

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
C.A. NO. 14-2102-BLS

MASSACHUSETTS COUNCIL OF HUMAN  
SERVICE PROVIDERS, INC., ET AL.,

Plaintiffs,

v.

SECRETARY OF THE EXECUTIVE OFFICE OF  
HEALTH AND HUMAN SERVICES,

Defendant.

**AGREEMENT FOR JUDGMENT**

This Agreement for Judgment is made and entered into as of May 4, 2015, by and between Plaintiffs Massachusetts Council of Human Service Providers, Inc., Association for Behavioral Healthcare, Inc., Association of Developmental Disabilities Provider, Inc., and Children's League of Massachusetts (collectively, "Plaintiffs") and the Defendant Secretary of the Executive Office of Health and Human Services of the Commonwealth of Massachusetts ("EOHHS") (together and collectively, "the Parties").

WHEREAS, Plaintiffs filed a complaint in this action alleging that EOHHS violated Chapter 257 of the Acts of 2008 ("G.L.c. 257"), as amended, by failing to promulgate and implement all initial rate regulations for social services providers covered by G.L.c. 118E, §13C, par. 2 ("Initial Rate Regulations"), by the required statutory deadlines and by failing to conduct 2 year rate reviews as required by statute; and

WHEREAS, by order dated January 12, 2015, the Court granted Plaintiffs' motion for judgment on the pleadings and ordered EOHHS to promulgate all required Initial Rate Regulations within 90 days such that they would be implemented for contracts entered into by the Commonwealth on or after July 1, 2015, but at a hearing held January 22, 2015, stated from the bench that the Parties would be permitted to negotiate an alternative schedule for promulgation and implementation of Initial Rate Regulations, to be entered as a judgment of the Court; and

WHEREAS, the Parties have conducted extensive negotiations concerning the terms upon which they agree to an alternative schedule for promulgation and implementation of Initial Rate Regulations, to be entered as a judgment by the Court.

NOW, THEREFORE, the Parties agree as follows:

1. Additional Payments for Programs Without Initial Rate Regulations as of the Date of This Agreement

(a) EOHHS shall pay to each social services provider covered by G.L.c. 257 ("c. 257 Provider(s)") who, as of the date of this Agreement, is a party to a contract with the Commonwealth to provide services covered by G.L.c. 257 ("c. 257 Contract") and has not yet been the subject of Initial Rate Regulations promulgated by EOHHS, an additional payment equal to 3.75% of each c. 257 Provider's total Contract funding level for the Commonwealth's Fiscal Year 2015 (7/1/14-6/30/15) ("FY15"). This payment, defined as the "3.75% Payment", shall be based on the amount of the Commonwealth's FY15 encumbrance for the c.257 Contracts as of the Commonwealth's encumbrance deadline, specified by the Executive Office for Administration and Finance and the Office of the Comptroller, which is on or around May 10, 2015. The 3.75% payment shall be in addition to the amount provided for in each c. 257 contract for the Commonwealth's Fiscal Year 2016 (7/1/15-6/30/16).

(b) The 3.75% Payments shall be paid by EOHHS to each c.257 Provider entitled to a 3.75% Payment in equal quarterly installments (of 0.9375% each) as follows: first quarterly payment on or around August 15, 2015; second quarterly payment on or around October 15; third quarterly payment on or around January, 15, 2016; and fourth quarterly payment on or around April 15, 2016. Payment to each eligible c.257 Provider shall be contingent upon the timely execution and return to EOHHS of a Commonwealth Standard Contract Form.

(c) If an Initial Rate Regulation is promulgated and implemented by EOHHS prior to any date described in subparagraph (b) for the payment of a quarterly 3.75% Payment, the c.257 Providers covered by such newly promulgated Initial Rate Regulation shall receive a 3.75% Payment for the quarter in which the Initial Rate Regulation is implemented, but shall not receive any further quarterly 3.75 % Payments.

(d) A list of the specific c.257 Services for which c.257 Providers shall be entitled to receive 3.75% Payments is attached to hereto as Schedule A (including all programs listed in Tiers 2 and 3), which is expressly incorporated as a term of this Agreement.

2. Additional Payments for Programs Without Initial Rate Regulations as of June 30, 2016

(a) EOHHS shall pay to each c. 257 Provider that is a party to a c. 257 Contract with the Commonwealth and is not the subject of Initial Rate Regulations promulgated by EOHHS by June 30, 2016, an additional payment in the form of a Cost Adjustment Factor ("CAF") percentage determined pursuant to ¶5 of this Agreement. If, as of the date that the additional CAF payment is due under this paragraph, no new CAF methodology has been determined pursuant to ¶5 of this Agreement, then the CAF methodology then being utilized by EOHHS for c. 257 rates at the time such additional CAF payment is due shall be utilized to determine the

CAF percentage payable under this paragraph. That payment shall be designated as the "FY17 Payment", and shall be determined by applying the CAF to (i) the Provider's FY16 contract funding level, plus (ii) the 3.75% Payment received by the Provider for FY16.

