

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOAN BZDAWKA, et al.,

Plaintiffs,

v.

Case No. 04-C-0193

MILWAUKEE COUNTY, et al.,

Defendants.

JOINT MOTION FOR PRELIMINARY AND FINAL APPROVAL OF
THE SETTLEMENT AGREEMENT, AND FOR AN ORDER DIRECTING
DISTRIBUTION OF NOTICE OF PROPOSED SETTLEMENT AGREEMENT
AND SCHEDULING FAIRNESS HEARING

The parties have reached a Settlement Agreement, attached hereto as Exhibit A, and jointly move the Court for approval pursuant to Fed. R. Civ. P. 23(e). The parties submit herewith their Joint Memorandum in Support of the Joint Motion for Preliminary and Final Approval of the Settlement Agreement, and for an Order Directing Distribution of Notice of Proposed Settlement Agreement and Scheduling Fairness Hearing. By September 25, 2007, in further support of this Joint Motion, the parties also will submit their individual substantive memoranda in support of approval of the Settlement Agreement.

Pursuant to Fed. R. Civ. P. Rule 23(e) and *Armstrong v. Board of Sch. Directors*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other gds. by Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998), the parties also jointly move the Court to enter an immediate order finding that the proposed Settlement Agreement is within the range of possible approval and that there is good reason to notify the class members of the

proposed Settlement Agreement; approving the contents of the Notice of Proposed Settlement Agreement (the "Notice"), attached hereto as Exhibit B; approving the Proposed Plan for Distribution of Notice of Proposed Settlement Agreement (the "Plan"), attached hereto as Exhibit C; directing distribution of the Notice as set forth in the Plan; and scheduling a fairness hearing on October 19, 2007, at 1:30 p.m., to determine whether the proposed settlement is fair, reasonable, and adequate.

FOR PLAINTIFFS:

Date: 8/13/2007

s/Robert Theine Pledl
ROBERT THEINE PLEDL
State Bar #1007710

Pledl Law Office
1110 North Old World Third Street, Suite 670
Milwaukee, WI 53203
Fax: (414) 224-0811
Telephone: (414) 225-8999
Email: pled1@sbcglobal.net

Date: 8/13/2007

s/Sarah Jane Somers
SARAH JANE SOMERS
North Carolina State Bar #33165

Date: 8/13/2007

s/Martha Jane Perkins
MARTHA JANE PERKINS
North Carolina State Bar #9993

National Health Law Program, Inc.
211 North Columbia Street
Chapel Hill, NC 27514
Fax: (919) 968-8855
Telephone: (919) 968-6771
Email: somers@healthlaw.org
Email: perkins@healthlaw.org

Attorneys for Plaintiffs

FOR COUNTY DEFENDANTS:

Date: 8/14/2007

Milwaukee County Courthouse
901 North 9th Street, #303
Milwaukee, WI 53233
Fax: (414) 223-1249
Telephone: (414) 278-4302
Email: jjorgensen@milwcnty.com

s/John Jorgensen
JOHN JORGENSEN
Principal Assistant Corporation Counsel
State Bar #1017484

Attorney for Defendant Milwaukee
County

FOR STATE DEFENDANTS:

Date: 8/14/2007

s/Maureen McGlynn Flanagan
MAUREEN MCGLYNN FLANAGAN
Assistant Attorney General
State Bar #1013639

Date: 8/14/2007

s/Mary E. Burke
MARY E. BURKE
Assistant Attorney General
State Bar #1015694

Date: 8/14/2007

s/David Dudley
DAVID DUDLEY
Assistant Attorney General
State Bar #1062812

Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
Fax: (608) 267-2223
Telephone: (608) 266-1780 (Flanagan)
Email: flanaganmm@doj.state.wi.us
Telephone: (608) 266-0323 (Burke)
Email: burkeme@doj.state.wi.us
Telephone: (608) 266-3076 (Dudley)
Email: dudleydd@doj.state.wi.us

Attorneys for Defendants
Wisconsin Department of Health
and Family Services and Kevin
Hayden

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOAN BZDAWKA,
SANDRA ERLICHMAN AND
MARILYN BERDIKOFF,

CLASS ACTION

Plaintiffs,

v.

MILWAUKEE COUNTY,
WISCONSIN DEPARTMENT OF
HEALTH AND FAMILY SERVICES,
AND KEVIN HAYDEN, Secretary for
Wisconsin Department of Health and
Family Services,

CIVIL ACTION
NO. 04-C-0193

Defendants.

SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs initiated this lawsuit by complaint filed January 28, 2004, in Milwaukee County Circuit Court Case No. 04-CV-0862 seeking declaratory and injunctive relief against Milwaukee County (the "County Defendants"); and

WHEREAS, the County Defendants removed Milwaukee County Circuit Court Case No. 04-CV-0862 to federal court by notice of removal filed February 25, 2004; and

WHEREAS, Plaintiffs joined the Wisconsin Department of Health and Family Services ("DHFS") and the predecessor of Wisconsin Department of Health and Family Services Secretary Kevin Hayden (collectively, the "State Defendants" and, together with the County Defendants, "Defendants") to this lawsuit by amended complaint filed April 13, 2004; and

WHEREAS, Plaintiffs subsequently sought and obtained permission to file their second amended complaint (filed April 30, 2004), third amended complaint (filed August 19, 2004), and fourth amended complaint (filed March 30, 2005); and

WHEREAS, the Court, in a Decision and Order filed February 7, 2006, has partially granted and partially denied the Defendants' motions to dismiss and, in an Order filed April 5, 2006, has denied the State Defendants' motion to certify the Court's February 7, 2006, ruling to include certification to pursue an interlocutory appeal; and

EXHIBIT A

WHEREAS, as a result of the Court's prior rulings and amendments to the pleadings by the parties, this now is an action for prospective declaratory and injunctive relief under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, based on claims of discrimination on the basis of disability in the delivery of Family Care services; and

WHEREAS, Family Care is a federally-approved Wisconsin Medical Assistance ("MA") dual waiver program designed to deliver home and community-based services, rather than only nursing home care, to elderly and disabled persons who qualify for nursing home care via a managed care waiver, *see* 42 U.S.C. § 1396n(b) and (c); and

WHEREAS, the Court on October 13, 2006, certified a plaintiff class consisting of disabled Milwaukee County residents who are now, or will in the future, be eligible to reside in a Family Care-funded community-based residential facility ("CBRF") or adult family home ("AFH"); and

WHEREAS, all parties now want to resolve this controversy on mutually satisfactory terms by compromising disputed claims and terminating this protracted litigation;

NOW THEREFORE, in consideration of the undertakings set forth herein and intending to be legally bound thereby, it is stipulated and agreed to by the Plaintiffs, the County Defendants and the State Defendants, represented by their undersigned counsel, that all of Plaintiffs' claims for relief which were or could have been asserted in this action shall be fully resolved on the following terms as set forth in this Settlement Agreement.

