

## Final Settlement Agreement

*M.T.E. et al., v. Washington Department of Social and Health Services, No. 11-2-01209-1  
Thurston County Superior Court, Washington State*

This Agreement to Settle Claims (“Agreement”) is between plaintiff M.T.E., by and through her parent, L.E., and Sheryl Wagner Houlihan (collectively “Named Plaintiffs”), the “Settlement Classes” (as defined in ¶ 1.21), and defendant Washington State Department of Social and Health Services (“Defendant,” defined in ¶ 1.9). Named Plaintiffs and Defendant are referred to collectively as the “Parties.” This Agreement is a full expression of the agreements between the Parties.

### RECITALS

Plaintiffs M.T.E. and Sheryl Wagner Houlihan allege that Defendant improperly denied benefits and breached its contracts with class members by applying the invalidated children’s assessment rule, WAC 388-106-0213. Defendant denies these allegations. The action, brought in Thurston County Superior Court, seeks relief on behalf of (1) a class of similarly situated child recipients of Medicaid-funded personal care services whose paid services were determined by the children’s assessment rule, and (2) a class of similarly situated individual providers of Medicaid-funded personal care services who provided care to those affected child recipients while living with them. By this Agreement, the Parties wish to resolve all claims and all potential claims with respect to Defendant’s application of the former children’s assessment rule.

### AGREEMENT

#### 1. Definitions

- 1.1 “Action” shall mean: *M.T.E. et al. v. Wash. Dep’t. of Soc. & Health Svcs.*, No. 11-2-01209-1, a class action pending in Thurston County Superior Court, in Olympia, Washington.
- 1.2 “Agreement Execution Date” shall mean: the date on which this Agreement is fully executed.
- 1.3 “CBA Settlement Agreement” shall mean: the settlement agreement between the State of Washington, SEIU 775, SEIU Healthcare NW Health Benefits Trust and the SEIU Healthcare NW Training Partnership, attached as *Appendix A* to this Agreement and incorporated into this Agreement by reference.
- 1.4 “Claims Administrator” shall mean: Epiq Systems.
- 1.5 “Class Counsel” shall mean: SIRIANNI YOUTZ SPOONEMORE HAMBURGER.
- 1.6 “Class Members” shall mean: those individuals who comprise the two Settlement classes.
- 1.7 “Class Period” shall mean: July 1, 2005 through November 30, 2011.

- 1.8 “*Court*” shall mean: Thurston County Superior Court, Olympia, Washington.
- 1.9 “*Defendant*” shall mean: the Washington State Department of Social and Health Services.
- 1.10 “*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.
- 1.11 “*Final*” shall mean: with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceeding for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and final disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.
- 1.12 “*Final Decision*” shall mean: a decision of the Washington State Supreme Court or of any intermediate Court of Appeals that is not appealed within the time permitted for such appeals or that, if appealed, is not accepted for review.
- 1.13 “*Individual Provider*” (IP) shall have the same meaning as defined in RCW 74.39A.240
- 1.14 “*Named Plaintiffs*” shall mean: M.T.E., by and through her mother, L.E., and Sheryl Wagner Houlihan.
- 1.15 “*Parties*” shall mean: Named Plaintiffs and Defendant.
- 1.16 “*Personal Care Services*” shall have the same meaning as defined in WAC 388-106-0010.
- 1.17 “*Releasees*” shall mean: Defendant, its 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.
- 1.18 “*Settlement*” shall mean: the settlement to be consummated under this Agreement.
- 1.19 “*Settlement Amount*” shall mean: the sum of \$4,000,000.
- 1.20 “*Settlement Class Released Claims*” shall mean: any and all claims, demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating to DSHS’s application of the former WAC 388-106-0213, and claims that were brought, or that could have been brought, by the Named Plaintiffs against Defendant in the Action on behalf of a class, including but not limited to claims for breach of contract, fiduciary duty, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorney’s fees and costs, expenses, prejudgment and post-judgment interest,

statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This Release shall be binding on Plaintiffs, the Settlement Classes (excluding individuals who have timely opted out), and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

- 1.21 “*Settlement Classes*” shall mean: the classes to be certified for settlement purposes under Washington Civil Rule 23(b)(3).
- 1.22 “*Settlement Provider Class*” shall mean: the class certified for settlement purposes under Washington Civil Rule 23(b) consisting of all DSHS authorized Individual Providers of personal care services who have not opted out of such a class and who, during any month during the *Class Period*: (1) were authorized by DSHS to provide personal care services to individuals whose personal care service hours were determined by application of former WAC 388-106-0213; (2) lived with those individuals during that month; and (3) provided unpaid personal care services that exceeded the amount of personal care services authorized by DSHS during that month.
- 1.23 “*Settlement Recipient Class*” shall mean: the class certified for settlement purposes under Washington Civil Rule 23(b) consisting of all individuals who have not opted out of such class and who, during the *Class Period*: (1) were recipients of Medicaid-funded personal care services; (2) had their Medicaid-funded personal care services determined by application of the former WAC 388-106-0213; and (3) who paid out of pocket for additional personal care services during any month in the *Class Period*.
- 1.24 “*Settlement Trust Fund*” shall mean: a trust account established by Class Counsel to hold and distribute the Settlement Amount. The Parties agree that the amounts held in trust will at all times be treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1, et seq.

