

SECOND AMENDED SETTLEMENT AGREEMENT

I. GENERAL PROVISIONS

- A. This Second Amended Settlement Agreement (Second Amended Agreement or SASA) is entered into between the Cabinet for Health and Family Services (Cabinet) and Kentucky Protection and Advocacy (P&A) 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 (hereinafter collectively “the Parties”).
- B. The Interim Settlement Agreement (ISA), executed on August 15, 2013, and Amended Settlement Agreement (ASA), executed on October 19, 2015, were first to begin a process over a three-year period and then to continue that process so that, to the extent that the Cabinet offers services to individuals with SMI residing in or at risk of entry into in a PCH, such services shall be provided in the most integrated setting appropriate to meet their needs 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). Accordingly, through the Interim Settlement Agreement and the Amended Settlement Agreement, the Parties intended that the steps to achieve the goal of community integration and self-determination would be undertaken.
- C. At the time of the ISA and ASA, P & A, on behalf of individuals with SMI residing in or at risk of entry into a PCH who receive or could receive State Supplementation, was prepared to file a federal lawsuit, with a number of named plaintiffs, asking the Court to certify a class of approximately 2,300 individuals to ensure compliance with the ADA, *Olmstead* and the Rehabilitation Act. Those claims remain viable and the Cabinet acknowledges that PCHs are institutions covered by the ADA, *Olmstead*, and the Rehabilitation Act.
- D. P&A and the Cabinet acknowledge that the relief agreed to in the ISA and ASA has not been fully provided and in order to provide relief and services beyond the ISA’s initial three-year period and the ASA’s subsequent two-year period, the Cabinet is entering into the Second Amended Agreement in good faith for an additional period of at least three, but no more than four years to provide access to Housing Assistance with necessary behavioral health supports to an additional three hundred fifty (350) potential class members in addition to the potential class members provided such supports under the ISA and ASA, making for a total of 1,275 individuals. The fourth year shall be used only to monitor the percentage of successful transitions and whether the SASA percentage goals for successful transition have been met. If the SASA percentage goals for successful transition are met prior to the expiration of the four-year term, the agreement shall terminate at that time or at the expiration of the

three-year term, whichever is later, unless the Cabinet fully satisfies the terms of this Agreement as set out in III. I.3.

- E. 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 Second Amended Agreement on behalf of his or her entity is duly authorized to enter into this Second Amended Agreement and to bind that Party to the terms and conditions of this Second Amended Agreement.
- F. This Second Amended Agreement is binding upon the Parties, by and through their officials, agents, employees, and successors for the terms of this Second Amended Agreement. If the Cabinet contracts with any outside provider for any of the services provided in this Second Amended Agreement, the Second Amended Agreement shall be binding on all contracted parties, including agents and assigns. The Cabinet shall require that all contracted parties and agents take all actions necessary for the Cabinet to comply with the provisions of this Second Amended Agreement, including, but not limited to, having SASA-specific deliverables and Performance Indicators in the contracts of any provider delivering supports or services, or responsible for any provisions of the SASA.
- G. This Second Amended Agreement and any documents incorporated by reference constitute the entire integrated Second Amended Agreement of the Parties. No prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding. Any amendment to this Second Amended Agreement shall be in writing and signed by both Parties.
- H. The Cabinet acknowledges it has pledged seven million five hundred thousand dollars (\$7,500,000) each in State Fiscal Years 2019, 2020 and 2021.
- I. The Cabinet, while empowered to enter into and implement this Second Amended Agreement, does not have the legal authority to bind the Kentucky General Assembly, which has the authority under the Kentucky Constitution and laws to appropriate funds for, and amend laws pertaining to, the Cabinet's system of services for people with mental illness including for the amount pledged and referred to in Section I.H. The Cabinet agrees to seek funding in good faith necessary to implement and complete the terms of this Second Amended Agreement. In the event the Cabinet fails to attain necessary appropriations to implement and complete the terms of this Second Amended Agreement in a future fiscal year, this Second Amended Agreement shall become null and void. Any question of whether the amount of the appropriations is adequate to implement and complete the terms of the Second Amended Agreement is solely for determination by the Cabinet, and the Cabinet's determination may not be challenged by P&A unless P&A can show it was not made in good faith.
- J. During the pendency of this Second Amended Agreement, P&A agrees not to file any litigation against the Cabinet under the ADA or Rehabilitation Act for any claim or allegation regarding the failure of the Cabinet 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.