I. COMMITMENTS OF THE COUNTY DEFENDANTS.

- A. The Milwaukee County Department on Aging ("MCDA") Care Management Organization ("CMO") will provide continuing education and training to care managers regarding when notices of intended adverse action must be sent pursuant to Wis. Admin. Code § HFS 10.52(3) and the 2007 Health and Community Supports Contract, at 53-55, by incorporating this information into the annual continuing education provided to care management staff. This information will be incorporated into the annual continuing education materials provided to care management staff no later than 120 days following Court approval of this Settlement Agreement.
- B. The MCDA CMO will make reasonable efforts to support enactment of that part of Governor Doyle's proposed 2007-09 budget that would provide funding for an independent advocacy program for Family Care participants.
- C. The MCDA CMO will expand its CBRF provider audit review process to include actual salary and wages, staff turnover rates, occupancy, and further details regarding

cost and wage structures, beginning with the calendar year 2007 year-end audit reviews that will occur in 2008 and also including the calendar year 2008 year-end audit reviews that will occur in 2009.

- D. No later than December 1, 2007, the MCDA CMO will refine its CBRF provider contracts to require providers to submit additional information to support the expanded audit review described in Section I.C.
- E. The MCDA CMO will conduct a bi-annual (every other year) review of audited financial statements and contracts provided by multifacility, corporate providers of 3-4 bed AFH services, including actual salary and wages, staff turnover rates, occupancy, and further details regarding cost and wage structures, for the calendar year 2008 year-end audit reviews that will occur in 2009.
- F. No later than December 1, 2007, the MCDA CMO will refine its provider contracts with multifacility, corporate providers of 3-4 bed AFH services to require those providers to submit additional information to support the audit review described in Section I.E.
- G. The MCDA CMO will consider as a relevant factor data from provider surveys released on March 26, 2007, in connection with quality performance and provider rate setting for 2008 rates. The MCDA CMO will retain its current discretion to establish the rate-setting methodology and negotiate provider rates, subject to the superintending authority of DHFS.
- H. The MCDA CMO will complete provider network adequacy reviews twice a year, beginning with one such review in calendar year 2007. The CMO will retain its current right to terminate contracts with providers whose costs are not competitive.
- I. In connection with provider rate-setting for calendar years 2008 and 2009, MCDA will provide contracted providers for CBRF, AFH and day services the factors taken into account in developing the rates offered those providers.
- J. In connection with provider rate setting for calendar years 2008 and 2009, MCDA will post on its website a summary of the factors taken into account in developing the rates offered subcontracted CBRF, AFH and day services providers.
- K. The MCDA CMO will initiate a formal process of soliciting input from CBRF, AFH and day services providers that will be considered to the extent it is relevant in future rate setting, in connection with provider rate setting for calendar years 2008 and 2009.
- L. The MCDA CMO will, at least once annually in calendar years 2007, 2008 and 2009, invite all Milwaukee County municipalities to provide input to address the issue of affordable CBRF, AFH and other housing for Milwaukee County Family Care

participants; identify impediments; and encourage the development of such housing throughout Milwaukee County.

- M. As part of its semi-annual review of provider network adequacy, as described in Section I.H. above, the MCDA CMO will conduct needs assessments of future Family Care participants and where they are living in Milwaukee County.
- N. The MCDA CMO will disseminate the results of its provider network adequacy reviews at least once annually in calendar years 2007, 2008 and 2009 to the development and/or land use planning departments of all Milwaukee County municipalities.
- O. No later than 120 days following Court approval of this Settlement Agreement, the MCDA CMO will collaborate with the MCDA Resource Center to make available to all nursing homes located in Milwaukee County materials explaining the alternate residential options available through the Family Care program and providing contact information for the Milwaukee County Aging Resource Center for persons who wish to discuss other options available to them.

II. COMMITMENTS OF THE STATE DEFENDANTS.

- A. No later than 60 days following expiration of the 30 day review and comment period described in Section II.B., DHFS will issue a contract interpretation memo reiterating that: (1) a Family Care participant, pursuant to Wis. Stat. § 46.287(2)(b), may contest the choice of residential or day services provider proposed by the CMO by pursuing Family Care grievance procedures or a fair hearing; and (2) that the standard to be applied in resolving any such disputes is whether the proposed plan would provide care, treatment or supports that are insufficient to meet the participant's needs or outcomes, or are provided in a setting that is unnecessarily restrictive or less integrated than is appropriate to the participant's needs. The contract interpretation memo will state the importance of following the notice procedures required by Wis. Admin. Code § HFS 10.52(3) and the 2007 Health and Community Supports Contract, at 53-55.
- B. No later than 120 days following Court approval of this Settlement Agreement, DHFS will provide a draft of the contract interpretation memo discussed in Section II.A., to Plaintiffs' counsel, the County Defendants' counsel, the Legal Aid Society of Milwaukee, Legal Action of Wisconsin and Disability Rights Wisconsin for review and comment before finalization. DHFS will accept written comments on the draft contract interpretation memo for a period of 30 days beginning on the date the draft contract interpretation memo is transmitted to the entities specified in this paragraph. The State Defendants will retain sole discretion to determine final content of the contract interpretation memo, and to provide drafts to any other person or organization for review and comment before finalization.

