

Appendix 1

Final Settlement Agreement

Dunakin v. Lashway and Teeter, NO. 2:14-cv-00567-JLR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

This Settlement Agreement (Agreement) is between Plaintiff Adam Dunakin, by his next friend and mother, Kimberlee Hollinger (Plaintiff) and Defendants, Patricia Lashway, in her official capacity as Secretary of the Washington State Department of Social and Health Services (DSHS) and Dorothy F. Teeter, in her official capacity as Director of the Washington State Health Care Authority (HCA). The Plaintiff and the State are hereinafter referred to collectively as “the Parties.” This Agreement is a full expression of the agreements between the Parties.

RECITALS

On April 16, 2014, Plaintiff filed a lawsuit (Lawsuit) on behalf of himself and a class of similarly situated individuals against Defendants Dorothy Teeter and Patricia Lashway, in their official capacities as the directors of Washington state Health Care Authority and Department of Social and Health Services respectively. The Lawsuit asserted claims under the Americans with Disabilities Act, 42 U.S.C. § 12132 et seq. (ADA), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and several sections of Title XIX of the Social Security Act, 42 U.S.C. § 1396a, et seq. (Medicaid Act), including the Preadmission Screening and Resident Review (PASRR) provisions of the 1987 Nursing Home Reform Act, 42 U.S.C. § 1396r, et seq. (NHRA). Defendants denied these allegations. The U.S. District Court Western District of Washington at Seattle certified a class of Medicaid recipients with intellectual disabilities and related conditions (ID/RC) who are or will be residents of privately-operated nursing facilities in Washington and who are eligible to receive PASRR screening and evaluations, with Plaintiff appointed to represent the class. By this Agreement, the Parties wish to resolve all claims for the plaintiff and the class.

AGREEMENT

1. Definitions

- 1.1 “*Action*” shall mean: *Dunakin v. Lashway and Teeter*, No. 2:14-cv-00567-JLR, a class action pending in the U.S. District Court Western District of Washington at Seattle.
- 1.2 “*Agreement Execution Date*” shall mean: the date on which this Agreement is fully executed.
- 1.3 “*Class Counsel*” shall mean: Eleanor Hamburger of SIRIANNI YOUTZ SPOONEMORE HAMBURGER and Susan Kas of DISABILITY RIGHTS WASHINGTON.
- 1.4 “*Class Members*” shall mean: those individuals who comprise the class as certified by the Court, specifically:

All individuals who:

- a. are or will be residents of Medicaid-certified, privately-operated nursing facilities in the State of Washington; and
 - b. are Medicaid recipients with an intellectual disability or related condition(s) such that they are eligible to be screened and assessed pursuant to 42 U.S.C. § 1396r(e)(7) and 42 C.F.R. § 483.122 *et seq.*
- 1.5 “Class Released Claims” shall mean: any and all claims, demands, debts, liabilities, and causes of action, known or unknown, for injunctive and declaratory relief arising out of or relating Defendant’s PASRR system for the class that were brought, or that could have been brought, by the Named Plaintiff against Defendants in the Action on behalf of a class, including but not limited to claims for injunctive and declaratory relief under the NHRA, Medicaid Act, Section 504 of the Rehabilitation Act or ADA, attorneys fees and costs, expenses. Class Released Claims shall not include a release of claims for damages. This Release shall be binding on Plaintiffs, the class and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.
 - 1.6 “*Continuous active treatment program*” shall mean: a combination of specialized services as defined in paragraph 1.18 and services provided by a nursing facility to satisfy the requirements of 42 C.F.R. § 483.440.
 - 1.7 “*Court*” shall mean: U.S. District Court Western District of Washington at Seattle.
 - 1.8 “*Defendants*” shall mean: Patricia Lashway, in her official capacity as Secretary of the Washington State Department of Social and Health Services (DSHS) and Dorothy F. Teeter, in her official capacity as Director of the Washington State Health Care Authority (HCA).
 - 1.9 “*Effective Date of Settlement*” shall mean: the date on which all of the conditions to settlement set forth in Section 2 have been fully satisfied or waived.
 - 1.10 “*Intellectual disability or related condition*” (ID/RC) shall have the same meaning as those terms are described in 42 C.F.R. § 483.102 (3)(i) and (ii), and 42 C.F.R. § 435.1010.
 - 1.11 “*Legal Guardian*” shall mean: the guardian of an adult individual or a surrogate decision maker under Wash. Rev. Code 11.88.
 - 1.12 “*Named Plaintiff*” shall mean: Adam Dunakin, by his next friend and mother, Kimberlee Hollinger.
 - 1.13 “*Parties*” shall mean: Named Plaintiff, Plaintiff Class and Defendants.

- 1.14 “*PASRR Level I*” or “*PASRR Level I screening*” means the process of identifying individuals who are suspected of having ID/RC and therefore require a PASRR Level II evaluation. A PASRR Level I screening is further described and defined in 42 C.F.R. §§ 483.112(a) and 483.128.
- 1.15 “*PASRR Level II*” means a face-to-face evaluation performed to assess: (1) whether the individual’s needs could be met in the community through alternate placement options; (2) the individual’s need for inpatient care, whether in a nursing facility or other setting such as an ICF/IID; and (3) the individual’s need for specialized services. A PASRR Level II evaluation is further described and defined in 42 C.F.R. §§ 483.112, 483.132, and 483.136.
- 1.16 “*Releasees*” shall mean: Defendants, their subsidiaries, its successors, predecessors, officers, directors, representatives, employees, agents, assigns, attorneys, and any and all other entities and persons in privity with them which could be ostensibly liable for the claims being released.
- 1.17 “*Roads to Community Living*” (RCL) shall mean the demonstration project described in Wash. Admin. Code § 388-106-0250.
- 1.18 “*Specialized services*” shall mean: services for the class to be provided in nursing facilities, which are identified by the PASRR Level II. Specialized services are further described and defined in 42 C.F.R. §§ 483.116, 483.120(a)(2), 483.136, 483.440(a)(1), 42 U.S.C. § 1396r(e)(7)(G)(iii) and the State Plan Amendment for PASRR Specialized Services.
- 1.19 “*Settlement*” shall mean: the settlement to be consummated under this Agreement.