## 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 sections 2.2 through 2.4 have been satisfied or waived.
- 2.2 *Court Approval.* The Settlement contemplated under this Agreement shall have been approved by the Court, as provided herein. The Parties agree jointly to recommend to the Court that it approve the terms of the Agreement and the Settlement contemplated hereunder. The Parties agree to promptly take all steps and efforts contemplated by the Agreement, including the following:
  - 2.2.1 *Certification of Settlement Classes.* The Court shall have certified the Settlement Classes. Class Counsel shall make a motion for certification of the Settlement Classes as part of the motions to approve this Agreement. Defendant will not oppose certification of the Settlement Classes as defined

herein. The Parties agree that certification of the Settlement Classes shall not be construed as an admission by Defendant, dispositive of the issue of class certification, or that certification of these classes is the likely or necessary outcome if this case were to be fully litigated or establish a precedent of any kind in this or other litigation. The Settlement Classes in this case are established solely for the purpose of resolving the disputed claims in this legal proceeding and nothing more.

2.2.2 *Motions for Preliminary Approval and Notice.* The Court shall have preliminarily approved the Agreement (“Preliminary Approval Order”) and authorized the issuance of notice and opt-out rights to the Settlement Classes. 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, opt out of, 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.

2.2.3 *Issuance of Class Notice.* By the date set by the Court in its Preliminary Approval Order, Defendant shall provide the Claims Administrator with the Court approved notices, inclusive of translated notices, for mailing.

2.2.3.1 Class notice shall be issued as follows:

- 1) *U.S. Mail.* By the date set forth by the Court in its Preliminary Approval Order, the Claims Administrator shall mail the notices. Defendant shall make reasonable efforts to develop a list of all Settlement Recipient Class members and all Settlement Provider Class members which will include the class member’s name, address, and SSN. The list shall be provided to the Claims Administrator which will maintain the list in strict confidentiality. The Claims Administrator shall make reasonable efforts to update the addresses in the list prior to mailing the notices. The cost of mailing shall come out of the Settlement Amount.
- 2) *Webpage.* Defendant shall prominently post, electronically, a link to the settlement agreement, notice, claim form and instructions to claim form. Defendant shall also post translated versions of the court-approved Notice, Opt-out form, and Claim form.
- 3) *Language Translations.* Defendant shall cause to have the Court approved class notice and a claim form for each class translated into the following eight languages: Spanish, Russian,

Vietnamese, Cambodian, Chinese, Korean, Laotian, and Somali. A copy of each translation shall be provided to the Claims Administrator and Class Counsel.

- 4) *Publication*. Defendant shall cause to have published the Court-approved publication notice as ordered by the Court and in no less than five regional newspapers in general circulation in the State of Washington.

2.2.3.2 Class Counsel shall create a webpage which contains the following material:

- a. A description of *M.T.E. v. DSHS*, including a summary of the litigation to date.
- b. A description of the Settlement Class definitions.
- c. A summary of the proposed settlement derived from the class notice.
- d. A timeline and schedule of events, including deadlines for submitting claims, objecting, and opting out.
- e. How to contact Class Counsel for additional information.
- f. Key litigation and settlement documents, or links to documents.

2.2.4 *Fairness Hearing*. On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in the hearing (“Fairness Hearing”) during or after which the Court will determine by order (the “Final Order”): (i) the proposed Settlement 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”).

2.3 *Payment Made*. Payment, pursuant to section 6, has been made by Defendant.

2.4 *No Termination*. The Settlement shall not have terminated pursuant to section 8.

### 3. *Releases*

3.1 *Releases of the Releasees*. Upon the Effective Date of Settlement, as defined in paragraph 1.10 and Section 7 herein, M.T.E., by and through her mother, L.E., and

Sheryl Wagner Houlihan, on behalf of themselves and, to the full extent permitted by law on behalf of the Settlement Classes that they represent, absolutely and unconditionally release and forever discharge Releasees from any and all Settlement Class Released Claims that Plaintiffs or the Settlement Classes have directly, indirectly, derivatively, or in any other capacity ever had or now have. This Release shall be binding on Plaintiffs, the Settlement 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. Plaintiffs, at Defendant's request, shall execute a separate Release of All Claims on or after the Effective Date of the Settlement.

3.2 *Defendant's Release of Named Plaintiffs, the Settlement Classes and Class Counsel.* Upon the Effective Date of Settlement, Defendant, to the full extent permitted by law, absolutely and unconditionally releases and forever discharges the Named Plaintiffs, the Settlement Classes, and Class Counsel from any and all claims relating to this Action. 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 Defendant 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, except in an action or proceeding to enforce this Agreement or arising out of or relating to the Final Orders and motions for approval.

6. ***Settlement Fund***

6.1 *Settlement Amount.* Defendant shall pay \$4,000,000.00 (four million dollars) into the Settlement Trust Fund established by Class Counsel within 15 business days of the entry of the Final Order approving the settlement in this case.

6.2 *"All In" Payment.* Defendant's payment of the Settlement Amount into the Settlement Trust Fund constitutes the sole monetary contribution by the Defendant

under this Agreement, except for Defendant's obligation to pay the employer portion of any tax obligation created with the payment of claims (income) to the provider class, as set forth at paragraph 6.4.10 herein and Defendant's obligation to pay for excess administrative costs if a pro rata reduction occurs and administrative costs exceed \$75,000.00 as set forth at paragraph 6.4.11. All claims, attorney's fees, litigation costs, costs of administration, obligations under the SEIU 775 collective bargaining agreements in effect during the class period, and payments to the Named Plaintiffs shall come exclusively from the Settlement Amount in the Settlement Trust Fund, with Defendant having no further monetary obligation to affect this Agreement.

6.3 *Distribution of Settlement Amount.* The Settlement Amount will be used to pay (1) attorney's fees, (2) litigation costs, (3) costs of claims administration, (4) incentive awards, (5) amounts due under the CBA Settlement Agreement and (6) payments to Settlement Class Members.