- C. Within 15 business days of issuance as described in Sections II.A. and B., DHFS will post the final contract interpretation memo on its Family Care website.
- D. No later than 60 days following expiration of the 30 day review and comment period described in Section II.E., DHFS will develop additional informational materials explaining the Resource Allocation Decision ("RAD") method used in the Family Care program to help participants identify personal outcomes after which a participant's care management team then works with the participant and/or the participant's authorized representatives to find the most cost-effective way of achieving those personal outcomes via a service plan that is both reasonable and effective. The RAD instructional materials will include an explanation that Family Care participants who enter CBRFs and AFHs are not and should not be automatically disqualified from participating in day programming services outside their residences, and that it is appropriate to use the RAD to determine whether the outcomes of individual Family Care participants who reside in CBRFs and AFHs can not be met without access to outside day programming services.
- E. No later than 120 days following Court approval of this Settlement Agreement, DHFS will provide a draft of the RAD informational materials discussed in Section II.D., to Plaintiffs' counsel, the County Defendants' counsel, the Legal Aid Society of Milwaukee, Legal Action of Wisconsin and Disability Rights Wisconsin for review and comment before finalization. DHFS will accept written comments on the draft RAD informational materials for a period of 30 days beginning on the date the draft RAD informational materials are transmitted to the entities specified in this paragraph. The State Defendants will retain sole discretion to determine final content of the RAD informational materials, and to provide drafts to any other person or organization for review and comment before finalization.
- F. Within 15 days of issuance as described in Sections II.D. and E., DHFS will post the final RAD informational materials discussed on its Family Care website.
- G. At the same time as the final RAD informational materials are posted on DHFS' Family Care website as described in Section II.F., DHFS also will provide the final RAD informational materials discussed in Sections II.D. and II.E. to Family Care grievance bodies (CMO Grievance and Appeal Hearing Boards or Committees, DHFS' contracted MetaStar review team, and DHFS' internal contract monitoring team) and Division of Hearings and Appeals administrative law judges assigned to conduct Family Care hearings.
- H. If the MCDA CMO's 2008 annual certification application to DHFS includes submission of any revised form notices required by Wis. Admin. Code § HFS 10.52(3)(b)7. and 8., DHFS will, before certifying the MCDA CMO for 2008, provide copies of any such revised form notices to Plaintiffs' counsel, the Legal Aid Society of Milwaukee, Legal Action of Wisconsin and Disability Rights Wisconsin for

review and comment. DHFS will allow Plaintiffs' counsel, the Legal Aid Society of Milwaukee, Legal Action of Wisconsin and Disability Rights Wisconsin a minimum time period of ten business days to submit comments on any revised form notices provided to them for review. The State Defendants will retain sole discretion to determine whether or not to certify the MCDA CMO for 2008, and to determine whether to require the MCDA CMO to make any changes in the MCDA CMO's revised form notices.

- I. If the independent advocacy program to be funded pursuant to Governor Doyle's 2007-09 budget proposal is established, DHFS will include in any contract or other document governing the independent advocacy program a requirement for semi-annual reporting by the entity operating the independent advocacy program of statistical information regarding referrals received by the independent advocacy program.
- J. If the independent advocacy program to be funded pursuant to Governor Doyle's 2007-09 budget proposal is established, DHFS will post statistical reports received within two years from the date the Court approves this Settlement Agreement from the independent advocacy program as described in Section II.I. on DHFS' Family Care website within fifteen business days of receipt by DHFS of those reports.
- K. No later than 120 days following Court approval of this Settlement Agreement, DHFS will amend its contract with its External Quality Review Organization, currently MetaStar, to require semi-annual statistical reporting regarding referrals to the state's appeals and grievances program, both at DHFS and at the Division of Hearings and Appeals; referral outcomes; requests for fair hearings; and fair hearings conducted beginning with the January – June 2008 reporting period.
- L. Within 30 days of receipt, for a period of two years beginning on the date the Court approves this Settlement Agreement, DHFS will post the statistical reports described in Section II.K. on the DHFS Family Care website.
- M. The State Defendants will continue to support creation of the independent advocacy program for Family Care participants for which Governor Doyle included funding in his proposed 2007-09 budget and will issue a request for proposals and take other necessary steps to implement the program promptly upon passage by the Legislature, if that funding is included in the 2007-09 budget as enacted.
- N. DHFS will work with the MCDA CMO to enhance openness of the MCDA/provider rate-setting process for rate years 2008 and 2009 by exploring alternate rate-setting methods for CBRF and AFH providers.
- O. No later than 90 days following Court approval of this Settlement Agreement, DHFS will provide information to CBRF and AFH members of the MCDA CMO's provider

network about locations on DHFS' Family Care web site of the webcast describing the capitated rate setting process and the Family Care actuarial rate reports describing rate development methodology.

- P. No later than 60 days following expiration of the review and comment period described in Section II.Q., DHFS will issue a contract interpretation memo reiterating the importance of appropriate and adequate pre-transfer planning so as to identify and minimize potential effects on a Family Care participant transferring from one residential setting to another.
- Q. No later than 120 days following Court approval of this Settlement Agreement, DHFS will provide a draft of the contract interpretation memo discussed in Section II.P., to Plaintiffs' counsel, the County Defendants' counsel, the Legal Aid Society of Milwaukee, Legal Action of Wisconsin and Disability Rights Wisconsin for review and comment before finalization. DHFS will accept written comments on the draft contract interpretation memo for 30 days commencing with the date the draft contract interpretation memo is transmitted to the entities specified in this paragraph. The State Defendants will retain sole discretion to determine final content of the contract interpretation memo, and to provide drafts to any other person or organization for review and comment before finalization.
- R. Within 15 days of issuance as described in Sections II.P. and Q., DHFS will post the final contract interpretation memo discussed in Sections II.P. and II.Q. on its Family Care website.
- S. DHFS will provide technical assistance to MCDA and its existing Placement Team in identifying and implementing additional practices to enhance planning for safe and effective residential moves for Family Care participants, and in assessing every move before it occurs to identify potential harmful effects on the participant and to develop strategies for minimizing those effects. DHFS will provide this technical assistance to MCDA and its existing Placement Team by preparing technical assistance materials and convening, no later than July 1, 2008, a meeting of DHFS and MCDA staff to discuss these materials and how MCDA is incorporating or might incorporate strategies identified in its practices.
- T. DHFS will assign DHFS developmental disabilities staff to conduct a one-time review of Milwaukee County Watts review¹ procedures and pursue any corrective action, to be determined by DHFS, as determined appropriate by DHFS in its sole discretion and enforceable only by DHFS in its sole discretion. The one-time review will commence no later than July 1, 2008.
- U. Within 30 days of completion of the final report for the review described in Section II.T., DHFS will provide plaintiffs' counsel with a copy of the final report.