2. *Conditions to Effectiveness of the Settlement*

- 2.1 *General.* The Settlement provided for in this Agreement shall not become binding unless and until each and every one of the conditions in Section 2.2 have been satisfied or waived.
- 2.2 *Court Approval.*
 - 2.2.1 *Motion for Preliminary Approval and Notice.* The Court shall have preliminarily approved the Agreement (Preliminary Approval Order) and authorized the issuance of notice to the Class. Class Counsel shall make a motion for preliminary approval and authorization to send notice (Preliminary Motion). The Court must conclude that the notice to be sent fairly and adequately describes the terms of the Agreement, gives notice of the time and place of the hearing for final approval of the Settlement, describes how a Class Member may comment on, object to, or support the Settlement. The Court must also conclude that the manner of providing the notice to Class Members is the best notice practicable under the circumstances.

- 2.2.2 *Issuance of Class Notice.* By the date set by the Court in its Preliminary Approval Order, Defendants shall cause Class notice to be issued as follows:
- 2.2.2.1 *U.S. Mail.* By the date set forth by the Court in its Preliminary Approval Order, Defendants shall cause Class Notice to be mailed to a list of all Class Members and their parents/guardians/next friends, in their identified primary language. The cost of mailing shall be paid by Defendants.
- 2.2.2.2 *Webpage.* Defendants shall prominently post, electronically, a link to the settlement agreement and notice. Defendants shall also post translated versions of the court-approved Notice.
- 2.2.2.3 *Language Translations.* Defendants shall provide to Class Counsel a de-identified version of any translated notice to post on the Class Counsel webpage in Section 2.2.3 below.
- 2.2.3 *Class Counsel Webpage.* Class Counsel shall create a webpage which contains the following material:
- 2.2.3.1 A description of *Dunakin v. Lashway*, including a summary of the litigation to date;
- 2.2.3.2 A description of the Class definition;
- 2.2.3.3 A summary of the proposed settlement derived from the Class notice;
- 2.2.3.4 A timeline and schedule of events, including deadlines for submitting comments, objecting to or supporting the Settlement Agreement, and the date of the Final Approval Hearing;
- 2.2.3.5 How to contact Class Counsel for additional information;
- 2.2.3.6 Key litigation and settlement documents;
- 2.2.3.7 A link to the translated notices as described in Section 2.2.2.3 above.
- 2.2.4 *Final Approval Hearing.* On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in the hearing (Final Approval Hearing) during or after which the Court will determine by order (the Final Order) whether: (i) the proposed Settlement Agreement between the parties is fair, reasonable and adequate and should be approved by the Court; and (ii) the requirements of CR 23 and due process have been satisfied in connection with the distribution of the notice.

2.2.5 *Motion for Final Approval.* On the date set by the Court in its Preliminary Approval Order, Plaintiffs shall have filed a motion (Final Approval Motion) for an order giving final approval to this settlement (Approval Order).

2.2.6 *No Termination.* The Settlement shall not have terminated pursuant to Section 8.

3. ***Releases of the Releasees.*** Upon the Effective Date of Settlement, as defined in paragraph 1.10 and Section 7 herein, Plaintiff and the class that he represents, absolutely and unconditionally release and forever discharge Releasees from any and all Class Released Claims that Plaintiff or the class have directly, indirectly, derivatively, or in any other capacity ever had or now have. This Release shall be binding on Plaintiff, the Class Members, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents. The Court retains jurisdiction to enforce the terms of the release.
4. ***Representations and Warranties.*** The Parties, and each of them, represent and warrant that they are voluntarily entering into this Agreement as a result of arm's-length negotiations; in executing this Agreement they are relying upon their own judgment, belief and knowledge, and the advice and recommendations of their own counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof. The Parties, and each of them, represent and warrant that they have carefully read the contents of this Agreement; they have made such investigation of the facts pertaining to the Settlement, this Agreement and all of the matters pertaining thereto as they deem necessary; and this Agreement is signed freely by each person executing this Agreement on behalf of each party. Each individual executing this Agreement on behalf of any other Person does hereby represent and warrant to the other Parties that he or she has the authority to do so.
5. ***No Admission of Liability.*** The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing herein shall be deemed to constitute an admission of any wrongdoing by Defendants or any of the Releasees. Neither the fact nor the terms of this Agreement shall be offered or received in evidence in any action or proceeding for any purpose as an admission on the part of the parties.
6. ***PASRR and ADA – Related Services for Class Members***
 - 6.1 PASRR Policy: The Intellectual Disability Authority will establish a Developmental Disabilities Administration (DDA) PASRR Policy by no later than January 1, 2017, or within 90 days of final settlement approval, whichever is later, and continue to develop DDA's PASRR Manual and its PASRR Communication Protocol. Defendants will provide draft policies to Class Counsel for review and comment. Defendants will invite nursing facility representatives, community providers, self-advocates who have left the nursing facility, and Class Counsel to provide input and feedback during development of the PASRR Policy.

- 6.2 **Goal - Level I:** Defendants will continue to implement statewide PASRR Level I screening policies and procedures that result in timely and adequate PASRR Level I screening.

6.2.1 *Policy Outcomes*

6.2.1.1 Defendants will track non-compliant PASRR Level I screeners and/or facilities and refer those screeners/facilities to the appropriate regulator and/or for additional training.

6.2.1.2 The state survey agency will survey nursing facilities in accordance with federal and state requirements, and as a part of the survey process will monitor and enforce compliance with PASRR requirements.

6.2.1.3 During surveys, the state survey agency will review a sample of records to determine if a Level I and Level II, if required, were completed in accordance with federal and state requirements.

6.2.1.4 Defendants will use existing data systems to identify enrolled DDA clients in nursing facilities who were erroneously screened negative through an inaccurate PASRR Level I screen, and ensure those individuals receive a PASRR Level II evaluation pursuant to the PASRR Communication Protocol.

6.2.2 *Training Outcomes*

6.2.1 Defendants will continue to provide annual PASRR training to PASRR Level I screeners, including but not limited to employees of hospitals and nursing facilities.

6.2.3 *Metrics*

6.2.3.1 Defendants will provide Class Counsel with quarterly reports on compliance with each of the four Policy Outcomes in Section 6.2.1 above during the Settlement Period.

6.2.3.2 Defendants will provide Class Counsel with quarterly reports showing the percentage of PASRR Level I records reviewed that were completed in compliance with federal and state PASRR requirements. An instance will not be considered non-compliant for Class Members admitted to a nursing facility before April 1, 2015, if the only non-compliance with federal and state PASRR requirements is the failure to complete the Level I screen prior to admission. An instance also will not be considered non-compliant if the only non-compliance is the failure to complete the Level I screen prior to admission and the error was addressed following a previous citation of the facility. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 90% or greater.