6.4 *Claims Processing.* Claims submitted by a Class Member (or the parents or legal guardians on behalf of the Class Member) shall be eligible for reimbursement as follows:

6.4.1 *Payment to Class member or legal guardian.* Payment to a Class Member shall be made to a class member unless she/he is a minor child or ward, in which case, payment will be made to her/his parent, legal guardian or properly documented assignee.

6.4.2 *Submission of Claims.* Class Members (or their parents and/or legal guardians) will be provided with a Claim Form in connection with the Notice of Settlement provided herein.

6.4.3 *Elements of a Claim.* The documentation required for the submission of claims shall differ based upon the Settlement Class.

6.4.3.1 *Elements of Recipient Claim.* To obtain reimbursement, a Settlement Recipient Class Member (or his or her designee) must attest and verify: (1) she/he was a recipient of Medicaid-funded personal care services and under the age of 18 when the services in their claim were provided; (2) she/he received personal care services in excess of the amount authorized by DSHS; (3) the name of the provider of personal care services, and the amount and date of the personal care services provided (month/year); and (4) the out-of-pocket costs associated with those personal care services. A claim form shall be provided to Settlement Recipient Class Members for this purpose.

6.4.3.2 *Limitations on Recipient Claims.* The out of pocket costs approved must be equal to or less than the amount calculated by subtracting the authorized hours from the base hours of the claimant's

classification group (as defined in WAC 388-106-0080) during that month, multiplied by the hourly rate paid by DSHS to the authorized provider during that month. This limitation shall be the responsibility of DSHS to verify at its discretion.

6.4.3.3 *Documentation Required.* The following documentation will be required:

6.4.3.3.1 The actual or approximate date(s) of personal care services claimed, which can be evidenced by contemporaneous notes, an appointment schedule/log created at the time of the service delivery, invoices seeking payment that include dates of service, a signed letter from the provider, a sworn statement from a third-party who has knowledge attesting to the dates, or other evidence of similar reliability; and

6.4.3.3.2 The out-of-pocket costs associated with personal care services, which can be evidenced by cancelled checks, credit card account statements, provider ledgers, invoices stamped “paid” or showing amounts due, checking account statements, signed letters from the provider or the provider’s employer documenting the amount paid (so long as the letter clearly connects payments with the personal care service dates), or other evidence of similar reliability and containing similar specificity connecting payments to the personal care service dates.

6.4.3.3.3 The Recipient Claim Form shall include an authorization for the Claims Administrator to obtain any necessary information from DSHS and/or the identified providers to confirm the Recipient Claimant’s attestation and documentation.

6.4.3.4 *Elements of Provider Claim.* To obtain reimbursement, a Settlement Provider Class Member (or his or her designee) must attest and verify: (1) she/he was a qualified Individual Provider who was living with, and provided services to, a recipient of Medicaid-funded personal care services who was under the age of 18 when the services in their claim were provided; (2) she/he provided personal care services in excess of the amount authorized by DSHS during the Class Period; (3) the date (month/year) that personal care services in excess of the authorized amount were provided; and (4) she/he was not paid for those services. A claim form shall be provided to Settlement Provider Class Members for this purpose.



- 6.4.3.5 *Documentation Required.* A completed Provider Claim Form is required. The Provider Claim Form shall include authorization for the Claims Administrator to obtain any necessary information from DSHS and/or the relevant Medicaid-funded personal care recipient to confirm the Provider Claimant's attestation.
- 6.4.3.6 *Provider Claim Amount.* All valid provider claims shall be compensated at a per month "proxy" amount of \$450 per month or if there are insufficient funds to pay each claim at 100%, then on a *pro rata* basis, pursuant to Section 6.4.8.
- 6.4.4 The Claims Administrator shall review the claim forms to confirm that the items indicated in sections 6.4.3, 6.4.3.1, 6.4.3.2, 6.4.3.3, and 6.4.3.4, *above*, are present in the claim forms and that the submitted documentation supports the claimed amounts. The Claims Administrator shall also confirm the Class Member was on the list provided by DSHS of potential Settlement Class Members during the time of the Claim. The Claims Administrator shall further confirm that the claimed sums are not duplicative of each other.
- 6.4.4.1 *Defendant to Provide Data to Claims Administrator.* Defendant shall provide the Claims Administrator with the Class List (Name, address and SSN) for both Settlement Classes.
- 6.4.4.1.1 *Recipient Claims:* (1) the date of birth of each Recipient Class member; and (2) the months during the Class Period that the Class member was authorized to receive Medicaid-funded personal care services.
- 6.4.4.1.2 *Provider Claims:* (1) a list of the recipient class members and the authorized providers associated with those recipients during the claim period.
- 6.4.4.2 *Opportunity to Cure.* In the event of a deficiency of proof, the Claims Administrator shall provide the Class Member (or the parent/legal guardian of the Class Member) with an explanation of the deficiency and a reasonable opportunity, not to exceed 90 days, to cure the deficiency.
- 6.4.4.3 *Assistance in Perfecting Claim.* A copy of all deficiency notices shall also be provided to Class Counsel, who may assist the Class Member in curing any problems with the Class Member's claim.
- 6.4.5 *Disposition of Claims.* The Claims Administrator shall provide Class Counsel and Defendant's Counsel with copies of all Claim Forms submitted by Class Members (or their designees), along with the preliminary disposition of each claim (denied, approved at \$X, etc.). DSHS will notify the Claims Administrator and Class Counsel within fifteen working days of any objection to any claim and provide the basis for the objection. The

Claims Administrator will then make a final determination of the claim. The final determination of the Claims Administrator is entitled to a rebuttable presumption of accuracy.