¹*State ex rel. Watts v. Combined Comm. Svcs.*, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

- V. Within 30 days of finalization of any corrective action plan described in Section II.T, DHFS will provide plaintiffs' counsel with copies of any final corrective action plan.
- W. Within 30 days of receipt, DHFS will provide plaintiffs' counsel with copies of any compliance reports submitted by Milwaukee County for a period of two years following finalization of any corrective action plan implemented as a result of the one-time review of Milwaukee County Watts procedures discussed in Section II.T.
- X. No later than 120 days following Court approval of this Settlement Agreement, DHFS will amend the DHFS/MCDA Family Care contract to include language that MCDA will provide services in the most integrated level of residential setting consistent with the desired outcomes, preferences and identified needs of a participant, and that is cost-effective when compared to alternative services that could meet the same needs and achieve similar outcomes.
- Y. No later than 120 days following Court approval of this Settlement Agreement, DHFS will direct its External Quality Review Organization in writing to include in the care plan review process consideration of whether a Family Care participant would be more appropriately placed in a less restrictive/more integrated residence, and of whether the individual would prefer to move to a less restrictive/more integrated facility.

III. ENFORCEMENT.

- A. If Plaintiffs determine, based upon their good faith review of available evidence, that either the County Defendants or the State Defendants are out of compliance with any provision of this Agreement, Plaintiffs will notify all Defendants in writing accompanied by supporting documentation.
- B. The parties shall engage in a good faith negotiation to reach agreement within 30 days of the receipt by the Defendants of any documentation of alleged noncompliance and any necessary corrective actions, including a time period for implementation of such corrective actions, and shall make all reasonable efforts to reach agreement. This 30 day time period can be extended for any period of time by mutual agreement of all parties, or in the absence of agreement, can be extended once for one 30 day period by each party.
- C. If no agreement on the issue of noncompliance or necessary corrective action is reached within the timeframe established in Section III.B., the plaintiffs may file a remedial motion with the Court within 30 days after expiration of the timeframe established in Section III.B.

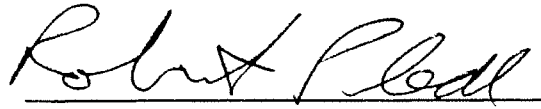
- D. The Court shall retain ultimate jurisdiction to enforce this Agreement until the termination date specified in Section IV.D.
- E. All of the provisions of this Agreement are separately and independently enforceable, except where the Agreement provides that an element or provision is not enforceable.

IV. MISCELLANEOUS.

- A. The parties agree that Family Care participants who enter CBRFs and AFHs are not and should not automatically be disqualified from participating in day programming services outside their residences. The parties further agree that it is appropriate to use the RAD to determine whether the outcomes of Family Care participants who reside in CBRFs and AFHs can not be met without access to outside day programming services.
- B. Time shall be computed under sections 990.001(4) and 801.15(1)(a) of the Wisconsin Statutes.
- C. Forthwith upon the Court's approval of the Settlement Agreement, Milwaukee County will cause to be transmitted to plaintiffs' attorneys the sum of Sixty-five Thousand Dollars (\$65,000.00) and the State of Wisconsin will cause to be transmitted to plaintiffs' attorneys the additional sum of Sixty-five Thousand Dollars (\$65,000.00) in full and final settlement of any and all claims plaintiffs may have for attorneys' fees and costs, including any costs incurred by plaintiffs for the services of expert witnesses, arising from this litigation through the date of the Court's order approving the Settlement Agreement following hearing pursuant to Fed. R. Civ. P. 23(e)(1)(C).
- D. Except for provisions of this Settlement Agreement for which some other compliance date or time period is specified, the provisions of this Settlement Agreement will terminate and cease to be enforceable on the date two years after the date of the Court's order approving the Settlement Agreement following hearing pursuant to Fed. R. Civ. P. 23(e)(1)(C).
- E. This Agreement is a full, final and complete compromise and settlement of claims, actual, doubtful or disputed, as to questions of liability, damage and remedy for the claims raised in this case or that could have been raised in this case, and is not to be construed as an admission of liability by the County Defendants, the State Defendants, their respective agents, their respective officers or their respective employees.

FOR PLAINTIFFS:

Date: July 31, 2007



ROBERT THEINE PLEDL
State Bar #1007710

Pledl Law Office
1110 North Old World Third Street, Suite 670
Milwaukee, WI 53203
Telephone: (414) 225-8999

Date: Aug. 9, 2007



SARAH JANE SOMERS
North Carolina State Bar #33165

Date: Aug 3, 2007



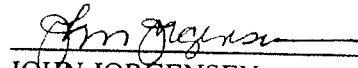
MARTHA JANE PERKINS
North Carolina State Bar #9993

National Health Law Program, Inc.
211 North Columbia Street
Chapel Hill, NC 27514
Telephone: (919) 968-6771

Attorneys for Plaintiffs

FOR COUNTY DEFENDANTS:

Date: 8/9/07



JOHN JORGENSEN
Principal Assistant Corporation Counsel
State Bar #1017484

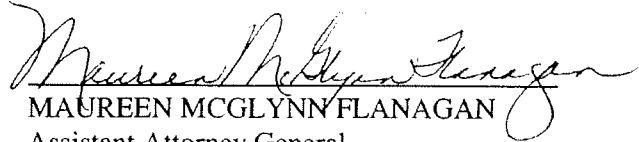
Milwaukee County Courthouse
901 North 9th Street, #303
Milwaukee, WI 53233
Fax: (414) 223-1249
Telephone: (414) 278-4302
Email: jjorgensen@milwcnty.com

Attorney for Defendant Milwaukee County

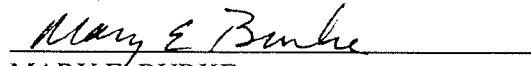
FOR STATE DEFENDANTS:

J.B. VAN HOLLEN
Attorney General

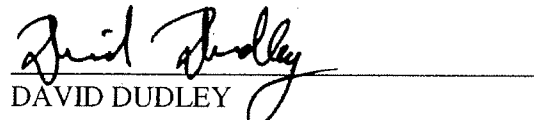
Date: August 10, 2007


MAUREEN MCGLYNN FLANAGAN
Assistant Attorney General
State Bar #1013639

Date: August 10, 2007


MARY E. BURKE
Assistant Attorney General
State Bar #1015694

Date: August 10, 2007


DAVID DUDLEY
Assistant Attorney General
State Bar #1062812

Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
Fax: (608) 267-2223
Telephone: (608) 266-1780 (Flanagan)
Email: flanagamm@doj.state.wi.us
Telephone: (608) 266-0323 (Burke)
Email: burkeme@doj.state.wi.us
Telephone: (608) 266-3076 (Dudley)
Email: dudleydd@doj.state.wi.us

Attorneys for Defendants
Wisconsin Department of Health
and Family Services and Kevin Hayden

SO ORDERED:

THE HONORABLE LYNN ADELMAN
United States District Judge

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOAN BZDAWKA, et al.,

Plaintiffs,

v.