6.2.3.3 The same quarterly reports must also show the number of enrolled DDA clients in nursing facilities who were erroneously screened negative through an inaccurate PASRR Level I screen, and the number of instances where an erroneous screen was corrected within 60 days of DSHS receiving the erroneous Level I. In instances where there is an erroneously negative Level I screen, the instance shall not count against compliance so long as it is corrected within 60 days of DSHS receiving the erroneous Level I. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 98% or greater.

- 6.3 **Goal - Level II:** Defendants will continue to implement statewide PASRR Level II evaluation policies and procedures that ensure timely, adequate and appropriate PASRR Level II evaluations of all Class Members.

6.3.1 *Policy Outcomes*

6.3.1.1 Defendants will continue to implement, and if necessary update, its PASRR Communication Protocol to ensure timely and adequate PASRR Level II evaluations.

6.3.1.2 Defendants will continue to monitor and track the timely provision of PASRR Level II evaluations, through at least (but not limited to) its case management system (DPMS) and Regional PASRR Monthly Meetings.

6.3.1.3 Defendants will continue to ensure that PASRR Level II evaluators have access to medical support and/or review of Level II evaluations:

6.3.1.3.1 Defendants will ensure that all PASRR program staff have access to DDA regional nursing care consultants as a resource to address medical questions when reviewing documentation, when performing Level IIs, when recommending professional evaluations or specialized services, or when questions arise during PASRR Regional Monthly Meetings.

6.3.1.3.2 Defendants will develop guidelines for when PASRR staff should utilize nursing care consultants or other medical resources to address medical concerns and needs for Class Members.

6.3.1.4 Defendants will continue to provide completed PASRR Level II evaluations to all evaluated individuals and their family members/guardians if appropriate, and will ensure that PASRR Level II evaluations clearly indicate whether the evaluated individuals are eligible for PASRR Specialized Services and, if so, the full range of specialized services recommended for that individual at the time of the Level II evaluation.

6.3.1.5 Defendants will continue to ensure that all individuals who receive a PASRR Level II evaluation are provided with a timely Planned Action Notice and notice of their right to appeal Defendants' PASRR determinations.

6.3.1.6 Defendants will continue to ensure that the PASRR Level II evaluations are updated with PASRR Addendums, when there are additional evaluations and/or recommendations for specialized services or new information is obtained, and addendums are provided to individuals with a timely Planned Action Notice.

6.3.2 *Training Outcomes*

6.3.2.1 PASRR Assessors will be trained on guidelines for when to seek additional medical guidance from hospital staff, nursing facility staff, or DDA regional nursing care consultants when reviewing documentation, when performing Level IIs, when recommending professional evaluations or specialized services, or when questions arise during PASRR Regional Monthly Meetings.

6.3.2.2 PASRR Assessors will be trained to identify on the Level II form the sources of evidence and/or key documents relied upon for their determination that the individual does not have ID/RC.

6.3.2.3 PASRR Assessors will be trained to identify on the Level II form the sources of evidence and/or key documents reviewed that limit the recommendations for specialized services and/or discharge planning.

6.3.2.4 PASRR Assessors will be trained on how to resolve discrepancies in documentation that could impact whether the individual has an ID/RC, the provision of specialized services and/or discharge planning.

6.3.2.5 Defendants will continue to revise its "PASRR Indicators and Approaches" to include more detailed guidance for when referrals for specialized evaluation and various specialized services should be made, and will use the PASRR Indicators and Approaches document as part of training for PASRR Assessors.

6.3.3 *Metrics*

6.3.3.1 Defendants will include in quarterly reports information about the percentage of Level II evaluations completed within fourteen (14) working days of receiving a Level I screen that indicates a Level II is necessary. When determinations are initially made verbally pursuant to 42 C.F.R. § 483.112, the date of completion shall be the date of the verbal determinations. For categorical determinations and exempted hospital discharges, the fact that a Level II is not completed within this timeframe

shall not count against compliance. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 90% or greater.

6.3.3.2 Defendants will include in quarterly reports information about the percentage of Level II evaluations completed prior to nursing facility admission when the Defendants receive the Level I prior to admission. When determinations are initially made verbally pursuant to 42 C.F.R. § 483.112, the date of completion shall be the date of the verbal determinations. For categorical determinations and exempted hospital discharges, the fact that a Level II is not completed within this timeframe shall not count against compliance. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 90% or greater.

6.3.3.3 Defendants will include in quarterly reports information about the percentage of Level II evaluations that identify that the individual may be served in a community-based alternative placement and if not, the specific barriers to community-based alternative placement. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 95% or greater.

6.3.3.4 Defendants will include in quarterly reports information about the percentage of Level II evaluations that recommend clinical evaluations. If no clinical evaluations are identified, Department staff will identify on the assessment the reasons that evaluations were not considered necessary for the individual. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate that 98% PASRR assessments either recommend evaluations or identify that no such evaluations were necessary. The Defendants will utilize a dropdown menu to document reasons why evaluations were not considered necessary and will provide the options to Class Counsel for review and comment prior to implementation.

6.3.3.5 Defendants will include in quarterly reports information about the percentage of Level II evaluations that identify why additional specialized services were not considered necessary for the individual. This outcome shall be met when three (3) consecutive quarterly reports demonstrate compliance at 98%. The Defendants will utilize a dropdown menu to document reasons why further services were not considered necessary and will provide the options to Class Counsel for review and comment prior to implementation.

6.3.3.6 Defendants will include in quarterly reports information about the percentage of individuals recommended for professional evaluations who receive evaluations within 30 days of recommendation, and the percentage of instances in which the evaluation is not performed within

30 days of recommendation, but the Defendants document the reason for the delay and/or follow-up steps within 60 days of the recommendation. If a recommendation is not performed within 30 days, the instance shall be considered compliant if it is provided within 90 days and the Defendants document the reason for delay and/or follow-up steps. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 90%. For Informational purposes, the Defendants will provide Class Counsel with information about the number of instances in which the evaluation is performed more than 30 days, but less than 90 days, after the recommendation.

6.3.3.7 Defendants will include in quarterly reports information about the percentage of individuals recommended for specialized services who receive recommended services within 90 days of recommendation. An instance will not be considered non-compliant if 1) inaction or resistance from the individual and/or his or her family or guardian is the reason for the delay, 2) within 120 days, Defendants provide recommended specialized services and document the reasons for delay, and/or 3) Defendants provide alternative services that have been identified through a person-centered planning process to meet the individual's needs. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 90%.