- 6.4.6 *Arbitration.* Defendant, Class Counsel or a Class Member may challenge the decision of the Claims Administrator. Any dispute over the decision of the Claims Administrator shall be submitted for final and binding arbitration before Hon. George Finkle (ret.). The type and manner of the arbitration (in-person, by phone or on the papers) shall be determined by the arbitrator in his sole discretion. Expenses of the arbitrator shall be paid from the Settlement Fund, provided, however, that the arbitrator may assess costs and fees against Defendant if Defendant's challenge is not brought in good faith.
- 6.4.7 *Reversion.* If, after the payment of all items under section 10 and all valid claims under this section 6, funds remain in the Settlement Trust Fund, then those funds shall be returned to the State of Washington within 90 days of the final payment out of the Trust Fund.
- 6.4.8 *Pro Rata Distribution.* If, after the payment of amounts set forth in section 10, insufficient funds remain in the Settlement Trust Fund to pay all valid claims under this section 6 at 100%, then each valid claim shall be paid on a *pro rata* basis with all other valid claims.
- 6.4.9 *Provider Claimant Tax Withholding.* Once the amount each individual provider claimant will receive is determined, the Claims Administrator shall determine the appropriate amount of federal and state withholding required (FICA – Federal Insurance Contributions Act; FUTA –Federal Unemployment Tax Act; or SUTA – Washington State Unemployment Tax Act) for each provider claimant. Any funds withheld by the Claims Administrator for this purpose shall be distributed to the appropriate taxing or other authority. The Claims Administrator shall coordinate with the Defendant and the Washington Employment Security Department as necessary to accomplish this task.
- 6.4.10 *Employer Tax Contributions.* Once the Claims Administrator has determined the amount each individual provider claimant will receive, the Claims Administrator will forward a list to the Employment Security Department of the State of Washington. The list will include the individual provider's name, their social security number, and the amount of the payment to each. Employment Security will calculate the applicable tax rate for each provider class member and will send that information to Claims Administrator. The Claims Administrator will calculate the amount of the employer tax contribution due for each provider claimant and will inform the Department of Social Health Services of the total tax amount due. The Department will send that total amount to the Claims Administrator for distribution to either the federal tax authorities (FICA and

FUTA) or the State of Washington (SUTA). The Claims Administrator shall issue a W-2 for each individual provider claimant.

6.4.11 *Excess Administrative Expenses.* If the costs of claims administration exceed \$75,000 and a *pro rata* reduction in class members' claims occurs, pursuant to Section 6.4.8, all costs of claims administration above \$75,000 shall be paid by the Defendant, and shall not be paid out of the Settlement Fund Amount.

**7. *Effective Date of Settlement***

7.1 *Effective Date.* This Agreement shall be fully effective and binding on the date on which all of the conditions to settlement set forth in section 2 have been fully satisfied or waived.

7.2 *Disputes Concerning the Effective Date of Settlement.* If Parties disagree as to whether each and every condition set forth in section 2 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within ten (10) business days thereafter, shall present their dispute for mediation and if mediation is unsuccessful allow the Court to resolve the dispute.

**8. *Termination of Agreement to Settle Claims***

8.1 *Court Rejection.* If the Court declines to preliminarily or finally approve the Settlement, then this Agreement shall automatically terminate, and thereupon become null and void.

8.2 *Court of Appeals Reversal.* If the Court of Appeals reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this section.

8.3 *Supreme Court Reversal.* If the Washington Supreme Court reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this section.

8.4 *Pending Appeal.* If an appeal is pending of an order declining to approve the Settlement, this Agreement shall not be terminated until final resolution of dismissal of any such appeal, except by written agreement of the Parties.

**9. *Consequences of Termination.*** If the Agreement is terminated and rendered null and void for any reason, then the following shall occur:

9.1 *Reversion of Action.* Each Action shall revert to its status as of August 17, 2015.

- 9.2 *Releases and Terms Void.* All Releases given or executed pursuant to this Agreement shall be null and void and none of the terms of the Agreement shall be effective or enforceable.

**10. *CBA Settlement Agreement Payments; Attorney's Fees and Expenses; Case Contribution Award and Cost of Administration***

- 10.1 *Attorney's Fees.* Class Counsel shall be paid their actual attorney's fees from the Settlement Trust Fund based on their normal hourly rates and the number of hours spent on the litigation ("Lodestar Amount"). The Court shall review and approve the Lodestar Amount. This Agreement is not contingent upon an award of attorney's fees at the level requested by Class Counsel, and shall not terminate by reason of any Court awarding less than the amount requested. Defendant will take no position with respect to this application for attorney's fees costs.
- 10.2 *Litigation Costs.* Class Counsel's actual out-of-pocket litigation costs shall be reimbursed out of the Settlement Amount, subject to the Court's review and approval. Defendant will take no position with respect to this application for costs.
- 10.3 *Case Contribution Awards.* Incentive awards of up to \$25,000 each for class representatives Sheryl Wagner Houlihan and M.T.E., for a maximum of \$50,000, will be requested. This Agreement is not contingent upon an award of incentive payments to M.T.E. and/or Sheryl Wagner Houlihan as Class Representatives, and shall not terminate by reason of the Court awarding less than the amount requested. Defendant will take no position with respect to this application for incentive awards.
- 10.4 *Costs of Administration.* All costs and expenses of claims processing and administration shall be paid from the Settlement Amount. Class Counsel may advance any such payments, and shall be entitled to reimbursement of the same from the Settlement Amount.
- 10.5 *CBA Settlement Agreement Payments.* Consistent with the CBA Settlement Agreement And Release in Appendix A, the following shall be paid solely from the Settlement Amount: (1) SEIU 775 shall receive \$115,000; (2) SEIU Healthcare NW Health Benefits Trust shall receive \$30,000; and (3) SEIU Healthcare NW Training Partnership shall receive \$5,000, subject to the terms and conditions described in the CBA Settlement Agreement in Appendix A.