- K. The Parties represent and acknowledge that this Second Amended Agreement is the result of good faith negotiations. The Parties further represent and acknowledge that the terms of this Second Amended Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of refocusing the Cabinet's use of Personal Care Homes.
- L. This Second Amended Agreement shall be interpreted in accordance with federal law and the laws of the Commonwealth of Kentucky. The venue for all legal actions concerning this Agreement shall be in the Franklin Circuit Court.

II. DEFINITIONS

- A. "Housing Assistance" shall mean assistance in gaining access to housing in the community, along with voluntary, flexible supports to help people with SMI that meet the requirements of III.E.7. of this Second Amended Agreement. This shall also mean assistance in gaining access to state or federal housing vouchers or subsidies if the person so chooses. It shall include access to the Community Integration Supplement (CIS) pursuant to 921 KAR 2:015 and the Olmstead Housing Initiative that is a partnership between Kentucky Housing Corporation and the Cabinet.
- B. "Individual" shall mean a person who is 18 years of age or older or a person in a situation where a guardian (either State or private) has been appointed because the individual has been determined disabled pursuant to KRS 387.500 *et seq.*, then "individual" shall mean the person and his or her guardian.
- C. "Serious Mental Illness" (SMI) shall mean a mental illness or disorder (but not a primary diagnosis of Alzheimer's disease or dementia) that is described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th Edition, or the DSM currently in use, that impairs or impedes functioning in one or more major areas of living and is unlikely to improve without treatment, services and/or supports.
- D. "Tenancy Rights" shall mean rights created by a landlord/tenant relationship, whether through a direct lease or a sublease.
- E. "Providers" shall mean Community Mental Health Centers (CMHC) and their affiliate organizations, Behavioral Health Service Organizations (BHSO), and any individual or organization qualified to provide behavioral health services. For purposes of this Second Amended Agreement, any CMHC capable of providing the services required by this Second Amended Agreement may provide such services regardless of its geographic location or the location of the individual being served.
- F. "Successful transition" shall mean a unique individual with SMI residing or at risk of residing in a PCH who has transitioned to live in a setting that meets the criteria of III.E.7. for a period of at least ninety (90) consecutive days as a short-term successful transition and three hundred sixty (360) days as a long-term successful transition. A transition shall not be deemed successful or unsuccessful due to the death or placement

in a nursing facility or the Supports for Community Living (SCL) waiver program of the individual within these periods. As long as tenancy rights are maintained, a hospitalization or incarceration shall not interfere with the calculation of success.

III. SUBSTANTIVE PROVISIONS

A. FOCUSING ON APPROPRIATE SUPPORTS AND SERVICES IN THE MOST INTEGRATED SETTING

1. The Cabinet agrees to continue to develop and implement effective measures to provide adequate and appropriate public services and supports identified through person-centered planning in the most integrated setting appropriate to meet the needs of individuals with SMI, and who are residing in or at risk of entry into in PCH, pursuant to the details and timelines set forth below.
2. All guardians shall receive information from the Cabinet to encourage their wards with SMI who reside in or are at risk of entry into PCHs to participate to the maximum extent of his/her abilities in all decisions that will affect him/her; act in his/her own behalf on all matters in which the ward is able to do so; and develop or regain, to the maximum extent possible, the ward's capacity to meet the essential requirement for his/her physical health or safety as required by KRS 387.640. Guardians shall be encouraged to permit individuals who have been determined disabled to participate as fully as possible in treatment discussions and discharge planning, to the maximum extent of the individual's capabilities, in accordance with state law. Any decisions made by the guardian about where the individual will live should reflect the individual's written preferences, to the extent possible.