Case No. 04-C-0193

MILWAUKEE COUNTY, et al.,

Defendants.

NOTICE OF PROPOSED SETTLEMENT AGREEMENT

PLEASE READ THIS NOTICE CAREFULLY IF YOU ARE:

- A MILWAUKEE COUNTY FAMILY CARE PARTICIPANT WHO LIVES IN AN ADULT FAMILY HOME (ALSO CALLED AN "AFH") OR A COMMUNITY BASED RESIDENTIAL FACILITY (ALSO CALLED A "CBRF")
- A PERSON IN MILWAUKEE COUNTY WITH DISABILITIES WHO IN THE FUTURE MAY BE ELIGIBLE FOR FAMILY CARE AND TO LIVE IN AN AFH OR CBRF WITH FAMILY CARE FUNDING
- A FAMILY MEMBER, GUARDIAN, OR POWER OF ATTORNEY FOR ANY PERSON DESCRIBED ABOVE

THE MATTERS EXPLAINED IN THIS NOTICE WILL NOT IMMEDIATELY INCREASE OR REDUCE BENEFITS RECEIVED BY ANY FAMILY CARE PARTICIPANT.

ALL FAMILY CARE PARTICIPANTS WILL CONTINUE TO RECEIVE NEEDED AND APPROPRIATE SERVICES FOR WHICH THEY ARE ELIGIBLE.

SEE SECTION III, BELOW, FOR INSTRUCTIONS ABOUT WHOM YOU CAN CONTACT FOR MORE INFORMATION ABOUT THE MATTERS EXPLAINED IN THIS NOTICE.

I. WHAT THIS NOTICE IS ABOUT.

This notice is about a lawsuit concerning certain rights of Milwaukee County residents with disabilities who are now or may in the future participate in the Family Care program. Family Care is a program providing home and community-based support services to persons with disabilities. In Milwaukee County, Family Care is administered by the Milwaukee County Department on Aging (also called "MCDA") through its Care Management Organization (also called the "CMO"). The state Department of Health and Family Services (also called "DHFS") provides funding for Family Care and oversees operation of Family Care by MCDA and the CMO.

This lawsuit was filed in 2004. Judge Lynn S. Adelman, from the United States District Court for the Eastern District of Milwaukee, is presiding over the lawsuit.

EXHIBIT B

Judge Adelman certified the lawsuit as a “class action.” This means that the lawsuit involves the rights of all persons in the “class” identified by Judge Adelman, even if those persons are not participating directly in the lawsuit. The persons in the class are called the “class members” or the “plaintiffs.” The class identified by Judge Adelman is:

Disabled Milwaukee County residents who are now, or will in the future, be eligible to reside in a Family Care funded community-based residential facility (“CBRF”) or adult family home (“AFH”).

In the lawsuit, the plaintiffs claimed that their legal rights were violated because Milwaukee County and DHFS were not providing enough funding for Family Care members who lived or wished to live in a CBRF or a AFH.

The other side of the lawsuit, called the “defendants,” consists of Milwaukee County, DHFS, and DHFS Secretary Kevin Hayden. The defendants deny that the plaintiffs’ legal rights were violated as claimed in the lawsuit.

The lawyers for the class members and the defendants have negotiated a Settlement Agreement. This means that the lawsuit will end without a trial or a decision by Judge Adelman about the claims made by the plaintiffs, if the settlement is approved. Instead, the lawyers for the class members and the defendants have agreed about certain actions that MCDA, the CMO, and DHFS will take to ensure that Family Care in Milwaukee County meets applicable requirements. Some information about the Settlement Agreement is provided in Section V, below. Information about how you can obtain a copy of the Settlement Agreement or further information about the Settlement Agreement is provided in Section III, below.

The lawyers have asked Judge Adelman to approve the Settlement Agreement. Further information about this process is provided in Section II, below. Judge Adelman has approved the contents of this notice and its dissemination to class members and other interested persons.

II. JUDGE ADELMAN WILL HOLD A HEARING ABOUT THE PROPOSED SETTLEMENT AGREEMENT, AND YOU MAY ATTEND THE HEARING, SPEAK AT THE HEARING, OR SUBMIT WRITTEN COMMENTS TO THE JUDGE BEFORE THE HEARING.

Judge Adelman has scheduled a hearing to consider whether to approve the Settlement Agreement. This hearing is scheduled as follows:

DATE: Friday, October 19, 2007
TIME: 1:30 p.m.
PLACE: United States District Court for the Eastern District of Wisconsin
517 East Wisconsin Avenue, Courtroom 390
Milwaukee, Wisconsin 53202

PLEASE NOTE: THIS LAWSUIT, THE SETTLEMENT AGREEMENT, AND THE OCTOBER 19 HEARING DO NOT CONCERN ANY INDIVIDUAL CLASS MEMBER’S CASE THAT IS PENDING IN COURT, OR IN AN ADMINISTRATIVE PROCEEDING. THIS LAWSUIT, THE SETTLEMENT AGREEMENT, AND THE OCTOBER 19 HEARING CONCERN ONLY THE OPERATION OF THE FAMILY CARE PROGRAM IN MILWAUKEE COUNTY AS A WHOLE.

Before the hearing, class members (or other persons on their behalf) may submit written comments regarding the Settlement Agreement for Judge Adelman to consider. Instructions on how to submit written comments appear in Section IV, below.

Class members and other persons are welcome to attend the hearing. You do not have to make a reservation in order to attend the hearing.