6.3.3.8 Defendants will include in quarterly reports information about the number of Class Members who were provided written information and verbal explanation about the family mentor. For the purpose of compliance, this outcome shall be considered met when three (3) consecutive quarterly reports demonstrate 90% of Class Members were provided written information and verbal explanation about the family mentor program.

6.3.3.9 Defendants will include in quarterly reports information about the number of Class Members who met at least one time with a family mentor, and the number of Class Members who both met at least one time with a family mentor and who after the meeting went on a visit to a residential program or had residential program provider visit them. If the percentage of individuals who utilize mentorship services is less than 10% for three (3) consecutive quarterly reports, the Defendants will meet with available mentors to discuss ways to better convey the availability of mentorship services to Class Members and develop training for PASRR Assessors. Class Counsel shall have the option of participating in this process and commenting on the training. For purposes of compliance, this outcome shall be considered met when either (1) three (3) consecutive quarterly reports demonstrate that 10% of individuals met at least one time with a family mentor or (2) the Defendants meet with available mentors and develop training for PASRR Assessors as described above.

- 6.4 **Goal - Post-PASRR Level II Meeting and Monitoring:** Defendants will implement meetings and procedures to take place after the completion of a Level II.

6.4.1 *Policy Outcomes*

6.4.1.1 Defendants will provide Post-PASRR Level II service planning consistent with Appendix A to this agreement, reflecting the Post-PASRR Level II Meetings and procedures agreed upon by the parties on March 17, 2016.

6.4.2 *Training Outcomes*

6.4.2.1 All PASRR staff will receive training on Appendix A and person-centered planning.

6.4.3 *Metrics*

6.4.3.1 Defendants will include in quarterly reports information about the percentage of Post-PASRR Level II meetings occurring within 90 days of the Level II evaluation. If a meeting does not occur within 90 days, the instance shall not count against compliance if the PASRR Assessor determines the meeting is impossible or inappropriate in the individual's case. If an individual discharges within 90 days of admission, the fact that a Post-PASRR meeting has not occurred will not count against compliance. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 90% or greater.

6.4.3.2 Defendants will include in quarterly reports information about the percentage of Post-PASRR Level II documentation provided with planned action notices within thirty calendar days of Post PASRR Level II meeting. If the documentation is mailed, the date it is provided will be the date it is placed in the mail. This outcome shall be considered met when three (3) consecutive quarterly reports demonstrate compliance at 90% or higher.

- 6.5 **Goal -** An individual's choice to transition, or not transition, to the community should be an informed one, and that choice will impact the level of transition planning provided. For Class Members who are able to and choose to live in a community-based alternative setting, Defendants will meet the following policy outcomes:

6.5.1 *Policy Outcomes:*

6.5.1.1 Each Class Member in this category should be assigned to a PASRR Assessor and/or a DDA or HCS Case Manager who will work with nursing facilities and service providers to develop and implement each Class Member's transition plan.

6.5.1.2 Based upon the PASRR Level II evaluation, and the Post-PASRR Level II Meeting(s), and taking into account the individual's expressed preferences, the PASRR Assessor and/or a DDA or HCS Case Manager will:

6.5.1.2.1 Consistent with the Money Follows the Person grant, individuals who are admitted for 90 days and are likely to be discharged within one year should be offered a referral to a Roads to Community Living (RCL) Case Manager to work with the individual, family members/guardian and other service providers to identify all residential, day, and medical support needs, types of providers and settings available and which of these will be pursued. For individuals who enroll in RCL:

6.5.1.2.1.1 RCL Case Manager should meet on a regular (at least quarterly) basis with the individual and family members/guardians, if available, to provide updated information about discharge planning.

6.5.1.2.1.2 As part of discharge planning, the RCL Case Manager will offer visits to, or meetings with, appropriate residential, day and medical support providers.

6.5.1.2.1.3 Discharge planning will be conducted consistent with person-centered planning practices.

6.5.1.2.1.4 Family mentor/peer mentor services will be offered to all individuals in this category.

6.5.1.2.2 For individuals who are likely to require more than one year to prepare for discharge, the PASRR Assessor will work with the individual, family members/guardian and other service providers to identify the skills the individual may need for community placement and how specialized services will be provided to develop these skills, and to address any barriers to community placement.

6.5.1.2.2.1 The PASRR Assessor will meet with the individual and family members/guardian at least annually to identify if the individual is likely to be discharged within one year.

6.5.1.2.2.2 Family mentor/peer mentor services will be offered to all individuals in this category.

6.5.1.2.2.3 Visits to, or meetings with, residential, day and employment providers will be offered.

6.5.1.2.2.4 Discharge planning will be conducted consistent with person-centered planning practices.

6.5.2 *Training Outcomes*

6.5.2.1 Defendants will provide training to PASRR Assessors on person-centered planning.

6.5.3 *Metrics*

6.5.3.1 Defendants will include in quarterly reports information about Class Members who have not been discharged from a nursing facility within 180 days of the initial Post-PASRR Level II meeting, whether the individual has been identified as being able to be placed in an community based alternative, whether the individual is willing to be placed in a community based alternative, and, if the individual is able to be placed in the community and wants to be placed in the community, the next steps to ensure placement, and anticipated transition timeline.

6.5.3.2 This outcome will have been met for current Class Members when placement in an alternative community based alternative occurs for 95% of current Class Members who are identified as (1) able to be placed in a community based alternative and (2) willing to be placed in a community based alternative. An individual shall not count against compliance if they are no longer able to be placed in a community based alternative or no longer desire to be placed in a community based alternative. An individual also shall not count against compliance if he or she is offered a viable placement that meets his or her needs, but the individual or his or her guardian does not accept the placement. If this metric is met, but the percentage is not 100%, the Defendants will disclose the circumstances of those individuals to Class Counsel.

6.5.3.3 This outcome will have been met for new Class Members (admitted to facilities after the effective date of the Settlement Agreement) when, starting in July 2017, and for four consecutive quarterly reports, 95% of new Class Members who are able to be placed in a community based alternative placement and are willing to be placed in a community based alternative placement discharge from the nursing facility within one year of the date the individual enters the facility or from the date the individual is both able to be placed in a community based alternative placement and willing to be placed in a community based alternative placement. An individual shall not count against compliance if they are no longer able to be placed in a community based alternative or no longer desire to be placed in a community based alternative. An individual also shall not count against compliance if he or she is offered a viable placement that meets his or her needs, but the individual or his or her guardian does not accept the placement. If this metric is met, but the percentage is not 100%, the Defendants will disclose the circumstances of those individuals to Class Counsel.