B. REGULATION

1. The Cabinet agrees to promulgate a new regulation or amend the existing regulation for PCHs, within one hundred eighty (180) days of the execution of this Agreement, requiring instruction in community transition skills, including Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) at all PCHs that participate in the Mental Illness or Intellectual Disability Supplement Program pursuant to 921 KAR 2:015 Section 13 and all PCHs that have more than thirty five percent (35%) residents with SMI as shown in the Annual Long Term Care Utilization and Service Report data. The Cabinet agrees to seek P&A's comments on this and any other draft administrative regulation(s) or potential changes to the new regulation relating to any issue that may affect the SMI population prior to the administrative regulation being submitted for final execution. The Cabinet will give due consideration to P&A's comments and supply written responses articulating the rationale if it declines to adopt those suggestions.

C. TECHNICAL ASSISTANCE COLLABORATIVE, INC.

1. Within ninety (90) days of the execution of this Agreement, the Cabinet shall consult with the Technical Assistance Collaborative, Inc. (TAC) to assess affordable housing and supportive services and provide strategic recommendations to create and maximize permanent supportive housing in compliance with this

Second Amended Settlement Agreement. The Cabinet shall consider any recommendations along with any P&A comments to those recommendations, giving the comments due consideration and supplying written responses articulating the rationale if it declines to follow any recommendations of the TAC.

D. CABINET LEVEL ADMINISTRATOR

1. Within one hundred eighty (180) days of the execution of this Agreement, the Cabinet shall establish a Cabinet-level position whose responsibility is to oversee the terms of the SASA and who shall have the responsibility for and authority to ensure compliance. The P&A Director can communicate directly with this official.

E. COMMUNITY-BASED SUPPORTED HOUSING ASSISTANCE

1. The Cabinet will develop and implement measures to provide individuals outlined in Section III.E.2.a-c access to community-based supported housing. Nothing in this Agreement will require the Cabinet to forgo federal funding or federal program participation, for housing that meets the criteria herein to provide community placements for individuals pursuant to this Second Amended Agreement.
2. Priority for eligibility for the receipt of Housing Assistance under this Second Amended Agreement will be given to the following categories of individuals:
 - a. Individuals with SMI who are residing in a PCH and receive state supplementation who have expressed to P&A, prior to the signing of this Second Amended Agreement, an interest in receiving services and supports in the most integrated setting, and have been entered into the Kentucky ISA Tracking Tool maintained by DBHDID, and who at the time of contact by the Cabinet, with timely follow-up, still wish to move into alternative housing.;
 - b. Individuals with SMI who are residing in a PCH and receive the State Supplementation;
 - c. Individuals with SMI who are or will be discharged from one of the state psychiatric hospitals set out in 908 KAR 2:040, Section 1, who have previously resided in a PCH or who are at risk of being placed in a PCH upon discharge from the psychiatric hospital.
 - i. No individual should be discharged from a state psychiatric hospital to a PCH unless :
 1. The CMHC has been notified of the impending discharge, if the patient consents to such notification;
 2. A Level of Care Utilization System (LOCUS) assessment has been administered and is documented as a part of the medical record; and
 3. The individual has been informed of the available community resources and consents to the placement in the PCH.
 - ii. Discharge planning will begin upon admission
 - iii. The Cabinet will track the numbers of individuals released from a state psychiatric hospital to a PCH, including those being placed there for the

first time; analyze the releases and identify barriers to release into the community; and develop and implement measures to overcome the problems and barriers identified; and

d. Individuals who are otherwise diverted from entry into a PCH

3. The Cabinet will provide Housing Assistance under this Agreement and the ISA and ASA to a total of one thousand two hundred seventy-five (1,275) individuals—approximately three hundred (300) individuals who are state wards with SMI residing or at risk of entry into PCHs and receiving state supplement; and approximately nine hundred seventy five (975) individuals with SMI residing in or at risk of entry into PCHs who are not state wards, but are receiving state supplement. As of September 30, 2018, the parties agree that the following number of persons are receiving the following services:

