

STATE OF MICHIGAN  
COURT OF CLAIMS

DAVID AND KORTNI HOREIN, PARENTS AND  
NEXT FRIENDS TO MINOR CHILD D.H., ET AL.,

Plaintiffs,

v

MICHIGAN DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,

Defendant.

COC NO. 23-000063-MM

HON. JAMES REDFORD

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**STIPULATED ORDER AMENDING APPENDIX A OF THE SETTLEMENT AGREEMENT**

Now come the parties jointly and stipulating to modifications needed to the Plan of Allocation for the Patient Compensation Fund, Appendix A of their Settlement Agreement. Pursuant to ¶ 76 of the Agreement, "The Parties may agree by stipulation executed by counsel to modify any aspect of this Agreement or Motions and Brief submitted in support of the Settlement Agreement. Any stipulation modifying the Agreement must be filed with the Court and is subject

to the Court's approval." (See Settlement Agreement, Attached as Exhibit 1 to Plaintiffs' Motion for Preliminary Approval, filed on January 31, 2024.)

The parties stipulate to the following amendment to Appendix A, Plan of Allocation for the Patient Compensation Fund (amendment in bold face):

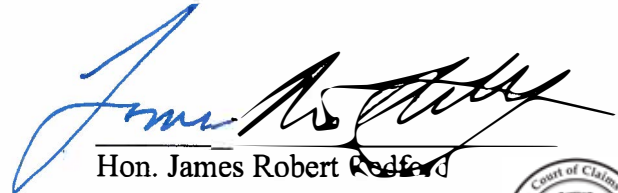
1. Change language in in the second paragraph under the heading on page 1, "Plan of Allocation: Patient Compensation Fund" to read: "This Plan of Allocation operates solely to define and prescribe the process by which the Patient Compensation Fund, defined by Paragraph 23.a of the Settlement Agreement, shall be allocated among the class representatives and class members of the Patient Plaintiff Class. **This Plan of Allocation for the Patient Compensation Fund awards funds to compensate members of the Patient Plaintiff Class solely for damages.** This Plan of Allocation may be modified only in accordance with the terms of the Settlement Agreement."

An amended copy of Appendix A, Plan of Allocation: Patient Compensation Fund is attached hereto.

IT IS SO ORDERED.

4-16-2024

Dated

  
Hon. James Robert Redford



Stipulated for entry:

Dated: April 11, 2024

/s/ Robin B. Wagner  
Robin B. Wagner (P79408)  
Attorney for Plaintiffs

Dated: April 11, 2024

/s/ Neil Giovanatti (w/ permission)  
Neil Giovanatti (P82305)  
Attorney for Defendant

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## **APPENDIX A**

### **PLAN OF ALLOCATION: PATIENT COMPENSATION FUND**

This Plan of Allocation is an Appendix to the Class Action Settlement Agreement for *Horein, et al v Michigan Department of Health and Human Services*, COC No. 23-000063-MM, (“Settlement Agreement”) and incorporates by reference here the entirety of that Settlement Agreement, including all definitions, recitations, and terms of agreement documented in that Agreement. The Patient Plaintiff Class to which this Plan of Allocation applies is defined in Paragraph 12.a of the Settlement Agreement.

This Plan of Allocation operates solely to define and prescribe the process by which the Patient Compensation Fund, defined by Paragraph 23.a of the Settlement Agreement, shall be allocated among the class representatives and class members of the Patient Plaintiff Class. This Plan of Allocation for the Patient Compensation Fund awards funds to compensate members of the Patient Plaintiff Class solely for damages. This Plan of Allocation may be modified only in accordance with the terms of the Settlement Agreement.

This Plan of Allocation shall conform with the requirements of MCR 2.420. The parties agree that if any of the components of this Plan of Allocation fail to conform with the requirements of MCR 2.420, they shall work in good faith to amend the Plan to bring it back into conformity with MCR 2.420.

### **DEFINITIONS**

1. For the Plan of Allocation for the Patient Compensation Fund, the following definitions shall apply:
  - a. “CMS” means the Centers for Medicare & Medicaid Services, the agency within the United States Department of Health and Human Services responsible for administration of the Medicare Program and the Medicaid Program.
  - b. “Legally Incapacitated or Incompetent Individual” or “LII” means an individual described in MCL 700.1105(a).
  - c. “Medicaid Program” means the federal program administered by the

states under which certain medical items, services, and/or prescription drugs are furnished to Medicaid beneficiaries under Title XIX of the Social Security Act, 42 USC 1396-1, *et seq.*

- d. "Minor" means any Patient Plaintiff that is less than eighteen (18) years of age at the time the Court issues the Final Approval Order.
- e. "Next Friend" shall mean an individual who is appointed under the order required under paragraph 5(a) of this Appendix to represent the interests of another individual who lacks legal capacity to act on his or her own behalf due to being a Minor, or due to physical or mental impairment, and have been determined to lack legal capacity, being an LII.
- f. "Settlement Preservation Trust" shall mean a pooled trust consisting of a Master Trust Agreement and joinder agreement to hold, manage, and administer funds for individuals who are not receiving means-tested government benefits, such as SSI, Medicaid, Social Security Disability Insurance, or Childhood Disabled Beneficiary Benefits.
- g. "Special Needs Trust" shall mean a pooled special needs trust, that complies with the requirements of 42 USC 1396p(d)(4)(C) and Bridges Eligibility Manual (BEM) 401, consisting of a master trust agreement and joinder agreement drafted consistent with federal and state statutes and policies to be considered an exempt resource for public benefit purposes in order for assets held, managed, and administered

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according to its terms in such a way as to protect and preserve means-tested government benefits, such as Supplemental Security Income or Medicaid, for persons with disabilities. Pursuant to 42 USC 1396p(d)(4)(C) such joinder agreement may be executed by a legally competent beneficiary, parent, grandparent, guardian, or the court.