- 6.6 **Goal** - An individual's choice to transition, or not transition, to the community should be an informed one, and that choice will impact the level of transition planning provided. For Class Members who are able to live in the community but who have rejected or whose family members/guardians have rejected alternative community placement, Defendants will meet the following policy objectives:

6.6.1 *Policy Outcomes:*

6.6.1.1 The PASRR Assessor will describe mentor services to all individuals in this category, and if the individual and/or guardian agrees, will arrange for a family or peer mentor to contact the individual and/or guardian to further discuss and/or offer mentorship services. If the individual accepts mentorship services, the PASRR Assessor will offer to invite the mentor to participate in Post-PASRR Level II or follow-up meetings.

6.6.1.2 After the Post-PASRR Level II Meeting(s), the PASRR Assessor and/or the RCL Case Manager will contact the individual and, if appropriate, their family members/guardians, at least annually, to update them regarding the range of options for community placement.

6.6.1.3 Defendants will provide guidance to Community Access providers that service goals and activities may include exposure to community-based alternatives.

6.6.2 *Training Outcomes*

6.6.2.1 Defendants will provide training to PASRR Assessors on person-centered planning.

6.6.3 *Metrics*

6.6.3.1 Defendants will include in biannual reports information about the number of Class Members who have refused community placement who have met with a peer mentor or their family members have met with a family mentor and later expressed a willingness to consider community placement.

6.6.3.2 Defendants will include in quarterly reports information about the number of Class Members offered mentorship services and the number of Class Members who participate in mentorship.

- 6.7 **Goal** - An individual's choice to transition, or not transition, to the community should be an informed one, and that choice will impact the level of transition planning provided. For Class Members who are not able to live in the community presently Defendants will meet the following policy objectives:

6.7.1 *Policy Outcomes*

6.7.1.1 At the Post PASRR Level II Meeting(s), the PASRR Assessor will document the reasons why the individual is not able to live in the community.

6.7.1.2 The PASRR Assessor shall ensure recommended specialized services are provided to each individual with reasonable promptness. If a specialized service is not provided within 90 days, and the individual has not refused the service, the Assessor shall document the reasons for delay and the appropriate steps that will be taken to address the delay. If the individual refuses one or more specialized services, the Assessor shall document the refusal and any steps taken to offer alternatives to address the individual's concerns.

6.7.1.3 The PASRR Assessor shall contact the individual and family members/guardian, if appropriate, every six months to determine whether the individual's condition has changed such that a new Level II evaluation is appropriate to assist with determining whether the individual will be able to participate in transition and/or discharge planning.

6.7.2 *Training Outcomes*

6.7.2.1 Defendants will provide training to PASRR Assessors on person-centered planning.

6.8 **Goal** – The Defendants will take steps to ensure adequate community provider capacity for individuals who are able to and desire community transition.

6.8.1 *Policy Outcome*

6.8.1.1 At PASRR Regional Monthly Meetings, Defendants will identify and take steps to address discharge barriers for any individuals who have requested community transition that is delayed over 90 days by providers declining referrals, inadequate housing resources, or other indicators of insufficient network capacity.

6.8.2 *Metrics*

6.8.2.1 Defendants will include in quarterly reports information about the percentage of individuals desiring discharge and whose total needs can be met in an appropriate community setting whose case managers identify potential community based providers within 90 days of the individual being assigned to a case manager.

6.8.2.2 Defendants will include in quarterly reports information about the percentage of individuals who have been assigned a case manager who

have packets sent to potential providers within 120 days of the individual being assigned to the case manager.

6.8.2.3 Defendants will include in quarterly reports information about the percentage of individuals who have been assigned a DDA RCL case manager to develop and implement a transition plan who discharge by the move target date. If the move target date is amended based on an individual's circumstances the instance shall be compliant if the individual discharges by the amended move target date.

6.10 Services for Adam Dunakin

6.10.1 The Defendants agree to not contest Dr. Hill's determination that Adam Dunakin has a condition or conditions related to an intellectual disability and that he will benefit from the provision of services similar to those provided to individuals with an intellectual disability.

6.10.2 Defendants will conduct a PASRR Level II evaluation of Mr. Dunakin with Class Counsel present, taking into account the information and recommendations of declarations of Dr. Deborah Hill as described in her two declarations in this matter.

6.10.3 Defendants will ensure recommended occupational, respiratory, and speech therapy evaluations are conducted regarding Mr. Dunakin's needs.

6.10.4 Defendants will ensure recommended assessments will be conducted of Mr. Dunakin's needs for assistive technology that would help him prepare for community-based alternative living placement at some point in the future or reach the highest practicable level of functioning in his current setting.

6.10.5 Defendants will refer Mr. Dunakin to the appropriate program to explore community-based alternatives that will meet all assessed needs.

6.10.6 While the settlement agreement is in effect:

6.10.6.1 Defendants will notify Class Counsel in advance of the Level II evaluation described in Section 8(b).

6.10.6.2 Defendants will instruct Mr. Dunakin's nursing facility to provide the Defendants with advance notice of PASRR-related evaluations, including the evaluations described in Sections 8(c) and 8(d). When Defendants receive notice, they will notify Class Counsel.

6.10.6.3 Defendants will notify Class Counsel in advance of other PASRR-related meetings with Mr. Dunakin and DDA or HCS staff, such as the Post-PASRR Level II Meetings and follow-ups contemplated by Appendix A.

6.10.6.4 Defendants will copy Class Counsel on all correspondence with Mr. Dunakin.

- 6.11 **Nursing Facility Maintains Legal Obligations:** Nothing in this Agreement is intended to reduce, limit, expand or enhance a nursing facility's existing legal obligations.
- 6.12 **Federal Requirements:** Nothing in this Agreement is intended to reduce, limit, expand or enhance existing federal legal requirements.

7. ***Monitoring Implementation and Outcomes***

- 7.1 Defendants will provide Class Counsel with quarterly and biannual reports as established above in Section 6.
- 7.2 The parties agree to discuss quarterly and biannual reports by teleconference or in-person meetings if either party requests a teleconference or meeting within thirty (30) days of Class Counsel receiving Defendants' outcome reports. The purpose of these communications is to ensure a common understanding of the data and provide for informal discussion regarding implementation of this Agreement. Any dispute regarding Defendants' compliance with the Agreement will be addressed pursuant to Section 10 below.