Community Integration Supplement (CIS)	717
Olmstead Housing Initiative (OHI)	50
No CIS or OHI, but living in the community pursuant to the terms of ISA and ASA	159
<u>Total</u>	<u>926</u>

The Cabinet will provide Housing Assistance to the remaining 350 individuals under the SASA. No fewer than 263 of those individuals, approximately seventy-five percent (75%), shall transition directly from a PCH.

4. Compliance with the numbers above shall be measured by counting the unique individuals who are class members receiving CIS, OHI, or living in the community without CIS or OHI, but with other services and supports pursuant to the terms of the ISA, ASA and SASA as demonstrated on the Kentucky ISA Tracking Tool on the reporting date.
5. Housing Assistance shall be allocated on a first come, first served basis following the terms set forth in Section III.E.2 based on geographic housing availability and individual preference in accordance with the priorities set forth above.
6. The Cabinet currently has ongoing programs for housing assistance that will continue in effect. The Cabinet may utilize those programs to fulfill its obligations under this Second Amended Agreement to provide Housing Assistance to individuals, so long as the Housing Assistance provided using those ongoing programs meets all the criteria herein and the persons served under this Second Amended Agreement meet criteria for those programs. In addition, the Cabinet agrees to commit up to \$1 million of the amounts listed in Section I.H. toward its ongoing housing assistance programs over the term of this Second Amended Agreement. Those funds shall also be used to broaden the existing housing assistance program to cover the costs of unusual or extraordinary repairs incurred by landlords as a result of their participation in the programs. Those funds shall not be used for repairs needed as a result of normal wear and tear. No additional funds will be provided until existing fund

balances are expended.

7. Housing Assistance will be provided for individuals to live in settings that meet the following criteria:
 - a. They are permanent housing with Tenancy Rights;
 - b. They include tenancy support services that enable residents to attain and maintain integrated, affordable housing. Tenancy support services offered to people living in supported housing are flexible and are available as needed and desired, but are not mandated as a condition of tenancy;
 - c. They enable individuals with disabilities to interact with individuals without disabilities to the fullest extent possible;
 - d. They do not limit individuals' ability to access community activities at times, frequencies and with persons of their choosing;
 - e. They are scattered site housing, where no more than 25% of the units in any development are occupied by individuals with a disability known to the Cabinet;
 - f. They afford individuals choice in their daily life activities, such as eating, bathing, sleeping, visiting and other typical daily activities; and
 - g. The priority is for single-occupancy housing.
8. Housing Assistance made available under this Second Amended Agreement cannot be used in Personal Care Homes, group homes, nursing facilities, boarding homes, assisted living residences, supervised living settings that do not meet the requirements of Section III.E.7, or any setting required to be licensed or certified.
9. Individuals will be free to choose other appropriate and available housing options, after being fully informed of all options available. Being fully informed means that an individual has been provided information about the option of transitioning to supported housing, its benefits, and the array of services and supports available as set out in this Second Amended Agreement. However, housing that does not meet the criteria set forth herein shall not be considered Housing Assistance for purposes of this Second Amended Agreement.

F. BEHAVIORAL HEALTH SERVICES

1. The Cabinet shall provide access to the array and intensity of services and supports under this Second Amended Agreement necessary to enable individuals with SMI currently residing in or at risk of entry into in PCHs to successfully transition to and live in community-based settings. The Cabinet

shall provide each individual receiving Housing Assistance under this Second Amended Agreement with access to services for which that individual is eligible that are covered under the Medicaid Program or the Cabinet-funded service array as described in Section III.F.3 of this Agreement.