- h. "Pooled Trust" means a trust that is created to hold, manage, and administer the funds of a class or type of individual. A pooled trust consists of a master trust agreement which defines how such funds will be administered, the rights and duties of the trustee and beneficiaries. To join a pooled trust, a party with legal authority, such as a parent or Next Friend, executes a document called a Joinder Agreement. Assets are pooled for purposes of investment, but separate records are kept for each individual's assets.

### ALLOCATION PROCESS

#### 2. **Determination of Eligible Patient Plaintiff Class Members:**

Pursuant to paragraph 72 of the Settlement Agreement, the Department shall provide Class Counsel with a list of all Patient Plaintiff Class Members. This list, and its contents, is subject to the Protective Order entered by the Court on December 7, 2023.

- a. **Eligibility:** Individuals who appear on the list of Patient Plaintiff Class Members provided by the Department shall be deemed automatically eligible for participation in the Patient Plaintiff Class.

b. **Registration Process:** Any individual who believes that their name was erroneously omitted from the list of Patient Plaintiff Class Members provided by the Department, may register with the Special Master by no later than the opt-out deadline specified in the Class Notice. Registration requires the individual, or a parent, guardian or other suitable representative acting on their behalf, to provide the Special Master with clear and convincing evidence, as defined in paragraph 31.b of the Settlement Agreement, that the individual fully meets the definition of a class member as provided in paragraph 12.a of the Settlement Agreement. The Special Master shall make his determination of eligibility within fourteen (14) days of receiving any registration, and his determination of eligibility shall be final and binding.

3. Unless a Patient Class Member opts out of this Settlement Agreement, all Eligible Patient Class Members shall be included in the allocation process.

4. **For each Patient Plaintiff Class Member who is not a Minor or LII:**

a. The Patient Plaintiff Class Member shall receive the Notice of Class Action and Class Settlement pursuant to paragraph 64 of the Settlement Agreement.

b. Within sixty (60) days after the approval of the Motion to appoint Next Friends (see ¶ 5(a)), Class Counsel shall contact Patient Plaintiff Class Member to determine the manner of

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disbursement for the Patient Plaintiff's share of the Patient Compensation Fund. The Patient Plaintiff will have the option of receiving the funds through a cash payment, through the Pooled Special Needs Trust provided for in Paragraph 6 below, or through the Settlement Preservation Trust provided for in Paragraph 6 below. Class Counsel will assist each Patient Plaintiff Class Member in providing advice on the differences between these options and executing the necessary documentations to obtain the funds.

**5. For each Patient Plaintiff Class Member who is a Minor and/or**

**LII:**

- a. Within fourteen (14) days after the Opt-Out Deadline, Class Counsel shall file a motion pursuant to MCR 2.201(E) seeking an order appointing individuals to act as a Next Friend on behalf of each Minor and LII.
- b. If the Patient Plaintiff is receiving SSI, the Patient Plaintiff shall receive their portion of the Patient Compensation Fund through a through a Pooled Special Needs Trust that comports with 42 USC 1396p(d)(4)(C).
- c. For all other Patient Plaintiffs (i.e., those not addressed by either paragraphs 4 or 5(b), above), the appointed Next Friend shall select either a Pooled Special Needs Trust or a Pooled

Settlement Preservation Trust to receive the proceeds of the Patient Compensation Fund. The Next Friends shall select the type of trust, in writing, for the Patient Plaintiff within sixty(60) days after the approval of the Motion to appoint Next Friends (see ¶ 5(a)).

6. **List of Disbursement Methods:** Class Counsel shall compile a list of disbursement methods selected for each Patient Plaintiff based on the terms set forth in paragraphs 4 and 5, above. The list of disbursement methods for the Patient Plaintiffs shall be submitted with the Motion for Final Approval of the Settlement Agreement (see paragraph 68 of the Settlement Agreement).

7. **Disbursement of Patient Compensation Fund:** No later than two (2) business days after the Effective Date, Class Counsel shall provide the list of disbursement methods for each of the Patient Plaintiffs to the QSF Administrator. Within seven (7) days of receiving the list of disbursement methods for the Patient Plaintiffs, the QSF Administrator shall distribute the Patient Compensation Fund, \$2,888.888.89, such that (1) \$5,000.00 shall be distributed for each Class Representative for the Patient Plaintiffs through their designated method of distribution, and (2) the remaining funds will be distributed equally by the number of participating Patient Plaintiffs, including the Class Representatives for the Patient Plaintiffs.

8. **Selecting the Trusts and Facilitating Entry into the Trusts:** Class Counsel shall, upon exercising due diligence, select one or more Pooled

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Special Needs Trust and Settlement Preservation Trust administrators, facilitate the proper execution and funding of each trust and accompanying documentation, and notify the Department and other applicable government agencies of each Patient Plaintiffs' change of circumstance where such notification obligations exist, including where the Patient Plaintiff is receiving a means-based public benefits.

9. **Costs of the Trusts:** All costs of the trust(s) utilized to effectuate the Settlement Agreement for the Patient Plaintiffs shall be borne by the funds allocated to the individual Patient Plaintiff's trust.