8. ***Duration of the Agreement.*** The Parties anticipate Defendants will complete implementation of this Agreement on or about September 30, 2020, and that the Parties' obligations herein will terminate, if at that time Defendants demonstrate they have substantially complied with the metrics described in Section 6. At that time, the metrics set forth Section 6 will be the sole objective measures that, when accomplished, will indicate the State of Washington is in substantial compliance with the terms of this Agreement such that the lawsuit herein will be dismissed.

- 8.1 The Defendants shall achieve full compliance with any specific metric listed in Section 6 by satisfying the terms of that metrics. If the Defendants achieve the full compliance measure for a specific outcome at any time prior to the end of this Agreement, that outcome will no longer be monitored by or enforceable by the Plaintiff.
- 8.2 At any time prior to the expiration of this Agreement, if the Defendants have achieved the full compliance measure for each and every outcome listed in Section 7 of this Agreement, the parties shall jointly seek a court order asking for termination of this Agreement and dismissal of the case.

9. ***Attorneys Fees and Litigation Costs.*** The parties agree that for the purposes of attorneys fees and litigation costs only, the Class is the prevailing party in this matter.

- 9.1 Within ten business days after the Agreement is finally approved by the Court, Class Counsel shall provide Defendants with a copy of Class Counsel's time entries (with redactions, where appropriate) and cost ledger. No later than

10 business days after receipt of Class Counsel's time entries, Defendants must elect either Option 1 or Option 2. Defendants' election must be in writing. If Defendants fail to elect either Option, the Settlement Agreement presumes that Defendants elect Option 1. The entries will be sufficiently detailed for a reasonable person to determine the exact nature of work performed and how it relates to the hours claimed. Within the ten day period prior to electing an option, Defendants are permitted to make one request for clarification or additional information regarding Class Counsel's time entries and supporting documentation. The period Defendants have for making their election will toll while awaiting Class Counsel's response to its request for clarification, and may continue to toll at Class Counsel's discretion.

9.1.1. *Option 1: Payment of Lodestar without Multiplier.* Defendants shall pay Class Counsel its fees, based on the lodestar method without a multiplier, as reflected in the time entries provided in Section 9.1 above. Defendants shall also pay Class Counsel's actual litigation costs as reflected in the cost ledger provided in Section 9.1 above.

9.1.2. *Option 2: Trial Court Resolution of Fees and Costs.* Pursuant to Rules 23(h) and 54 (d), Class Counsel will file a motion for attorneys fees and allowable litigation costs along with documentation supporting the request. Consistent with existing law, Class Counsel may seek a multiplier or enhancement of their attorneys fees. Defendants will respond in the time called for under the rules, and may seek a reduction of the attorneys fees sought. The trial court shall award reasonable fees and costs to Class Counsel to be paid by Defendants. Either party reserves the right to appeal the amount of the award.

10. *Dispute Resolution*

- 10.1. Any claim, dispute, or other matter in controversy (dispute) arising out of or related to this Agreement, or the breach, implementation or performance thereof, shall be resolved according to the procedure set forth below.
- 10.2. The parties agree to convene, at a mutually agreeable time and place, and use their good-faith, best efforts to discuss and resolve the dispute. This initial meeting will be a direct negotiation between the parties without the assistance of a mediator or other non-party.
- 10.3. If the parties are unable to resolve the dispute within 30 days, or such other time frame upon which the parties mutually agree, they may engage the mediation services of a mutually agreeable mediator for the purpose of mediating a resolution to the dispute.
- 10.4. Either party may file an appropriate motion with the United States District Court in this matter after participating in the meeting described in Section 10.2. The moving parties' counsel shall provide the appropriate notice to the opposing party's counsel of such action.

11. *Other Provisions*

- 11.1 This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 11.2 The parties have participated and had an equal opportunity to participate in the drafting and approval of drafting of this Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language.
- 11.3 *Governing Law.* This Agreement shall be governed by the laws of State of Washington without regard to conflict of law principles except to the extent such law may be pre-empted by federal law.
- 11.4 *Venue.* If any action is necessary to enforce the provisions of this Agreement, venue shall be had in the Western District of Washington.
- 11.5 *Principles of Interpretation.* The following principles of interpretation apply to this Agreement:
 - 11.5.1 *Headings.* The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
 - 11.5.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.
 - 11.5.3 *References to a Person.* References to a person include references to an entity, and include successors and assigns.
- 11.6 Signors of this Agreement represent and warrant they have full power and authority to enter into this Agreement and to carry out all actions required of them to the extent allowed by law. Each of the signors warrants that he/she has fully read and agrees to all the terms and conditions contained herein. Each of the Parties agree, without further consideration and as part of finalizing the Settlement hereunder, that they will in good faith promptly execute and deliver such documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.
- 11.7 *Survival.* All representations, warranties and covenants set forth in herein shall be deemed continuing and shall survive the Effective Date of Settlement.
- 11.8 *Entire Agreement.* This Agreement contains the entire agreement among the Parties relating to this Settlement.
- 11.9 *Modifications.* This Agreement may be amended by mutual agreement of the parties and approval of the Court. In order to be binding, such amendments must

be in writing, signed by persons authorized to bind each of the parties, and approved by the Court. The parties further agree to work in good faith to obtain Court approval of necessary amendments or modifications.

- 11.10 *Frustration of purpose/force majeure.* If the Defendants are unable to accomplish any of their obligations or meet timeframes under this Agreement due to events beyond their reasonable control (such as natural disaster, labor disputes, war, acts of God or governmental action beyond state control), Defendants shall notify Class Counsel with ten (10) business days of the date upon which Defendants become aware of the event and describe the event and its effect on performance. If performance is expected to be delayed or the event frustrates the purpose of the Agreement, the parties shall negotiate in good faith to amend the Agreement and seek approval of the Court for such amendment. If the Class does not agree to the amendment of the Agreement, the Class has the option of either litigating Defendants' breach of the Settlement Agreement or resuming this litigation as of April 4, 2016. To the extent Defendants have caused the payment of attorneys fees, litigation costs and incentive awards under this Agreement prior to the time of notification under this paragraph, neither Class Counsel, Plaintiff Dunakin nor the Class shall be responsible to repay any of those payments.
- 11.11 *Severability.* The provisions of this Agreement are not severable.
- 11.12 This Agreement shall inure to the benefit of and be binding upon the legal representatives and any successor(s) of Plaintiffs and Defendants.
- 11.13 If, for any reason, the Court does not approve this Agreement and the Stipulated Judgment as a fair, reasonable, and adequate settlement of this litigation as between the Plaintiffs and Defendants, this Agreement shall be null and void.
- 11.14 This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail which shall be deemed the same as an original signature.

