

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

BLANCA MEZA, by and through her  
Guardian, Aide Hernandez, DESTINY  
BELANGER, by and through her  
Guardian, Julie Belanger, on behalf of  
themselves and all others similarly  
situated, and DISABILITY RIGHTS  
FLORIDA, INC.,

Case No.: 3:22-cv-783-MMH-PDB

Plaintiffs,

v.

JASON WEIDA, in his official capacity  
as Secretary for the FLORIDA AGENCY  
FOR HEALTH CARE ADMINISTRATION,

Defendant.

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**AMENDED SETTLEMENT AGREEMENT**

This AMENDED SETTLEMENT AGREEMENT (“Agreement”), entered into as of the effective date, by and between Plaintiffs, BLANCA MEZA, by and through her Guardian, Aide Hernandez, DESTINY BELANGER, by and through her Guardian, Julie Belanger, on behalf of themselves and all others similarly situated, and DISABILITY RIGHTS FLORIDA, INC. (herein “Plaintiffs”), who brought a putative class action under 42 U.S.C. § 1983, against Defendant, JASON WEIDA, in his official capacity as Secretary for the FLORIDA AGENCY FOR

HEALTH CARE ADMINISTRATION (herein “AHCA”) (collectively herein the “Parties”), alleging violations of 42 U.S.C. §§1396a(a)(10)(A), 1396a(a)(10)(D); 1396d(a)(4), Title II of the Americans with Disabilities Act, 42 U.S.C. §12131 et seq. and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

This Agreement is the product of multiple discussions between the Parties. The Parties have consulted with their legal counsel and have agreed to resolve the issues regarding the Plaintiffs’ claims via agency rule-making. The Parties therefore execute this Agreement as follows:

1. **Coverage of Incontinence Supplies.** AHCA agrees to continue with formal notice and comment rulemaking with the intention of extending coverage of medically necessary incontinence supplies for Medicaid State Plan recipients age 21 years and older (“Coverage of Incontinence Supplies”). This process already commenced with the publication of AHCA’s Notice of Development of Rulemaking on August 29, 2023, followed by a rule development workshop, held on September 22, 2023. Thereafter, on November 3, 2023, AHCA published the proposed rule in Florida’s Administrative Register (the “Proposed Rule”). AHCA intends to amend all AHCA policies, fee schedules, and administrative rules necessary, including the

adoption of Fla. Admin. Code R. 59G-4.076,<sup>1</sup> in accordance with Chapter 120, Florida Statutes, for the Coverage of Incontinence Supplies.

2. **Court Notification and Joint Motion.** The Parties agree to jointly move the Court to preliminarily approve settlement within ten (10) days of signing this Agreement (“Joint Motion”). The Joint Motion will include a request for hearing with the Court. The purpose of the motion and hearing will be to request that the Court preliminarily review the Parties’ settlement agreement and to set deadlines to fulfill the notice obligations under Fed. R. Civ. P. 23 and provisions of the Class Action Fairness Act, 28 U.S.C. § 1711 et seq., and to schedule a final fairness hearing. The notice obligations under Fed. R. Civ. P. 23 and the Class Action Fairness Act are set forth in Paragraph 4.a. through 4.c. of this Agreement.

3. **Stay.** Within seven (7) days of signing this Agreement, the Parties will jointly move to stay the litigation until February 1, 2024, while AHCA engages in Chapter 120, Florida Statutes, rulemaking regarding Coverage of Incontinence Supplies and undertakes the other actions described at Paragraph 1 of this

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<sup>1</sup> This draft rule repeals and replaces current Fla. Admin. Code R. 59G-4.070. In repealing and replacing this coverage policy by promulgating Fla. Admin. Code R. 59G-4.076, AHCA abides by its obligation to include a sunset provision in the agency rule that does not exceed five (5) years. AHCA’s incorporation of the required sunset provision does not reflect an intent to withdraw Medicaid coverage of incontinence supplies five years after Fla. Admin. Code R. 59G-4.076 is adopted, subject to the necessity determination contained within the November 11, 2019, directive to agencies.

Agreement. The Parties may, upon mutual agreement, extend the stay to allow for additional time for AHCA to meet its obligations under Chapter 120.

**4. Notice Obligations.**

a. Within ten (10) days of execution of this Agreement, AHCA will identify a cohort of Medicaid recipients, aged 21 years and over, that potentially have the need for incontinence supplies, by searching its Florida Medicaid Management Information System (“FMMIS”) database for claims information in the past seven years evidencing recipients with any of the following diagnosis codes, subject to reasonable parameters to be determined by the agency:

ICD-10 L24.A2	IRRITANT CONTACT DERMATITIS
ICD-10 N393	STRESS INCONTINENCE (FEMALE) (MALE)
ICD-10 N3941	URGE INCONTINENCE
ICD-10 N3942	INCONTINENCE WO SENSORY AWARENESS
ICD-10 N3946	MIXED INCONTINENCE
ICD-10 N39490	OVERFLOW INCONTINENCE
ICD-10 N39491	COITAL INCONTINENCE
ICD-10 N39492	POSTURAL (URINARY) INCONTINENCE
ICD-10 N39498	OTHER SPECIF URINARY INCONTINENCE
ICD-10 R159	FULL INCONTINENCE OF FECES
ICD-10 R32	UNSPECIFIED URINARY INCONTINENCE
ICD-10 R3981	FUNCTIONAL URINARY INCONTINENCE

b. Within thirty (30) days of the Court’s approval, at the hearing on the Joint Motion contemplated in section 2, of the proposed notice procedures set forth herein, AHCA will send a notification via U.S. Mail to each member of the cohort described in section 4.a., containing the following information: a link to view this

Agreement; the day, time, and place of the fairness hearing; and a link to view Plaintiff's motion for attorneys' fees.

c. AHCA will comply with 28 U.S.C. § 1715 and provide proof of compliance to the Court on or before the fairness hearing.

d. Within thirty (30) days of AHCA finalizing Coverage of Incontinence Supplies as described in Paragraph 1 of this Agreement, AHCA will issue provider and plan alerts that provide notice of the policy change. The alerts will be posted on the AHCA website in the same manner as other alerts of like kind.