2. The services and supports referenced in this section shall:
 - a. Be evidence-based, recovery-focused and community-based;
 - b. Be flexible and individualized to meet the needs of each individual;
 - c. Help individuals to increase their ability to recognize and deal with situations that may otherwise result in crises; and
 - d. Increase and strengthen individuals' networks of community and natural supports, as well as their use of these supports for crisis prevention and intervention.
3. The Cabinet shall rely on the following behavioral health services to satisfy the requirements of this Second Amended Agreement: Assertive Community Treatment (ACT) teams, case management services, crisis services, peer support services, and Supported Employment services.
4. The Cabinet shall require via its contracts with each CMHC that at least one county in each CMHC catchment area provides all of the services listed in Section III.F.3.
5. All ACT teams shall operate to fidelity to either, at the Cabinet's determination, the Dartmouth Assertive Community Treatment (DACT) model or the Tool for Measurement of Assertive Community Treatment (TMACT) or any fidelity models listed in the Substance Abuse and Mental Health Services Administration (SAMHSA) Tool Kits. All providers of behavioral mental health services shall adhere to requirements of the applicable service definition.
6. An initial person-centered transition service plan shall be developed within ninety (90) days of assignment to the transition coordinator/team, pursuant to Section III.G.3.f for each individual, which shall be implemented by a qualified professional who is clinically responsible for ensuring that all elements and components of the plan are arranged for the recipient in a coordinated manner. Individualized transition plans shall include psychiatric advance directives and/or crisis plans so that such measures can be incorporated into the response to any behavioral health crisis.
7. Case Management Services bring services, agencies, resources and people together to help an individual achieve his or her goals.
8. Crisis Services
 - a. The Cabinet shall ensure that a crisis service system exists for individuals

served under this Second Amended Agreement that includes crisis services sufficient to offer timely and accessible services and supports to those individuals experiencing a behavioral health crisis. The services shall include mobile crisis teams, community-based residential crisis services, and crisis telephone lines which shall be available 24 hours per day, 7 days per week.

- b. The Cabinet shall monitor crisis services and identify service gaps. The Cabinet shall develop and implement effective measures to address any gaps or weaknesses identified.
 - c. Crisis services shall be provided in the least restrictive setting (including at the individual's residence whenever practicable), consistent with an already developed individual community-based crisis plan or in a manner that develops such a plan as a result of a crisis situation, and in a manner that prevents unnecessary hospitalization, incarceration or institutionalization.
9. Peer Support Services shall be provided. Peer Support Services are the social and emotional support provided by persons with a mental health condition to others sharing a similar mental health condition to bring about a desired social or personal change. The job of a Peer Specialist is not to replace current clinical mental health staff, but to offer additional and/or alternative options to help people in their efforts to recover.

10. Supported Employment

- a. The Cabinet shall develop and implement measures to provide Supported Employment Services to individuals under this Agreement who are residing in or at risk of entry into a PCH, that meet their individualized needs. Supported Employment Services are defined as services that will assist individuals in preparing for, identifying, and maintaining integrated, paid, competitive employment. Services offered may include job coaching, transportation, assistive technology assistance, specialized job training, person centered employment plans, job development and individually-tailored supervision, including while residing in a PCH.
- b. Supported Employment Services shall be provided with fidelity to an evidence-based supported employment model for supporting people in their pursuit and maintenance of integrated, paid, competitive work opportunities. Supported Employment Services shall be assessed by an established fidelity scale such as the scale included in the SAMHSA supported employment toolkit.

G. DISCHARGE AND TRANSITION PROCESS

1. The Cabinet shall implement procedures for ensuring that individuals residing in or at risk of entry into a PCH will be accurately and fully informed in writing and signed by the individual about the community-based options provided under this Second Amended Agreement pursuant to Section III.E.9.

