

ADDENDUM TO SECOND AMENDED SETTLEMENT AGREEMENT

WHEREAS, on or about October 22, 2018, the Second Amended Settlement Agreement (SASA) was entered into between the Cabinet for Health and Family Services (Cabinet) and Kentucky Protection and Advocacy (P&A) through their representatives and hereafter collectively referred to as “the Parties”, in the interest of Kentuckians with Serious Mental Illness (SMI) currently residing in free-standing Personal Care Homes (PCHs), who receive State Supplementation pursuant to KRS 205.245 and 921 KAR 2:015, and who are not opposed to community placement; or those with SMI at risk of entry into a PCH, who would be eligible for State Supplementation, and who are not opposed to community placement;

WHEREAS, under the terms of the SASA the Cabinet resolved to provide, to the extent that the Cabinet offers services to individuals with SMI residing in or at risk of entry into a PCH, Housing Assistance with necessary behavioral health supports in the most integrated setting appropriate to meet the needs of these individuals pursuant to Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §12131, *et. seq.*, as interpreted by the United States Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), to an additional three hundred fifty (350) potential class members in addition to the potential class members already provided such supports under the Interim Settlement Agreement (ISA) and the Amended Settlement Agreement (ASA) making for a total of 1,275 individuals;

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for the novel coronavirus (COVID-19), a respiratory disease causing illness that can range from very mild to severe, including illness resulting in death;

WHEREAS, on March 6, 2020, Andy Beshear, Governor of the Commonwealth of Kentucky, issued Executive Order 2020-215 declaring a state of emergency regarding COVID-19;

WHEREAS, on March 10, 2020, the Cabinet issued Novel Coronavirus (COVID-19) Guidance for Long-Term Care Facilities Regarding Visitation, pursuant to guidance issued by the Centers for Medicare and Medicaid Services on March 4, 2020, limiting visitation at long-term care facilities only to those who are receiving end-of-life care;

WHEREAS, Personal Care Homes are Long-Term Care Facilities pursuant to KRS 216.510(1);

WHEREAS, at the time of the COVID-19 public health emergency and Executive Order 2020-215 the relief agreed to in the SASA had not been fully provided by the Cabinet, and cannot be provided by the Cabinet under the current COVID-19 state of emergency; and

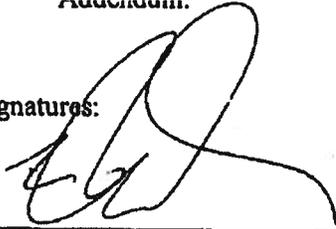
WHEREAS, following consideration of the current state of emergency related to COVID-19, the inability of the Cabinet to provide certain deliverables specified in the SASA at this time, and the general health and welfare of the individuals whose interests are addressed by the SASA, the Parties consent to this Addendum to the SASA.

THEREFORE, the Parties hereby agree to the following Addendum:

1. Until Executive Order 2020-215 is lifted, the Cabinet will suspend all efforts to transition individuals with SMI currently residing in free-standing PCHs, who receive State Supplementation pursuant to KRS 205.245 and 921 KAR 2:015, and who are not opposed to community placement, or those with SMI at risk of entry into a PCH, who would be eligible for State Supplementation, and who are not opposed to community placement, to community-integrated housing as defined in Section III.E.7 of the SASA.
2. Until Executive Order 2020-215 is lifted, the Cabinet will provide behavioral health services as defined in Sections III. F.1-10 of the SASA only to the extent allowable by Executive Order or other federal and/or state government issued Orders related to COVID-19, and only to the extent by which Community Mental Health Centers are reasonably capable. These services may include:
 - a) Phone calls to provide follow-up services to individuals who have previously transitioned to community-integrated housing under the SASA.
 - b) Assistance with gathering documentation related to obtaining or re-certifying for State Supplementation.
 - c) Other services that can be provided while practicing social distancing or that do not require in-person contact.
3. Until Executive Order 2020-215 is lifted, the Cabinet will suspend all efforts to meet the discharge and transition process provisions defined in Sections III.G.1-3 of the SASA, including transition milestone timelines, Regional Transition Committee meetings, and in-person Cabinet-Level quarterly meetings.
4. There is no expectation by either Party to this Addendum that mental health services or housing assistance will be provided in a manner that does not comply with CDC guidelines concerning social distancing, that is inconsistent with the Novel Coronavirus (COVID-19) Guidance for Long-Term Care Facilities Regarding Visitation issued by the Cabinet on March 10, 2020, or that is inconsistent with any additional guidelines, restrictions, or orders that may be issued at any time during the duration of Executive Order 2020-215.
5. Once Executive Order 2020-215 is lifted, the Parties will reconvene to assess the status of the Commonwealth's behavioral health system.
 - a) If no substantial changes to the behavioral health system has occurred as a result of the COVID-19 pandemic, the terms of the SASA will resume as per the original agreement with the exception of the substantial compliance date of October 1, 2021.
 - b) If no substantial changes to the behavioral health system occurred as a result of the COVID-19 pandemic, the Cabinet will be allowed additional time to comply with the terms of the SASA, to be guided by the amount of time during which Executive Order 2020-215 is in place.
 - c) If substantial changes to the behavioral health system do occur as a result of the COVID-19 pandemic, the Parties agree to assess those changes and make any changes to the substantive terms of the SASA that may be necessary in order to achieve the relief sought under the SASA.

6. During the pendency of this Addendum, P&A agrees not to file any litigation against the Cabinet for any claim or allegation regarding the failure of the Cabinet to comply with the terms of the SASA or to meet its obligations under the ADA or the Rehabilitation Act for persons with SMI residing in or at risk of entry into a PCH who receive or could receive the State Supplementation.
7. This Addendum is effective on the date of the last signatory to the Addendum and is binding upon the Parties, by and through their officials, agents, employees, and successors for the terms of this Addendum.
8. This Addendum adds to the SASA and the Addendum alters the terms of the SASA only to the extent specifically expressed by the Addendum.
9. The signatures below of the Secretary of the Cabinet and the Executive Director of P&A represent and warrant that the person who has signed this Addendum on behalf of his or her entity is duly authorized to enter into this Addendum to the Second Amended Settlement Agreement and to bind that Party to the terms and conditions of this Addendum.

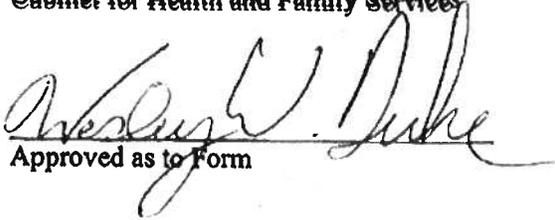
Signatures:



Eric Friedlander
Secretary
Cabinet for Health and Family Services



Jeff Edwards
Director
Kentucky Protection and Advocacy



Approved as to Form



Approved as to Form

3/20/2020
Date

3/23/2020
Date