Judge Adelman, in his discretion, may permit some class members (or other persons on their behalf) to speak during the hearing about the Settlement Agreement. Instructions on how to ask Judge Adelman for permission to speak at the hearing appear below in Section IV.

III. HOW TO OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR MORE INFORMATION ABOUT THE CASE.

Class members (or other persons on their behalf) may obtain a copy of the Settlement Agreement from DHFS's internet site, at <http://www.dhfs.state.wi.us/LTCare>. A paper copy of the Settlement Agreement may be obtained, at no charge, by contacting Attorney Robert Pledl of the Pledl Law Office. Attorney Pledl is one of the lawyers for the class members. His telephone number is **(414) 225-8999**.

Class members (or other persons on their behalf) who have questions about the Settlement Agreement or would like more information about the lawsuit also may contact Attorney Pledl at **(414) 225-8999**.

You may also review the materials that the parties have filed with the Court by going to the Office of the Clerk of Court at the United States District Court for the Eastern District of Wisconsin in Milwaukee, which is in the United States Courthouse at 517 East Wisconsin Avenue, Room 362, Milwaukee, Wisconsin. To review materials in the public record in this case, refer to Case No. 04-C-0193. Persons with accounts on the Court's PACER system may access many case filings electronically, subject to the standard applicable fees, at http://www.wied.uscourts.gov/pacer_information.htm.

IV. HOW TO SUBMIT COMMENTS TO JUDGE ADELMAN OR REQUEST PERMISSION TO SPEAK AT THE OCTOBER 19 HEARING.

Any class member (or other persons on his or her behalf) who wishes to submit written comments that support or object to the Settlement Agreement, must send or deliver a letter to the Clerk of Court at the following address:

Clerk of Court
United States District Court
Eastern District of Wisconsin
517 East Wisconsin Avenue, Room 362
Milwaukee, WI 53202

All letters must be **received** by the Clerk of Court no later than **4:30 p.m., Tuesday, September 25, 2007**. All letters must be signed, and must include the name, address, and telephone number of the person submitting the letter. All letters should indicate that they are being submitted in Case No. 04-C-0193. The Clerk of Court will forward all letters received to Judge Adelman. Copies of all letters also should be sent by the writer to both Attorney Pledl and Attorney Maureen McGlynn Flanagan at the addresses provided at the end of this Section IV.

Any class member (or other persons on their behalf) who wishes to speak at the October 19 hearing must request permission from Judge Adelman by submitting a letter to the Clerk of Court. These letters also must be **received** by the Clerk of Court no later than **4:30 p.m., Tuesday, September 25, 2007**. All letters must be signed, and must include the name, address, and telephone number of the person submitting the letter. All letters should indicate that they are being submitted in Case No. 04-C-0193. The Clerk of Court will forward all letters received to Judge Adelman. Copies of all letters also should be sent by the writer to both Attorney Pledl and Attorney Maureen McGlynn Flanagan at the addresses provided at the end of this Section IV.

Judge Adelman will decide who can speak at the hearing. Please be assured that Judge Adelman will consider all letters whether or not permission is granted to speak, and whether or not the letter writer attends the October 19 hearing.

The addresses at which copies of all letters should be sent to Attorney Pledl and Attorney Flanagan are:

Robert Theine Pledl
Pledl Law Office
1110 North Old World Third Street, #670
Milwaukee, WI 53203

Maureen McGlynn Flanagan
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857

V. INFORMATION ABOUT THE SETTLEMENT AGREEMENT.

If Judge Adelman approves the Settlement Agreement, then MCDA, the CMO, and DHFS will commit to take certain actions over a two-year period to help insure that Family Care in Milwaukee County meets applicable requirements.

The most important parts of the Settlement Agreement are summarized below. For further details, such as applicable deadlines, please review the Settlement Agreement online or by requesting a paper copy from Attorney Pledl as discussed in Section III above.

(A) Commitments of the Milwaukee County Department on Aging and the CMO

1. The CMO will provide annual training to care managers about when notices of intended adverse action must be sent to Family Care participants. This information also will be incorporated into related training materials.
2. The CMO will make reasonable efforts to support the enactment of Governor Doyle's budget proposal to provide funding for an independent advocacy program for Family Care participants.
3. The CMO will expand its annual audit review process for CBRF providers to include actual salary and wages, staff turnover rates, occupancy, and further details regarding cost and wage structures.
4. The CMO will review audited financial statements and contracts for multifamily, corporate providers of 3-4 bed AFHs, including actual salary and wages, staff turnover rates, occupancy, and further details regarding cost and wage structures.
5. In connection with CBRF and AFH provider 2008 rate setting, the CMO will consider data from provider surveys released in March 2007. The CMO will retain its discretion to establish the rate-setting methodology and negotiate provider rates, subject to supervisory review by DHFS.
6. The CMO will complete provider network adequacy reviews twice a year, beginning with one review in calendar year 2007. These reviews will include needs assessments of future Family Care participants and where they are living in Milwaukee County. The results of these reviews will be provided to the development and/or land use planning departments of all Milwaukee County cities, towns, and villages. The CMO will retain its current right to terminate contracts with providers whose costs are not competitive.
7. In connection with provider rate-setting for calendar years 2008 and 2009, MCDA will provide CBRF, AFH, and day services providers the factors taken into account in developing the rates offered those providers. MCDA will post a summary of these factors on its website.
8. The CMO will start a formal process of soliciting input from CBRF, AFH, and day services providers that will be considered to the extent that it is relevant in future rate setting.
9. At least once annually in calendar years 2007, 2008, and 2009, the CMO will invite all Milwaukee County municipalities to provide input on affordable CBRF, AFH, and other housing for

Milwaukee County Family Care participants, and will encourage the development of such housing throughout Milwaukee County.

10. The CMO will work with the MCDA Resource Center to provide all nursing homes located in Milwaukee County with informational materials about the alternate residential options available through the Family Care program, and will provide contact information for persons who wish to discuss other options available to them.