11. ***Dismissal.*** At such time as the Claims Administrator has distributed from the claim fund all monies due to proper claimants for each class, paid any reversion amount to the Department, paid all other payments set forth in Section 10 of this Agreement, and made appropriate tax payments under Section 6.4.9 and Section 6.4.10, the Parties shall submit to the court a motion and order to dismiss this case with prejudice.

**12. *Miscellaneous***

- 12.1 *Dispute Resolution.* The Parties agree that any dispute regarding the terms, conditions, releases, enforcement or termination of this Agreement shall be resolved through mediation with Teresa Wakeen and, if mediation is unsuccessful, through binding arbitration by Hon. George Finkle (ret.) without the ability or right to appeal.
- 12.2 *Governing Law.* This Agreement shall be governed by the laws of State of Washington without regard to conflict of law principles.
- 12.3 *Severability.* The provisions of this Agreement are not severable.
- 12.4 *Amendment.* Before entry of any Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of any Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court.
- 12.5 *Waiver.* The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
- 12.6 *Construction.* None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision thereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.
- 12.7 *Principles of Interpretation.* The following principles of interpretation apply to this Agreement:
- 12.7.1 *Headings.* The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
- 12.7.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.
- 12.7.3 *References to a Person.* References to a person include references to an entity, and include successors and assigns.
- 12.8 *Survival.* All representations, warranties and covenants set forth in herein shall be deemed continuing and shall survive the Effective Date of Settlement.
- 12.9 *Entire Agreement.* This Agreement contains the entire agreement among the Parties relating to this Settlement.
- 12.10 *Counterparts.* This Agreement may be executed by exchange of executed faxed or PDF signature pages, and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more


counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

- 12.11 *Binding Effect.* This Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans, predecessors, and transferees, and their past and present shareholders, officers, directors, agents, and employees.
- 12.12 *Further Assurances.* 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 other documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.

**SIGNATURES:**

WASHINGTON STATE DEPARTMENT OF SOCIAL  
AND HEALTH SERVICES.

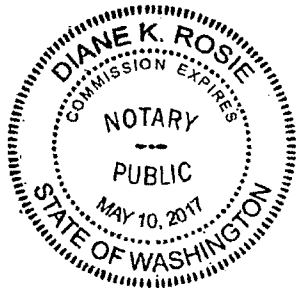
DATED: 11/16/2015


By   
Its Asst. Secretary - PDA

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 16<sup>th</sup> day of November, 2015, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Evelyn Perez, to me known to be the Asst. Secretary-DDA of WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES.

Witness my hand and official seal hereto affixed the day and year first above written.



  
 NOTARY PUBLIC in and for the State of  
WASHINGTON, residing at Olympia  
 My commission expires: 5-10-2017

M [REDACTED] T [REDACTED] E [REDACTED], BY AND THROUGH HER  
LEGAL GUARDIAN AND MOTHER, L [REDACTED] E [REDACTED]

DATED: 11/16/2015

By [REDACTED]

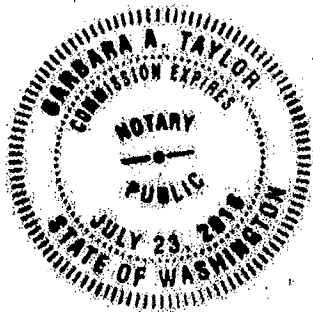
STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, L [REDACTED] E [REDACTED] to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 16 day of November, 2015.



Barbara A. Taylor  
NOTARY PUBLIC in and for the State of  
Washington, residing at 21028 Elberta RD  
My commission expires: July 23, 2016



SHERYL WAGNER HOULIHAN

DATED: 11-17-2015By Sheryl Wagner Houlihan

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, SHERYL WAGNER HOULIHAN to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 17<sup>th</sup> day of November, 2015.

Aaron Green  
NOTARY PUBLIC in and for the State of  
Washington, residing at King County  
My commission expires: 04-23-2019

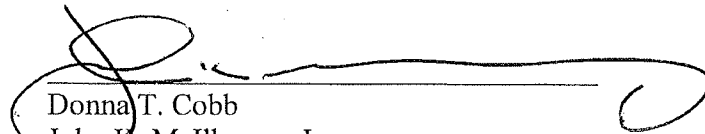
APPROVED:

SIRIANNI YOUTZ  
SPOONEMORE HAMBURGER

A handwritten signature in cursive script, appearing to read "Eleanor Hamburger".

Richard E. Spoonemore  
Eleanor Hamburger  
Attorneys for the Plaintiffs and the Settlement Class

ATTORNEY GENERAL OF WASHINGTON

A handwritten signature in cursive script, appearing to read "Donna T. Cobb".

Donna T. Cobb  
John R. McIlhenny, Jr.  
Attorneys for Defendant

AAG

APPENDIX A – COLLECTIVE BARGAINING  
AGREEMENT (CBA) SETTLEMENT AGREEMENT AND  
RELEASE

## COLLECTIVE BARGAINING AGREEMENT (CBA) SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made by and between Service Employees International Union (SEIU) 775, SEIU Healthcare NW Health Benefits Trust, SEIU Healthcare NW Training Partnership, and the State of Washington, Department of Social and Health Services (DSHS or Department)(collectively the "Signatories").