SIGNATURES:

**WASHINGTON STATE DEPARTMENT OF SOCIAL
AND HEALTH SERVICES,**

DATED: _____

By _____
PATRICIA LASHWAY, Director, in her
official capacity

WASHINGTON STATE HEALTH CARE AUTHORITY,

DATED: _____

By _____
DOROTHY F. TEETER, Director, in her
official capacity

ADAM DUNAKIN

DATED: _____

By _____

KIMBERLEE HOLLINGER

DATED: _____

By _____
Next Friend and Mother of Adam Dunakin

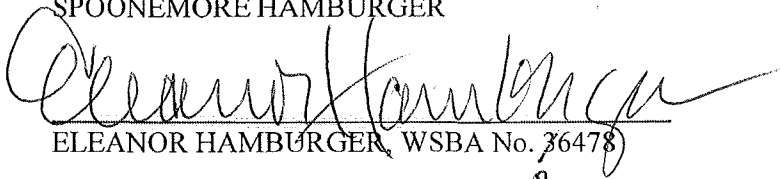
APPROVED:

DISABILITY RIGHTS WASHINGTON



SUSAN KAS, WSBA No. 36592

SIRIANNI YOUTZ
SPOONEMORE HAMBURGER



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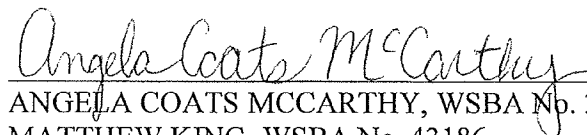
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Assistant Attorneys General
Attorneys for Defendants

APPENDIX A

1. Consistent with person-centered practices, the Defendants agree to conduct a Post-PASRR Level II Meeting following the Level II for individuals who are confirmed to have an intellectual disability or related condition and who continue to reside in a nursing facility, and create a PASRR Follow-Up Meeting form to memorialize the meeting.
2. Post-PASRR Level II
 - a. Timing
 - i. The Post-PASRR Level II Meeting will occur within 90 days of the completion of a Level II, including a Level II completed after a significant change in condition, unless the PASRR Assessor determines that the meeting is impossible or inappropriate in the individual's case. Examples of circumstances that would make a meeting impossible or inappropriate include, but are not limited to:
 1. The individual refuses to participate;
 2. The individual's medical condition is so severe that he or she is unable to participate in such a meeting;
 3. The individual or guardian asks for postponement of the meeting until a future date.
 - ii. If the Post-PASRR Level II Meeting is not held within 90 days of the completion of a Level II, notification of the fact that the meeting will not be held and the basis for that decision will be sent to the individual and any applicable legal guardian or Necessary Supplemental Accommodation representative (NSA).
 - iii. Examples of situations that would indicate the Post-PASRR Level II Meeting should occur earlier include:
 1. The individual's medical condition is expected to change significantly over a period of less than 90 days, in a way that might affect the individual's ability to participate in specialized services or transition to a community setting; or
 2. The individual requests that the Post-PASRR Level II Meeting be held sooner.
 - iv. These meetings are in addition to the Level II, and any other follow-up that the Assessor may conduct with other involved persons, such as nursing facility staff, specialized services providers, or case managers.
 - b. Post-PASRR Level II Meeting Participation
 - i. Participants at the Post-PASRR Level II Meeting will include the PASRR Assessor, the individual, the individual's guardian or family members if

appropriate, nursing facility staff if available, service providers if available, the Family Mentor and/or Peer Mentor if available and appropriate, and the individual's case manager if one exists.

c. Post-PASRR Level II Meeting Content

- i. Prior to the Post-PASRR Level II Meeting, the PASRR Assessor will compile service plans or other relevant documents, including Level IIs, any completed professional evaluations, the nursing facility care plan, and any service plans created by specialized service providers.
- ii. At the Post-PASRR Level II Meeting, the PASRR Assessors and participants will discuss the service plans, the individual's specialized services as defined by 42 C.F.R. § 483.120, transition, and/or discharge goals and objectives, whether the service plans are advancing those goals and objectives, and whether any additional services are necessary.
- iii. The content of the meeting will be summarized in the PASRR Follow-Up Meeting form and sent to the individual and guardian or NSA if applicable.

d. PASRR Follow-Up Meeting Form

- i. The Defendants will create a PASRR Follow-Up Meeting form to guide the PASRR Assessor through the topics of the follow-up meetings, as discussed above, to record the content of the discussion, to record the participants, to outline next steps, and to advise the individual, guardian, meeting participants, service providers, and nursing facility staff of the outcomes of the meeting and the planned interval until the next follow-up. The Defendants will provide a copy of the draft form to Class Counsel and provide 30 days for review and comments. The Follow-Up Meeting form will be provided to the client along with documentation reviewed at the meeting.

3. Follow-Up Contact

- a. After the Post-PASRR Level II Meeting, the PASRR Assessor will contact the individual and/or any applicable guardian or NSA at least every six months (unless the PASRR Assessor determines that the contact would be impossible or inappropriate), or more frequently as necessary depending on the individual's specific circumstances. This will also occur if the individual has refused the Post-PASRR Level II. The PASRR Assessor will determine based on an individual's circumstances whether the meeting should occur in-person, but it will be held in-person if requested. There will be at least one face-to-face contact each year, unless the PASRR Assessor determines that it would be impossible or inappropriate. In that situation the PASRR Assessor will provide written notice to the individual and guardian or NSA about the availability of a face to face meeting. The content of the follow-up contact would include at a minimum the status of any specialized services

and/or discharge plan, regardless of whether the individual previously received specialized services or expressed interest in community transition. The follow-up contact will be documented in a service episode record.

- i. Participation during Follow-Up Contacts will include the PASRR Assessor, the individual and the individual's guardian or family members. Others may be invited at the individual's request or the PASRR Assessor's professional discretion.

Appendix 2

Proposed Notice of Settlement Agreement and Fairness Hearing for *Dunakin v. Lashway* No. NO. 2:14-cv-00567-JLR, a Case about Services for Private Nursing Facility Residents with Intellectual Disabilities and Related Conditions.

Dunakin. v. Patricia Lashway and Dorothy Teeter, NO. 2:14-cv-00567-JLR, involves Preadmission Screening and Resident Review (PASRR) screening, evaluation, and services for private nursing facility residents with intellectual disabilities and related conditions (ID/RC) in Washington State.

