar materials as updated will be mailed or provided to consumers upon completion of an application to the Family Independence Agency for Medicaid funded long term- care. In addition, materials will be available on an on-going basis as with other MDCH publications. In addition, the content will be posted and available on the MDCH Long Term Care website and MiSeniors.net.

b. Within nine months, MDCH will develop and implement a process to ensure informed choice for beneficiaries who meet nursing facility level of care. This process will be promulgated as policy and incorporated into the program requirements for nursing facility and MI Choice waiver providers. The process will require providers to educate consumers about long term care options, including distribution of MDCH developed educational materials. A specific MDCH form will be developed that will require an attestation by the hospital discharge planner, provider or other professional assisting the applicant and an acknowledgment by the applicant or his/her representative that long term care options were fully described and discussed, including the MI Choice program.

c. Implementation of an informed choice process will include training for hospital discharge planners, long term care ombudsman staff, long term care providers, and other interested parties regarding informed consent and long term care options including, in particular, the MI Choice program. The initial training shall take place within nine months after the Court's

approval of this Stipulation. Follow-up training will be provided annually.

d. Defendants shall provide to counsel for plaintiffs draft copies of all documents, materials, forms, etc. required to implement the provisions of this paragraph and afford counsel reasonable opportunity to comment.

#### **VII. Uniform Medical/Functional Eligibility Criteria**

13. MDCH will utilize the identical functional/medical eligibility criteria for both applicants to the MI Choice Waiver program and applicants for Medicaid-funded nursing facility care, both under the current waiver and under any new or amended waiver submitted to CMS in accordance with this Stipulation. Within 9 months of the date of this Agreement, MDCH intends to submit to CMS its application for a new and/or amended home and community based waiver for the elderly and disabled. Through this application and a concurrent proposed state plan amendment, MDCH intends to request approval to alter the current eligibility criteria for long term care, including home and community based waiver services and nursing facility care. MDCH will publish the proposed eligibility criteria as a Medicaid Proposed Policy concurrent with the submission of the application to CMS and seek public input before implementation. Concurrent with implementation of its new or amended waiver program, MDCH shall implement a checklist that will be used by waiver agents and nursing facility providers to document the basis for each medical eligibility or ineligibility determination. The completed checklist for each client shall be maintained by the respective provider. If a client is determined to be medically ineligible for admission into either the waiver program or the nursing facility, the client shall be sent a written notice informing the client of his or her available appeal rights. The development of new eligibility criteria for Medicaid-funded long term care is not required by this Stipulation, nor are Plaintiffs requesting that MDCH take this action.

### **VIII. Contact Logs and Waiting Lists**

14. Within one month of approval by the Court of this Stipulation, and until a waiting list procedure is approved by CMS, DCH shall instruct waiver agents to maintain a log of individuals who request to participate in the waiver program. The log may be used to provide information to those who have indicated an interest in participating in the program as well as to provide information to waiver agents and DCH about the numbers and/or characteristics of those who have expressed an interest in the program. Within 9 months of the date of the Court's approval of this Stipulation, MDCH shall develop, and submit to CMS for approval, procedures for creating and utilizing waiting lists and shall implement such procedures upon approval by CMS.

### **IX. Transition Services**

15. DCH shall make a good faith effort to seek and use funding focused on helping individuals transition from nursing facilities into available community-based settings. Subject to the availability of funds, DCH shall consider requesting an amendment to the MI Choice waiver to include transition services as a covered service.

### **X. Medicaid Long Term Care Task Force**

16. Within two months of approval by the Court of this Stipulation, the Governor shall create a Medicaid Long Term Care Task Force to assist the State of Michigan in developing options for expanding the availability of home and community-based long-term care services and for improving long term care services. The task force shall include representatives of state agencies, providers, legislators or their representatives, advocates and consumers. The charge of the task force shall include, but not be limited to, promoting a full array of community based care options for Michigan citizens in need of long term care, identifying barriers to the creation of and access



to an efficient and effective system of community based care, and to make recommendations to the Governor and the Legislature. The task force shall consist of 21 members: seven each from consumers and consumer advocacy groups, provider groups, and governmental/legislative entities. The Task Force may create subcommittees as needed and appoint additional individuals to serve on such subcommittees if deemed appropriate by the Task Force. The Task Force shall deliver an interim report to the Governor and to the Chairs of the House and Senate Subcommittees on Appropriations for the Michigan Department of Community Health within six months of the formation of the Task Force, and a final report within a year of the formation of the Task Force unless the Governor chooses to extend the deadlines, duties and/or period of service of the Task Force.