### I. DEFINITIONS

As used in this Agreement, and for the purpose of this Agreement only, the following terms have the below-stated meanings:

1. This Settlement Agreement and Release is referred to as the "CBA Settlement Agreement."

2. "Action" means *M.T.E., et al. v. Department of Social and Health Services, et al.*, Cause No. 11-02-01209-1 in Thurston County Superior Court in which plaintiffs M.T.E. and Sheryl Wagner Houlihan allege that DSHS improperly denied benefits and breached its contracts with class members by applying the invalidated children's assessment rule, WAC 388-106-0213.

3. "Parties" means plaintiffs M.T. E. and Sheryl Wagner Houlihan and DSHS, the named parties in *M.T.E., et al. v. Department of Social and Health Services*.

4. "Settlement Amount" means the funds to be paid by the State of Washington to resolve the Action.

5. "M.T.E. Settlement Agreement" means the Settlement Agreement to resolve the Action between the M.T.E. Plaintiffs and the Department of Social and Health Services.

6. "CBA Released Claims" means any and all claims under the Collective Bargaining Agreements between the State of Washington and SEIU 775 from June 17, 2005-December 7, 2011, related to the Action and the Settlement Amount, including but not limited to claims for union dues or fees, claims for contributions to the SEIU Healthcare NW Health Benefits Trust or the SEIU Healthcare NW Training Partnership and any and all known or unknown actions, causes of action, claims, counterclaims, cross-claims, third-party claims, defenses, demands, off-sets, set-offs, damages, costs, fees, and expenses, arising from the Action and/or the Settlement Amount. Excluded from this release of claims are any CBA claims associated with this Action related to correcting cumulative career hours, adjustment of wage scale placement, back pay for any wages lost due to incorrect placement on the wage scale and the cash out value on any Paid Time Off owed as a result of incorrect accrual. These excluded claims are disputed claims. By agreeing to this exclusion, the Department does not admit, infer or imply that these claims have any merit whatsoever.

7. "SEIU 775" means Service Employees International Union 775, which acted as the sole collective bargaining representative and negotiated the collective bargaining agreements during all relevant periods of times for the Action.

8. The "Department" means the State of Washington, Department of Social and Health Services.

9. "SEIU Healthcare NW Health Benefits Trust" means the ERISA trust established by the State of Washington and SEIU 775 to receive contributions from the State of Washington and other participating employers to provide health benefits to Individual Providers and other participating home care workers.

10. "SEIU Healthcare NW Training Partnership" means the ERISA trust established by the State of Washington and SEIU 775 to receive contributions from the State of Washington and other participating employers to provide training benefits to Individual Providers and other participating home care workers.

## II. RECITALS

1. From June 17, 2005 to December 7, 2011, the time period that WAC 388-106-0213 was in effect, SEIU 775 acted as the exclusive collective bargaining representative for the Settlement Provider Class and negotiated the respective collective bargaining agreements ("CBAs"). The applicable CBAs required that the Department deduct from the payments to bargaining unit members the dues required for Union membership, or, for nonmembers of the Union, a fee equivalent to the dues. The applicable CBAs also required the Department to make contributions on behalf of bargaining unit members to the SEIU Healthcare NW Health Benefits Trust and, for part of the class period, to the Training Partnership.

2. SEIU 775, the SEIU Healthcare NW Health Benefits Trust and the SEIU Healthcare NW Training Partnership take the position that each is entitled to dues, fees and contributions arising out of the claims asserted in the Action.. The Department disputes this position.

In consideration of the mutual promises and benefits conferred herein, the Parties agree as follows:

## III. AGREEMENT

1. Effective Date. The date of this Agreement shall become effective on the same date that the M.T.E. Settlement Agreement becomes effective. *See* M.T.E. Settlement Agreement, ¶ 1.10.

2. Court Approval. The Parties recognize and acknowledge that because this CBA Settlement Agreement settles potential claims against the Settlement Amount and because the Court has jurisdiction and oversight over the M.T.E. Settlement Agreement, this CBA Settlement Agreement is also subject to Court approval as part of the preliminary and final approval process in the Action.

3. Disclosure of Provider Class List. If the M.T.E. Settlement Agreement is approved by the Court, the Parties agree that the Union may receive from the Claims Administrator a copy of the Settlement Provider Class list to be provided to the Claims Administrator by the Department under the M.T.E. Settlement Agreement, § 6.4.4.1.2. This agreement does not waive any objection Plaintiffs may have to the Union obtaining that list from the Claims Administrator. The Parties to the underlying lawsuit herein may agree to seek a protective order for the list.

4. Payment. If the M.T.E. Settlement Agreement is approved by the Court, SEIU 775 will receive \$115,000 from the Settlement Amount ("Union payment"). SEIU Healthcare NW Health Benefits Trust will receive \$30,000 from the Settlement Amount ("Health Benefits Trust payment"). SEIU Healthcare NW Training Partnership will receive \$5,000 from the Settlement Amount ("Training Partnership payment"). SEIU 775, SEIU Healthcare NW Health Benefits Trust and SEIU Healthcare NW Training Partnership each agrees that the Union Payment, Health Benefits Trust Payment and the Training Partnership Payment shall constitute full and complete satisfaction of any dues, fees and contributions owing under the respective CBAs as a result of payment of the Settlement Amount in the M.T.E. Settlement Agreement. SEIU 775, SEIU Healthcare NW Health Benefits Trust and SEIU Healthcare NW Training Partnership each acknowledges and agrees that the source of the funds to pay for the Union, Health Benefit Trust and Training Partnership Payments shall be solely from the Settlement Amount and that this CBA Settlement Agreement in no way creates individual liability on the part of any class member. The Union, Health Benefit Trust and Training Partnership payments will not be characterized by Defendants as wages and no class members will be apportioned any part of the settlement for tax purposes.