PASRR is a special set of requirements to make sure individuals with ID/RC are not put in nursing facilities against their preferences if they can safely live with supports somewhere else in the community. PASRR also ensures that individuals with ID/RC who live in nursing facilities receive the “specialized services” they need to learn skills and increase their independence. PASRR includes a “Level I screen” to find the people going into nursing facilities who may have an ID/RC. PASRR also includes a “Level II evaluation” to decide what services and settings are appropriate.

The parties have reached an agreement in this case to improve PASRR Level I screening and Level II evaluations, as well as to make sure residents can get recommended services in the right settings. The parties filed this agreement with the Court, which preliminarily approved the agreement. Before the agreement is final, you have an opportunity to review the agreement for yourself and let the court know what you think. The Court will hold a fairness hearing. In this hearing, the Court will consider the comments it receives from people who are interested in the agreement. The Court will then make a final decision about whether the agreement is fair, reasonable, and adequate.

Background About the Lawsuit

The *Dunakin* lawsuit is a class action. In a class action, one individual represents many more people (referred to as the “class”) who have the same legal issues. The case was filed in 2014 against the Secretary of the Washington State Department of Social and Health Services (DSHS) and the Director of the Washington State Health Care Authority (HCA) by one individual (referred to as the “class representative”). He is a resident at a privately-operated nursing facility who has a condition related to an intellectual disability.

In April 2015, the Court ruled the outcome of the case will apply to him and others who:

- (a) are or will be residents of Medicaid-certified, privately-operated nursing facilities in the State of Washington; and
- (b) are Medicaid recipients with an intellectual disability or related condition(s) such that they are eligible to be screened and assessed pursuant to 42 U.S.C. § 1396r(e)(7) and 42 C.F.R. § 483.122 *et seq.*

Attorneys from Disability Rights Washington (DRW) and the law firm of Sirianni Youtz Spoonemore Hamburger represent the class.

Summary of the Settlement Agreement

PASRR Services

The Settlement Agreement lists seven goals for improving the PASRR screening, evaluations, and services. The goals of the agreement include:

1. Timely and adequate PASRR Level I Screening
2. Timely, adequate and appropriate PASRR Level II evaluations
3. Post-PASRR Level II Meetings and Monitoring
4. Informed Choice and Transition Planning for Class Members Who Could and Would Prefer to Live in Community-Based Settings
5. Informed Choice and Transition Planning for Class Members Who Could but Would Prefer Not to Live in Community-Based Settings
6. Informed Choice and Transition Planning for Class Members Not Able to Live in Community-Based Settings
7. Ensuring Adequate Community Capacity

For each goal, the agreement includes policy outcomes, training outcomes, and metrics.

The policy outcomes describe the procedures DSHS will use to achieve each goal. The policy outcomes include these key elements:

- Checking Level I screens at Nursing Facilities to ensure these correctly identify individuals with ID/RC who need further evaluations
- Ensuring Level II evaluations clearly indicate whether the individual needs Specialized Services and if so, the full range of specialized services that are recommended
- Establishing a Post-Level II planning and monitoring process to track implementation of Level II recommendations
- Assigning case managers or assessors to develop and implement transition plans for class members who are willing and able to discharge
- Offering Family Mentor Services to residents and their families
- Providing Specialized Services with reasonable promptness

The training outcomes for each goal describe what screeners, evaluators, and case managers will be taught to do in order to correctly follow the procedures in the policy outcomes. The training outcomes include these key topics:

- Level I Screening for hospital and nursing facility employees
- Identification of evidence and documents to make Level II determinations
- Guidance for when Level II evaluations should refer for further specialized evaluations
- Post-PASRR Level II planning and monitoring processes
- Person-Centered Planning for PASRR Assessors

Finally, the metrics for each goal include data that will be reported every three to six months to show whether the policy and training outcomes are being effectively implemented. Key metrics include:

- Percentage of Level I screens that were completed correctly
- Percentage of Level II evaluations that were completed on time
- Percentage of Level II evaluations that document reasons for determinations
- Percentage of class members who receive recommended evaluations and/or specialized services within 90 days
- Percentage of current class members willing and able to discharge who have been placed in a community-based alternative
- Percentage of future class members preferring a community-based alternative who do not remain in a nursing facility for more than one year

The parties anticipate Defendants will complete implementation of the Settlement Agreement on or about September 30, 2020. All obligations under the agreement will end if Defendants meet the agreed standards for all metrics. The metrics are the only measures that can show the state of Washington has met its obligations, and allow the Court to dismiss the case. If the state of Washington is in substantial compliance, the lawsuit will be dismissed.

Attorneys Fees and Costs

The defendants have agreed to pay the class's attorney fees and costs for the time and money Class Counsel has spent on this case. The amount of fees and costs will be negotiated in the future and approved by the Court, or will be decided by Court if the parties cannot agree on the amount.

Additional Information

This is just a summary of the Settlement Agreement. If you want to learn more about the Settlement Agreement, you have these options:

Read the entire Settlement Agreement. If you or someone you know may be a class member, learn more about your rights at:

[\[website\]](#)

There, you will find additional information. The site includes a copy of the full proposed Settlement Agreement. It also includes documents that describe PASRR evaluations and specialized services.

Ask questions. The Settlement Agreement is long and full of detailed information. Disability Rights Washington (DRW) is available to answer your questions. DRW is one of the organizations serving as the attorneys for class members. Talking to DRW does not cost you any money. You can call them toll-free at 1-800-562-2702.

How to Submit Your Comments

Anyone who wishes to comment on the Settlement Agreement, either for or against it, may do so by submitting their comments in writing or by attending the fairness hearing.

To submit your comments to DRW or to the Court:

You may submit written comments via mail, e-mail or other means.

Submit comments to Disability Rights of Washington at:

Disability Rights Washington

315 5th Ave. S., Suite 850

Seattle, WA 98104

[address]@dr-wa.org

Any comments received by DRW, or any listed class counsel in this case, will be provided to the Court.

Statements may also be provided directly to the Honorable Judge, James L. Robart.

Written comments must be received by the Judge no later than _____.

Submit comments to the court at:

United States District Court for the Western District of Washington, Seattle

700 Stewart St., Ste. 15229,

Seattle, WA 98101

To attend the fairness hearing:

Oral comments may be made at the fairness hearing to be held in Seattle on

_____.

The address to appear for the hearing is:

United States District Court for the Western District of Washington, Seattle

700 Stewart St., Suite. 15229,

Seattle, WA 98101