(B) Commitments of the Wisconsin Department of Health and Family Services

1. DHFS will issue written guidance reiterating that a Family Care participant may contest the choice of the residential or day services provider proposed by the CMO, through the Family Care grievance procedures or a fair hearing. The written guidance will note that the standard in resolving these disputes is whether the proposed plan would provide care, treatment, or supports that are insufficient to meet the participant's needs or outcomes, or are provided in a setting that is unnecessarily restrictive or less integrated than is appropriate to the participant's needs. It will state the importance of following the notice procedures required by the Wisconsin Administrative Code and the Family Care contract. DHFS will provide a draft of its written guidance to the plaintiffs' lawyers and certain public interest law firms, and will accept comments from them before finalizing the written guidance. When complete, the written guidance will be posted on the DHFS website.
2. DHFS will develop additional informational materials explaining the Resource Allocation Decision ("RAD") method used in the Family Care program to help participants identify personal outcomes, after which a participant's care management team then works with the participant and/or the participant's authorized representatives to find the most cost-effective way of achieving those personal outcomes via a service plan that is both reasonable and effective. The materials will include an explanation that Family Care participants who enter CBRFs and AFHs are not and should not be automatically disqualified from participating in day programming services outside their residences, and that it is appropriate to use the RAD to determine whether the outcomes of individual Family Care participants who reside in CBRFs and AFHs can not be met without access to outside day programming services. DHFS will provide a draft of its informational materials to the plaintiffs' lawyers and certain public interest law firms, and will accept comments from them before finalizing the informational materials. When complete, the informational materials will be posted on the DHFS website. The informational materials also will be provided to administrative law judges and other persons who review Family care grievances.
3. If the CMO's 2008 annual certification application to DHFS includes submission of any revised form notices, DHFS will provide copies of any revised form notices to the plaintiffs' lawyers and certain public interest law firms, and will accept comments from them regarding the revised form notices. DHFS will retain sole discretion to determine whether or not to certify the CMO for 2008, and to determine whether to require the CMO to make any changes in the CMO's revised form notices.
4. If the Family Care independent advocacy program included in Governor Doyle's 2007-09 budget proposal is established, DHFS will require the independent advocacy program to provide semi-annual statistical reports about referrals received by the independent advocacy program. These reports will be posted on the DHFS website.
5. DHFS and Secretary Hayden will continue to support Governor Doyle's budget proposal to create and fund an independent advocacy program for Family Care participants. If funding is included in the 2007-09 budget passed by the legislature, DHFS will take steps to implement the program promptly.

6. DHFS will work with the CMO to enhance openness of the provider rate-setting process for rate years 2008 and 2009 by exploring alternate rate-setting methods for CBRF and AFH providers.
7. DHFS will issue written guidance reiterating the importance of appropriate and adequate pre-transfer planning so as to identify and minimize potential effects on a Family Care participant transferring from one residential setting to another. DHFS will provide a draft of its written guidance to the plaintiffs' lawyers and certain public interest law firms, and will accept comments from them before finalizing the written guidance. When complete, the written guidance will be posted on the DHFS website.
8. DHFS will assist MCDA and its existing Placement Team in implementing additional practices to enhance planning for safe and effective residential moves for Family Care participants, assess moves before they occur to identify potential harmful effects on participants, and develop strategies for minimizing those effects.
9. DHFS will conduct a one-time review of Milwaukee County Watts review procedures and pursue any corrective action as determined appropriate by DHFS. A copy of the final report, any corrective action plan, and corrective action compliance reports will be provided to plaintiffs' counsel.
10. DHFS will direct its external quality review organization to include in the care plan review process consideration of whether a particular Family Care participant would be more appropriately placed in a less restrictive/more integrated residence, and of whether the individual would prefer to move to a less restrictive/more integrated facility.

(C) **Agreement Regarding Day Programming:** The plaintiffs and defendants agree that Family Care participants who enter CBRFs and AFHs are not and should not automatically be disqualified from participating in day programming services outside their residences. They further agree that it is appropriate to use the RAD to determine whether the outcomes of Family Care participants who reside in CBRFs and AFHs cannot be met without access to outside day programming services.

(D) **Enforcement:** If the parties disagree about whether the defendants are complying with the Settlement Agreement, the parties must first try to resolve the disagreement through negotiation with each other. If negotiations do not succeed, then the plaintiffs' lawyers may ask the Court to resolve the disagreement.

(E) **Attorney Fees:** If successful, the kinds of claims that are involved in this lawsuit would entitle the plaintiffs to reasonable attorney fees and costs. The parties have negotiated, separately from the remainder of the settlement agreement, a compromise of the claim for attorneys' fees and costs submitted by the plaintiffs' lawyers. Under the Settlement Agreement, plaintiffs' lawyers, who include lawyers from the Pledl Law Office, of Milwaukee, Wisconsin, and the not-for-profit organization National Health Law Program, Inc. of Chapel Hill, North Carolina, would receive a total of One Hundred and Thirty Thousand Dollars (\$130,000.00) as compensation and to reimburse their expenses incurred during this 3 1/2-year-old lawsuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOAN BZDAWKA, et al.,

Plaintiffs,

v.

Case No. 04-C-0193

MILWAUKEE COUNTY, et al.,

Defendants.

PROPOSED PLAN FOR DISTRIBUTION OF NOTICE
OF PROPOSED SETTLEMENT AGREEMENT

1. No later than September 11, 2007, the defendants shall cause a copy of the Notice of Proposed Settlement Agreement (the "Notice") to be sent by First Class U.S. Mail to each person included, as of a date certain, in the database maintained by the Milwaukee County Department on Aging ("MCDA") listing Milwaukee County Family Care members, legal guardians for those Family Care members, and persons holding activated powers of attorney for those Family Care members.

2. MCDA shall cause a copy of the Notice to be provided to each person who enrolls in Milwaukee County Family Care, and/or the legal guardians or persons holding activated powers of attorney for those enrollees, between the date certain used to determine recipients of the mailing described in ¶ 1 and October 16, 2007.

3. No later than September 11, 2007, the Wisconsin Department of Health and Family Services will post electronic copies of the Settlement Agreement and the Notice on its website at <http://www.dhfs.state.wi.us/LTCare>.

4. Upon request, counsel for the plaintiffs shall provide paper copies of the Settlement Agreement to class members or other persons requesting paper copies. Counsel for the plaintiffs will record the names of persons to whom paper copies are provided.