**5. Final Disposition of the Matter.**

a. Attorneys' Fees. At the time the Joint Motion described in Paragraph 2 *supra* is filed, Plaintiffs will also file a motion for attorneys' fees in the amount of \$50,000. Upon the Court's approval of the motion, AHCA will pay to Plaintiffs within (30) days the sum of \$50,000, in full satisfaction of attorneys' fees and costs accrued by Plaintiffs in connection with this litigation.

b. Motion for Voluntary Dismissal. If the Parties satisfy the terms of this Agreement as set forth in Paragraphs 1 through 4, then within seven (7) days of the Court granting final approval of the Agreement, the Parties will file a joint motion for voluntary dismissal of this litigation with prejudice.

**6. Construction and Headings.** The Parties enter into this Agreement to avoid the costs, burdens, and necessity of trial. Each party has reviewed and revised

this Agreement, and the normal rule of construction that ambiguities are to be construed in favor of the non-drafting party shall not be employed or applied to the interpretation of this Agreement. Neither this Agreement, nor any of its subparts, parts or terms shall be interpreted in such a manner that the interpretation prohibits or restricts the Parties from carrying out any obligation, right, or duty which is established by state or federal law.

7. **Release.** In connection with the dismissal described in Paragraph 5.a., the named Plaintiffs, Blanca Meza, by and through her Guardian, Aide Hernandez, Destiny Belanger, by and through her Guardian, Julie Belanger, and Disability Rights Florida, Inc. (herein “Named Plaintiffs”), in consideration of this Agreement, hereby covenant not to sue and voluntarily remise, release and forever discharge AHCA and all officers, directors, servants, agents and employees of AHCA from any and all liability, demands, claims, damages, or loss of any kind and nature, whether at law or equity, or administrative in nature, regarding all matters raised in the above-captioned case, having case number 3:22-cv-783-MMH-PDB, and any other matter which has or could have been asserted by the Named Plaintiffs based on, related in any way to any act, omission, event, occurrence or agreement involving Named Plaintiffs and AHCA as it relates to the aforesaid circumstances raised in case number 3:22-cv-783-MMH-PDB. Furthermore, it is understood and agreed that this Agreement is a release of all known and unknown, past, present, and future

injuries, property damage, permanent injuries, disfigurements and pain and suffering, medical, hospital and nursing expenses, expense for home health care providers, housekeepers, or other caregivers, mental anguish, including claims for punitive or exemplary damages, humiliation, embarrassment, loss on income, loss of earning power, ambulance service, medical expenses, loss of services, loss of companionship, loss of consortium, loss of comfort, third party claims of any kind or character whether for contribution, indemnity or any other cause of action, all of the above for past, present, and future known or unknown, or possible wrongful death should death ever occur and be attributed to the aforesaid under case number 3:22-cv-783-MMH-PDB, and any and all other matters and things from the beginning of time to the date of the execution of this Agreement suffered by or on behalf of the Named Plaintiffs attributed to the aforesaid circumstances raised in case number 3:22-cv-783-MMH-PDB.

8. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or written, regarding the subject covered in this Agreement. The Parties acknowledge that no representations, inducements, promises, or statements related to this settlement or the subjects covered in this Agreement, oral or written, have been made by any of the Parties or by anyone acting on behalf of the Parties which

are not embodied or incorporated by reference in this Agreement, and further agree that no other agreement, covenant, representation, inducement, promise, or statement relating to this Agreement or the subjects covered in this Agreement not set forth in writing in this Agreement have been made by any party.

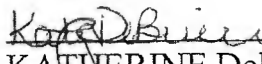
9. **No Admission.** Neither party will consider, deem, or suggest that anything in this Agreement constitutes the other party's admission of liability, wrongdoing, or violation of law. This Agreement nor any of its terms shall be used as an admission or introduced as evidence as to any issue of law or fact, in any proceeding, suit or action, other than an action to enforce this Agreement.

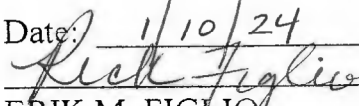
10. **Execution.** By executing this Agreement, the Parties stipulate that they understand the terms hereof, execute it by their own free will, and intend to be bound by it.

11. **Counterparts.** This Agreement may be executed in counterparts, which taken together constitute a fully executed document.



THE UNDERSIGNED SIGNATORIES REPRESENT THAT S/HE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO THE TERMS AND CONDITIONS.

<b>FOR THE PLAINTIFFS</b>	
Date: <u>1/9/24</u>	
 KATHERINE DeBRIERE Counsel for Plaintiffs	

<b>FOR AHCA</b>	
Date: <u>1/10/24</u>	
 ERIK M. FIGLIO Counsel for Defendant	

[END OF SETTLEMENT AGREEMENT]