2. In addition to the Cabinet Level Administrator in Section III.D., the Cabinet shall maintain the overall transition team at the Cabinet level, which will include a representative from P&A and an individual who has successfully transitioned from a PCH via the ISA or ASA, to provide oversight and assist local transition teams in addressing and overcoming identified barriers preventing individuals from transitioning to an integrated setting. The members of the transition team shall include individuals with experience and expertise in how to successfully resolve problems that arise during discharge planning and implementation of discharge plans.

3. Implementation of In-Reach, Discharge and Transition Process

- a. DBHDID shall maintain requirements and materials for in-reach and transition coordinators and teams, including written protocols requiring referrals during the in-reach process to other programs such as the 1915(c) waivers, Veterans' Administration services, and state general fund services. DBHDID agrees to seek P&A's comments on any revisions and give them due consideration.
- b. DBHDID shall ensure that ongoing in-reach occurs on a regular and continuing basis to individuals in PCHs and Cabinet owned and operated psychiatric hospitals and individuals meeting the requirements of this Second Amended Agreement continues.
- c. The Cabinet shall advise PCHs that they may not interfere with the reasonable access of in-reach and transition coordinators and teams to the PCHs and may not discourage PCH residents from meeting with such coordinators and teams. The Cabinet shall encourage the coordinators and teams to report any instances of such interference or discouragements and the Cabinet shall take appropriate corrective action to address interference and discouragement.
- d. P&A shall be permitted to offer its assistance to individuals with SMI who are state wards in accessing services under this Second Amended Agreement. State guardians shall cooperate with P&A and case managers so that they might find the most integrated setting appropriate to meet the individual's needs, and shall allow P&A to represent those wards that request P&A's assistance in accessing services under this Second Amended Agreement.
- e. Initial contact (in-reach) will occur within fourteen (14) days of the date a referral is entered into the Kentucky ISA Tracking Tool maintained by DBHDID. Within fifteen (15) days of initial contact, individuals who have indicated they want to leave the PCH shall be assigned to a transition coordinator/team.
- f. Initial transition and discharge planning for an individual meeting the qualifications of this Second Amended Agreement shall be completed within ninety (90) days of assignment to a transition coordinator/team. Discharge, if appropriate, for an individual served under this Second

Amended Agreement will occur within one hundred eighty (180) days of assignment to a transition coordinator/team if Housing Assistance is then available. The total timeframe from referral to discharge is 209 days. At least 50% shall be transitioned within the 209-day timeframe. If Housing Assistance is not available for an individual within 209 days of assignment to the transition team, the transition team shall maintain contact and work with the individual on an ongoing basis until the individual transitions to community-based housing as described in Section III.E.

H. QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

1. The Cabinet shall maintain and enhance a quality assurance and performance improvement monitoring system to ensure that community-based placements and services are developed in accordance with this Second Amended Agreement, and that the individuals who receive services or Housing Assistance pursuant to this Second Amended Agreement are provided with the services and supports they need for their health, safety, and welfare. The goal of the Cabinet's system will be that all mental health and other services and supports funded by the Cabinet are of good quality and are sufficient to help individuals achieve increased independence, gain greater integration into the community, obtain and maintain stable housing, avoid harms, and decrease the incidence of hospital contacts, incarceration and institutionalization.
2. **Quality Assurance System:** The Cabinet shall regularly collect, aggregate and analyze data related to in-reach and person-centered discharge and community placement efforts, including, but not limited to, information related to both successful (both short-term and long-term) and unsuccessful placements, as well as the problems or barriers to placing and/or keeping individuals in the most integrated setting. Successful transitions shall be equal to or greater than seventy-five percent (75%) for the third year of this Second Amended Agreement, October 1, 2020 through September 30, 2021. The percentage of successful transitions that occur during each year of the SASA shall be measured as a separate and distinct data set. Such information shall include outcome-based measures and fidelity. The Cabinet shall review this information on a semi-annual basis and develop and implement measures to overcome the problems and barriers identified.