(b) The FY17 Payments shall be paid by EOHHS to all c.257 Providers entitled to an FY17 Payment in equal quarterly installments as follows: first quarterly payment on or around August 15, 2016; second quarterly payment on or around October 15, third quarterly payment on or around January 15, 2017; and four quarterly payment on or around April 15, 2017. Payment to each eligible c.257 Provider shall be contingent upon the timely execution and return to EOHHS of a Commonwealth Standard Contract Form.

(c) If an Initial Rate Regulation is promulgated and implemented by EOHHS prior to any date described in subparagraph (b) for the payment of a quarterly FY17 Payment, the c.257 Providers covered by such newly promulgated Initial Rate Regulation shall receive a FY17 Payment for the quarter in which the Initial Rate Regulation is implemented, but shall not receive any further quarterly FY17 Payments.

### 3. Initial Rate Regulation Schedule

EOHHS shall promulgate and implement Initial Rate Regulations for all c. 257 program services covered by G.L.c. 257 that have not been the subject of Initial Rate Regulations as of the date of this Agreement (as listed in Schedule A, Tiers 1, 2, and 3) on the following schedule:

(a) Initial Rate Regulations for "Tier One" program services (as reflected on Schedule A) shall be promulgated and implemented by July 1, 2015.

(b) Initial Rate Regulations for "Tier Two" program services (as reflected on Schedule A) shall be promulgated and implemented by June 30, 2016.

(c) Initial Rate Regulations for “Tier Three” program services (as reflected on Schedule A) shall be promulgated and implemented by July 1, 2017.

4. For the purposes of this Agreement, the term “implement” or “implemented,” when applied to Chapter 257 rates, shall mean that rates have been duly promulgated and are fully payable under standard Commonwealth of Massachusetts contract terms, pursuant to a related procurement award or other properly executed contracting mechanism.

5. Cost Adjustment Factor

EOHHS shall conduct detailed economic analysis for the purpose of developing a consistent calculation methodology for setting a CAF that estimates changes in the reasonable costs of goods and services, including those attributed to inflation, in determining payment rates applicable to c.257 Providers. EOHHS acknowledges that, at the current time, it employs a CAF methodology for setting c.257 rates that is different in key respects from a Cost Increment Factor currently employed by the Operational Services Division (“OSD”) for use in pricing approved Ch. 766 Special Education schools and for estimating cost changes in social service programs. EOHHS agrees to work with all relevant Commonwealth parties, including representatives of the Executive Office for Administration and Finance and OSD, and to engage with relevant expert economic analysts in order to develop a CAF methodology that will be used by EOHHS as a basis for establishing rates for Chapter 257.

6. Ongoing Plan Monitoring and Oversight

EOHHS shall engage in meetings with the Provider and Consumer Advisory Council (“PCAC”) at which EOHHS will provide meeting participants with detailed status reports on all of the promulgation and implementation of all Initial Rate Regulations and pricing and rate review activities being undertaken pursuant to the provisions of this Agreement, and the

Schedule referred to above. Such meetings shall be held and status reports supplied to the PCAC beginning in June, 2015, and continuing through June, 2017.

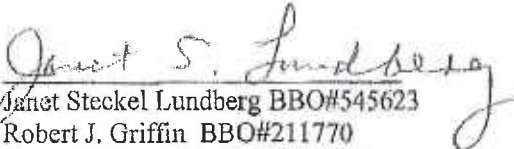
7. The Parties agree that the terms of this Agreement shall be entered by the Court as a Judgment in the instant Action, and that the Parties shall file with the Court a Joint Motion for Entry of Judgment in the form attached hereto as Attachment A. All provisions of the Judgment shall be enforceable in a proceeding filed in this Action.

8. The Parties agree that the entry of the Judgment referenced in ¶7 of this Agreement shall be final and binding upon the Parties to this Action and this Agreement, as well as upon the Commonwealth of Massachusetts, that each such Party waives all rights of appeal and waives the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure (except upon a proceeding for contempt or for enforcement of this Agreement).

9. Upon approval and entry of this Agreement as a Judgment by the Court, the Judgment shall constitute a Final Judgment of the Court.