#### **XI. Miscellaneous**

17. This Stipulation is the entire agreement among the parties with respect to the subject matter hereof and supersedes any and all prior oral and written discussions and all agreements. Each party represents that it has not relied upon any statement of the other party except those statements set forth in this Stipulation.

18. By mutual agreement, the parties may change the terms of this Stipulation, including, but not limited to, the timetables for taking specific actions, provided that such mutual agreement be memorialized in writing and signed by the parties and approved by the Court. In the event that one party disagrees as to the appropriateness of any change proposed by the other party, the parties shall meet to attempt to resolve such dispute. Should the parties fail to reach agreement, either party may file appropriate motions with the Court.

19. Plaintiffs agree that they will notify Defendants in writing of any alleged non-compliance with the Stipulation and request a meeting for the purpose of attempting to resolve the problem

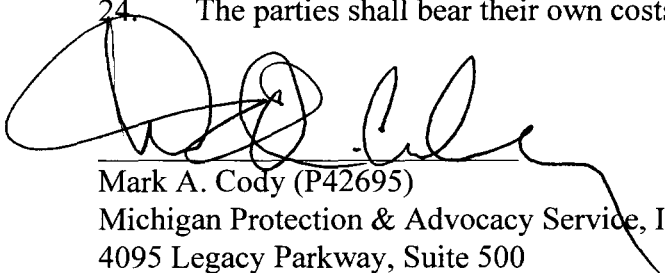
or problems identified by the Plaintiffs regarding the alleged non-compliance.

20. Should the parties fail to resolve the problems identified by the Plaintiffs, or should there be dispute as to any item contemplated by this Stipulation or the failure of Defendants to comply with the provisions of Stipulation, Plaintiffs may file a motion with the court seeking a judicial determination that Defendants are in substantial non-compliance.


22. By entering into and complying with this Stipulation, no party makes any concession as to the merits of the opposing party's claims or defenses.

23. The Court shall retain continuing jurisdiction of this case for the purpose of enforcing the terms of this Stipulation.

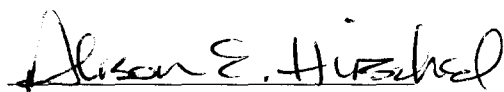
24. The parties shall bear their own costs and attorneys fee.



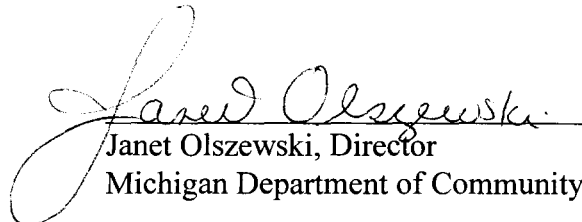
Mark A. Cody (P42695)  
Michigan Protection & Advocacy Service, Inc  
4095 Legacy Parkway, Suite 500  
Lansing, MI 48911  
Attorney for Plaintiffs



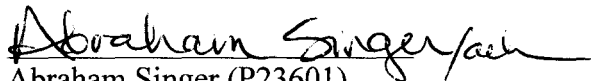
Erica Weiss Marsden (P25911)  
Michigan Department of Attorney General  
Social Services Division  
P.O. Box 30037



Alison E. Hirschel (P57623)  
Michigan Poverty Law Program  
611 Church Street, Suite 4A  
Ann Arbor, MI 48104  
Attorney for Plaintiffs



Janet Olszewski, Director  
Michigan Department of Community Health



Abraham Singer (P23601)  
Pepper Hamilton, LLP  
100 Renaissance Ctr, Floor 36  
Detroit, MI 48243  
Attorney for Plaintiffs