5. Termination. If the M.T.E. Settlement Agreement is not preliminarily or finally approved by the Court, this CBA Settlement Agreement shall automatically terminate and thereupon become null and void.

6. Releases: The Signatories agree that payment of the Union, Health Benefit Trust and Training Partnership Payments, as stated in Paragraph III.4 above, satisfies all Claims between the Signatories related to the Action, except those disputed Claims expressly excluded, and the M.T.E. Settlement Agreement approved and entered by the Court. Unless expressly excluded in Paragraph II.6, above upon Final Approval of the M.T.E. Settlement Agreement by the Court and payment of the Dues, Health Contributions and Training Contributions Settlement amounts stated in Paragraph III.4 above, each Signatory shall be deemed to have released all other Signatories and their attorneys from any Claims, contractual or not, known or unknown, past or present, or whether asserted in the Action or not, arising out of or relating in any way to dues, fees and/or contributions under the CBAs arising from the Department's payment of the Settlement Amount, including any fees or expenses that could be sought in relation to any such Claims.

7. No "Third Party Claims": SEIU 775, SEIU Healthcare NW Health Benefits Trust and SEIU Healthcare NW Training Partnership acknowledge that no "third party" is an intended "third-party beneficiary" of the Department's contractual obligation to transmit dues, fees and/or contributions to them, and further states that SEIU 775, SEIU Healthcare NW Health Benefits Trust and SEIU Healthcare NW Training Partnership have not assigned or transferred any rights to any "third party" for dues, fees and/or contributions arising from the Department's payment of the Settlement Amount.

8. Protective Order. The signatories agree that class counsel, on behalf of the class members in *M.T.E. v. DSHS*, may seek from the Court, without opposition, a protective order covering at least: all personal and confidential material provided to and/or relied upon by the Claims Administrator to make claims determinations, including but not limited to (a) protected material in guardianship files; b. Medicaid billing data, and/or private pay billing data; c. the names, addresses, phone numbers, social security numbers and DSHS identification numbers of members of either class, claim forms submitted by them and any other personal information relating thereto; d. all Medicaid client information; and e. other material protected by federal or state statute or regulation or court rule.

9. Specifically Enforceable. The Signatories agree that all the provisions herein may be specifically enforced by a court.

10. Binding Agreement. This Agreement shall be binding upon the Signatories hereto and their respective successors, heirs, legal representatives and assigns.

11. Complete Agreement. This Agreement is a full and complete integration of the Signatories' agreement, and there are no promises, covenants, or representations concerning the subject of this Agreement not contained herein.

12. Read and Understood; Advice of Counsel. Each of the Signatories has read and fully understands this Agreement, relied wholly upon its own judgment, beliefs and knowledge of the nature of the potential Claims or off-sets against the Settlement Amount for dues and fees under the respective CBAs, and has consulted and has been advised by independent counsel with respect to the terms in effect hereof.

13. Attorney Fees and Costs. Should any complaint be filed or any claim be made arising out of the alleged breach of any of the provisions of this Agreement, the Signatories agree that the "prevailing party" shall be entitled to reasonable attorneys' fees and expenses arising from any such action.

14. Nontransfer of Claims. Each of the Signatories specifically warrants that it has not assigned or transferred any claim or part or portion of a claim released herein, nor has it given security interest in such claim or portion of a claim.

15. Duty to Execute Further Necessary Documentation. The Signatories agree to cooperate fully and to execute all documentation that may be necessary to implement the terms of this Agreement. This provision is supplementary to, and not in derogation of, the provisions of this Agreement.

16. Severability. In the event any term or provision is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions, which terms and provisions shall remain binding and enforceable.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and, which taken together, shall constitute a single instrument.

18. Construction of Agreement. This Agreement has been jointly drafted by

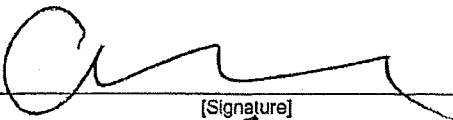
the Signatories following negotiations. It shall be construed according to the fair intent of the language as a whole, and not for or against any party.

19. Choice of Law. This Agreement shall be interpreted in accordance with the laws of the State of Washington. Venue for any disputes arising under this Agreement shall be in Thurston County Superior Court.

20. Authority to Execute. Each of the undersigned represents and warrants that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement and that this Agreement is valid, binding, and enforceable against the party on whose behalf he/she signed.

IN WITNESS WHEREOF, the SIGNATORIES, by and through their respective duly authorized representatives, affix their signatures hereto as of the dates indicated.

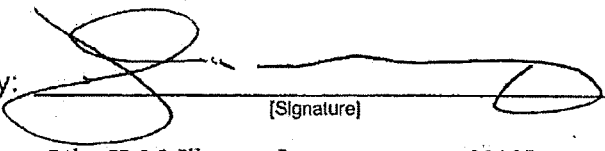
FOR SEIU 775:

By:   
[Signature]  
ADAM GLICKMAN

Its: Secretary-Treasurer for SEIU 775

Dated: 10/30/15

FOR THE DEPARTMENT:

By:   
[Signature]  
John K. McIlhenny, Jr, WSBA No. 32195

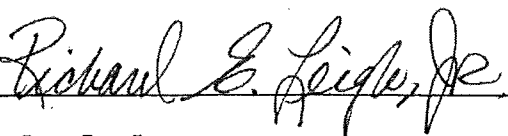
Washington Attorney General's Office

Its: Assistant Attorney General

Dated: \_\_\_\_\_

FOR SEIU HEALTHCARE NW TRAINING PARTNERSHIP AND SEIU HEALTHCARE  
NW HEALTH BENEFITS TRUST

:

By:   
Richard E. Leigh, Jr.