MASSACHUSETTS COUNCIL OF  
HUMAN SERVICE PROVIDERS, INC.  
et al.,


By their attorneys

  
Janet Steckel Lundberg BBO#545623  
Robert J. Griffin BBO#211770  
KROKIDAS & BLUESTEIN LLP  
600 Atlantic Avenue, 19<sup>th</sup> Floor  
Boston, Massachusetts 02210  
(617) 482-7211

SECRETARY OF THE EXECUTIVE  
OFFICE OF HEALTH AND HUMAN  
SERVICES

By her attorney,

MAURA HEALEY  
ATTORNEY GENERAL

  
Daniel J. Hammond  
Assistant Attorney General  
Government Bureau  
BBO # 599475  
One Ashburton Place, Room 2014  
Boston, Massachusetts 02108  
(617) 727-2200, ext. 2078

Schedule A: Agreement for Judgment

Tier 1

Project	Dept.	Activity Code	Program Name
Substance Abuse Residential 101 CMR 346	DPH	4951	Latina Residential Recovery
		4958	BSAS Jail Diversion Program
		4919	Specialized Case Management for Families in TSL
		3386	Residential Treatment
		3401	2nd Offender Residential
	3380	Specialized Res Services	
	MRC	2237	Substance Abuse Services

Tier 2

Project	Dept.	Activity Code	Program Name
General Programs - MCB/MRC 101 CMR 422	MCB	2103	Diagnostic & Evaluation
		2406	Mobile Eye Clinic Services
		2110	Personal Vocational Adjustments
		2119	Homemaker
		2121	Mobility Services
		2405	Deaf Blind Community Access Network
	MRC	2218	Assistive Technology Independent Living
		2220	Home Care Assistant
		2222	Transition to Adulthood Program
Community Services Network 101 CMR 413	DYS	2514	Community Services Network
In-Home Basic Living Supports	DDS	3287	Supplemental Adult Supports
		3798	Individual/Community Supports
	MCB	2402	Residential Supports
	MRC	2216	Independent Living / Supported Living
2227		Community Supports	
Community Based Day Supports 114.4 CMR 15	MRC	2225	MRC Non-Residential
	DDS	3777	Nursing Facility Active Treatment
		3778	Nursing Facility Transitional Services
Adult Homelessness Supports 101 CMR 421 (proposed)	DMH	3039	Homeless Support Services
		3049	Adult Residential Services



Tier 3

Project	Dept.	Activity Code	Program Name
PACT Program	DMH	3031	Program of Assertive Community Treatment
Respite	DDS	3182	Emergency Stabilization Residence
	DMH	3048	Respite Care Services
General Programs - DCF/DYS	DCF	FBSC	FBS Clinical
		FBSS	Young Parent Support; Community Connections
		CSSE	Comprehensive Emergency Services
		CSSI	Protective Investigations
	RESS	Residential Shelter	
Independent Living Centers	DYS	2507	Alternative Lock-up
	MCD	2451	Independent Living Service
	MRC	2208	VR Independent Living
Clinical and Medical Services	DMH	3014	Recovery Learning Community
	DDS	3170	Clinical Team - Mental Health Evaluations
General Programs - DPH	DPH	3438	Teen Pregnancy Prevention
		4927	Recovery High School
		4828	Environmental Health Assessment
Inpatient Programming	DMH	3090	Adult Contracted Inpatient
Substance Abuse Case Management	DPH	3389	SASI - Substance Abuse Shelter for Individuals
		4956	BSAS Supportive Case Management
		3329	Tewksbury Stab & Trans
		3382	Youth Search
		4936	Youth Intervention Programs
Family Stabilization	DMH	4929	Office Based Opioid Treatment Services
		3068	Day Services
Protective Services	DDS	3274	Corporate Rep Payee
	ELD	8010	Guardianship
Young Parents Program	ELD	8005	Money Management Assistance
Violence and Injury Prevention	DTA	2833	ESP - Young Parents Program
Violence and Injury Prevention	DPH	3486	Batterer Intervention Program
		DCP	DVCB DV Community Based
	DPH	3361	Sex Assault Prev. & Surv.
		4785	LGBT Domestic Violence Response
Community Based Flexible Supports (CBFS)	DMH	4749	Refugee & Immigrant Safety (RISE)
		3054	Community Based Flexible Support
		3056	Individual Support
Family Network Lead Agency	DCF	3059	Community Rehabilitative Support
		FNLA	Family Network Lead Agency
Health-Related	DPH	4915	HIV/AIDS Corrections to Community Reintegration Program
		4955	OHA HIV/AIDS Case Management and Health Related Support
		4950	HIV Prevention, Testing and Referral Services