Information obtained from the Quality Assurance System shall be shared with P&A on least a quarterly basis, unless requested sooner.

I. OTHER REQUIREMENTS

1. **Independent Reviewer.** The Parties shall select an independent reviewer to continue to monitor the Cabinet's implementation of this Second Amended Agreement, who shall have authority to independently assess, review, and file quarterly status reports to all parties to the Second Amended Agreement. Such assessment and review shall include analysis of unsuccessful transitions, including

recommendations.

2. The Parties have chosen to monitor the Cabinet's implementation of this Second Amended Agreement through quarterly status reports on the Cabinet's implementation of and compliance with the provision of this Second Amended Agreement. A quarterly report on the individuals meeting the criteria of Section III.E.2.a of this Second Amended Agreement shall be prepared that indicates the transition milestones achieved as defined in the Kentucky ISA Tracking Tool and the Data Tracking Tool Users' Manual maintained by DBHDID.
3. The implementation of this Agreement as an ISA began on September 1, 2013. The Parties anticipate that the Cabinet will have substantially complied with all provisions of this Second Amended Agreement by October 1, 2021, to be shown by continued monitoring from October 1, 2021 to September 30, 2022 of only the percentage of successful transitions. The Agreement shall terminate October 1, 2022, unless the Cabinet fully satisfies its terms prior to that date or unless it is otherwise extended. Substantial compliance is achieved if any violations of the Second Amended Agreement are minor and occasional and are not systemic. Any Second Amended Agreement deadline may be extended by mutual agreement of both Parties.
4. Throughout the pendency of this Second Amended Agreement, the P&A and the Cabinet shall coordinate and discuss areas of disagreement and attempt to resolve outstanding differences. In the event of any dispute over the language or construction of this Second Amended Agreement or its requirements, the Parties agree to meet and confer in an effort to achieve a mutually agreeable resolution prior to terminating the Second Amended Agreement.
5. If the Cabinet responds by proposing a curative action by a specified date, the P&A may accept the Cabinet's proposal or offer a counterproposal for a different curative action or deadline. If the Parties reach an agreement that varies from the provisions of this Second Amended Agreement, the new agreement shall be in writing and signed. If the Parties fail to reach agreement on a plan for curative action, the P&A may seek an appropriate judicial remedy.
6. Failure by any Party to enforce this entire Second Amended Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver.
7. The Cabinet shall maintain sufficient records to document that the requirements of this Second Amended Agreement are being properly implemented and shall make such records available to P&A for inspection and copying upon request.
8. Notice under this Second Amended Agreement shall be provided by overnight courier to the following or their successors:

For the Cabinet:

Commissioner
Department for Behavioral Health, Developmental and Intellectual
Disabilities
275 E. Main Street
Frankfort, Kentucky 40621

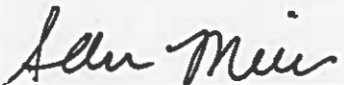
Office of General Counsel
Cabinet for Health and Family Services
275 E. Main Street
Frankfort, Kentucky 40621

For P & A:


Director
Protection and Advocacy
5 Mill Creek Park
Frankfort, Kentucky 40601

9. The precise acts to be done by the Parties under this Second Amended Agreement are clearly ascertainable and any breach of this Second Amended Agreement may result in significant and irreparable damage to either Party for which they will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that they may immediately seek enforcement of this Second Amended Agreement by means of specific performance and that specific performance will be an available equitable remedy.

Signatures:



Adam Meier
Secretary
Cabinet for Health and Family Services



Jeff Edwards
Director
Kentucky Protection and Advocacy



Approved as to Form



Approved as to Form

10/19/2018

Date

10/22/18

Date