5. No later than September 11, 2007, counsel for the plaintiffs shall cause a copy of the Notice to be provided to the Executive Directors of the following organizations:

- AIDS Resource Center
Milwaukee, WI
- Alliance for the Mentally Ill, Greater Milwaukee
Milwaukee, WI
- Alzheimer Association
West Allis, WI
- American Diabetes Association of Wisconsin
Wauwatosa, WI
- ARC Milwaukee
Milwaukee, WI
- Arthritis Foundation-Wisconsin
Milwaukee, WI
- Asian American Community Center
Milwaukee, WI
- Autism Society of Southeastern Wisconsin
Franklin, WI
- Bethesda Community Senior Citizens Center
Milwaukee, WI
- Brain Injury Association of Wisconsin
Wauwatosa, WI
- Brown Deer Senior Citizens Center
Milwaukee, WI

- Catholic Charities of the Archdiocese of Milwaukee
Milwaukee, WI
- Community Care for the Elderly
Milwaukee, WI
- Disability Rights Wisconsin
Milwaukee, WI
- Eisenhower Center
Milwaukee, WI
- Gay Lesbian Bi-Sexual Transgender Community Center
Milwaukee, WI
- Goodwill Industries
Milwaukee, WI
- Grand Avenue Club
Milwaukee, WI
- Guest House of Milwaukee
Milwaukee, WI
- Health Care for the Homeless
Milwaukee, WI
- Huntington's Disease Society of America
Wauwatosa, WI
- Independence First
Milwaukee, WI
- Indian Council of the Elderly
Milwaukee, WI
- Interfaith Older Adult Programs
Milwaukee, WI
- Islamic Family & Social Services
Milwaukee, WI
- Jewish Family Services
Milwaukee, WI

- Kindcare
South Milwaukee, WI
- Legal Action of Wisconsin/Senior Law
Milwaukee, WI
- Legal Aid Society of Milwaukee
Milwaukee, WI
- Mental Health Association in Milwaukee County
Milwaukee, WI
- Milwaukee Area Agency on Aging
Milwaukee, WI
- Milwaukee Center for Independence
Milwaukee, WI
- National Spinal Cord Injury Association
Milwaukee, WI
- Ranch Community Services
Menomonee Falls, WI
- SET Ministry
Milwaukee, WI
- United Cerebral Palsy of Southeastern Wisconsin
Milwaukee, WI
- United Seniors of Wisconsin
Milwaukee, WI
- Wisconsin Regional Library for the Blind & Physically Handicapped
Milwaukee, WI
- First Choice Outreach Services
Milwaukee, WI
- Open Door Services
Milwaukee, WI
- Supportive Community Service
West Allis, WI

- Board on Aging and Long Term Care
Madison, WI
- Wisconsin Council on Developmental Disabilities
Madison, WI
- Governor's Committee for People with Disabilities
Madison, Wisconsin
- Wisconsin Council on Mental Health
Madison, WI
- Wisconsin Council on Physical Disabilities
Madison, Wisconsin
- Independent Living Council of Wisconsin
Madison, WI
- Wisconsin Council on Long Term Care Reform
Madison, WI
- Wisconsin Parents Coalition for the Retarded, Inc.
Hartford, WI
- People First of Southeastern Wisconsin
Milwaukee, WI
- The Arc - Wisconsin Disability Association, Inc.
Madison, WI
- Mental Health Association
Madison, WI
- Coalition of Wisconsin Aging Groups
Madison, WI
- Wisconsin ADAPT
Madison, WI
- Southeast Wisconsin ADAPT
Brookfield, WI
- NAMI Wisconsin
Madison, WI

- Wisconsin United for Mental Health
Madison, WI
- Mental Health America of Wisconsin
Milwaukee, WI
- Movin' Out, Inc.
Madison, WI
- New Horizons Un-Limited, Inc.
Milwaukee, WI
- iCare Independent Care Health Plan
Milwaukee, WI
- Aging Resource Center of Milwaukee County
Milwaukee, WI
- ANEW
Wauwatosa, WI
- ANS Home Health
West Allis, WI
- Aurora Family Service
Milwaukee, WI
- Barry Health Care
Milwaukee, WI
- Bell Therapy
Milwaukee, WI
- Carefinders, Inc.
Milwaukee, WI
- Care Management Plus
Wauwatosa, WI
- Community Care Organization
Milwaukee, WI
- Curative
Milwaukee, WI

- Horizon Home Care and Hospice, Inc.
Brown Deer, WI
- Luther Manor
Wauwatosa, WI
- Milwaukee County Department on Aging
Milwaukee, WI
- Metro Home Health Service
Milwaukee, WI
- Milwaukee Christian Center
Milwaukee, WI
- Project Access
Milwaukee, WI
- Quality Assurance Home Health
Milwaukee, WI
- St. Anne's CMU
Milwaukee, WI
- St. Anne's Intergenerational Center
Milwaukee, WI
- Temps Plus
Milwaukee, WI
- Transitional Living Services
West Allis, WI
- United Community Center
Milwaukee, WI
- Mental Health Association
Madison, WI
- OASIS
Milwaukee, WI
- Asian American Senior Center
Milwaukee, WI

- Beulah Brinton Senior Center
Milwaukee, WI
- West Milwaukee Senior Center
Milwaukee, WI
- Chester W. Grobschmidt Senior Center
South Milwaukee, WI
- Indian Council of the Elderly
Milwaukee, WI
- Jewish Community Center
Whitefish Bay, WI
- Lakeside Senior Enrichment Program
Milwaukee, WI
- Kelly Senior Center
Cudahy, WI
- McGovern Park Senior Center
Milwaukee, WI
- Milwaukee Christian Center
Milwaukee, WI
- Northwest Senior Center
Milwaukee, WI
- Project Focal Point, Inc.
Milwaukee, WI
- Clinton and Bernice Rose Senior Center
Milwaukee, WI
- United Community Center
Milwaukee, WI
- Washington Park Senior Center
Milwaukee, WI
- Wauwatosa Senior Center
Wauwatosa, WI

- West Allis Senior Center
West Allis, WI
- Wilson Park Senior Center
Milwaukee, WI
- Community Health Ministry of Columbia St. Mary's
c/o Three Holy Women Catholic Church
Milwaukee, WI
- Community Health Ministry of Columbia St. Mary's
c/o Old St. Mary's Church
Milwaukee, WI
- Community Health Ministry of Columbia St. Mary's
c/o Ebenezer C.O.G.I.C.
Milwaukee, WI
- Milwaukee Aging Consortium
Milwaukee, WI