[Signature]

RICHARD E. LEIGH, JR.

Their: General Counsel

Dated: 12/3/15

## **Appendix 2**

**ATTENTION: IF YOU OR A FAMILY MEMBER RECEIVED MEDICAID-FUNDED PERSONAL CARE AS A CHILD OR YOU WERE AN INDIVIDUAL PROVIDER OF MEDICAID-FUNDED PERSONAL CARE TO A CHILD WITH WHOM YOU LIVED, A PROPOSED SETTLEMENT AGREEMENT MAY AFFECT YOUR RIGHTS.**

A court authorized this notice. This is not a solicitation from a lawyer.

- *M.T.E. et al., v. Wash. Dep't of Soc. & Health Servs.* is a class-action case in which a child Medicaid recipient and an individual provider of Medicaid-funded personal care sued the Washington Department of Social and Health Services (DSHS) over WAC 388-106-0213, referred to here as the "Children's Assessment Rule" or "Rule." This Rule was in place from July 1, 2005 through November 30, 2011. The Washington Supreme Court determined that the Rule was invalid.
- In October 2015, the parties in *M.T.E.* reached a settlement. DSHS has agreed to provide a \$4,000,000 settlement fund, out of which claims will be paid for (1) out-of-pocket costs for MPC services that would have been covered but for the application of the Rule, and (2) unpaid work performed by individual providers who lived with their child Medicaid client that would have been covered but for the application of the Rule.
- Thurston County Superior Court preliminarily approved the proposed Settlement Agreement. This notice has been ordered to explain your legal rights.

YOUR LEGAL RIGHTS IN THIS LAWSUIT	
YOU MAY COMMENT ON THE PROPOSED SETTLEMENT AGREEMENT.	<b>You have the right to comment on, object to, or support the proposed Settlement Agreement.</b> The Court will decide whether to approve or reject the proposed Settlement Agreement after a Final Hearing on <u>May 20</u> , 2016 at <u>9:00 a.m.</u> Thurston County Courthouse, 2000 Lakeridge Drive SW, Room <u>204</u> , Olympia, WA 98502.
YOU MAY SUBMIT A CLAIM.	<b>You may submit claims</b> for either (1) reimbursement of out-of-pocket costs you paid for MPC services that you or a family member received as a child, or (2) compensation for unpaid MPC work that you performed for a child.
YOU MAY ASK TO BE EXCLUDED.	<b>You may get out of this lawsuit.</b> If you ask to be excluded, you will not be able to submit a claim for reimbursement or compensation. However, you will keep any rights to sue DSHS separately about the same claims in this lawsuit.
YOU MAY DO NOTHING.	<b>If you do nothing, then you will remain in one of the Classes.</b> By doing nothing, if you are a Class Member, you give up any rights to sue DSHS separately about the same legal claims in this lawsuit. Unless you submit a claim, you will not receive any benefit from the proposed Settlement Agreement. You will not be responsible for the payment of attorneys' fees and costs out of your own pocket.

Если Вы желаете прочитать это извещение на русском языке, пожалуйста, посетите [WEBSITE].

如果您想閱讀中文的本通知書，請前往網站 [WEBSITE].

Nếu quý vị muốn đọc thông báo này bằng tiếng Việt Nam, xin đến [WEBSITE].

이 통지서를 한국어로 읽으시기 원할 경우는 [WEBSITE]을 방문하십시오.

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Si desea leer esta notificación en español, por favor diríjase a [WEBSITE].

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## **FREQUENTLY ASKED QUESTIONS**

### **1. Why did I get this notice?**

You received this Notice because DSHS determined that you or your family member may be a member of one of the following two Classes:

#### **Settlement Recipient Class**

All individuals who, during the *Class Period*: (1) were recipients of Medicaid-funded personal care services; (2) had their Medicaid-funded personal care services determined by application of the former WAC 388-106-0213; and (3) who paid out of pocket for additional personal care services during any month in the *Class Period*.

#### **Settlement Provider Class**

All individuals who, during the *Class Period*: (1) were authorized by DSHS to provide personal care services to individuals whose personal care service hours were determined by application of former WAC 388-106-0213; (2) lived with those individuals during that month; and (3) provided unpaid personal care services that exceeded the amount of personal care services authorized by DSHS during that month.

*Class Period* as used in this definition means July 1, 2005 through November 30, 2011.

### **2. What is this lawsuit about?**

This lawsuit was brought by two individuals who alleged that DSHS improperly applied WAC 388-106-0213, the Children's Assessment Rule. They alleged that the improper application of this Rule caused members of the Settlement Recipient Class to pay out of pocket for necessary personal care services. They also alleged that the Rule improperly required members of the Settlement Provider Class to work without pay to meet the personal care needs of the child Medicaid recipients with whom they lived. As a remedy, they alleged that pursuant to RCW 74.04.080 and RCW 34.05.574, the Settlement Recipient Class is entitled to past back benefits to the date that the Children's Assessment Rule was first applied. They also alleged that DSHS breached its contracts with the Settlement Provider Class by applying the invalid Rule, such that those providers are entitled to payment for unpaid work performed that would have been paid but for the application of the Rule. DSHS denies all claims.

### **3. What is a class action, and who is involved?**

In a class action lawsuit, one or more people ("Class Representatives") sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." All of the Class Members are called the Plaintiffs. One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class. In this case, M.T.E., a child Medicaid recipient, and Sheryl Wagner, an individual provider, are the Class Representatives. The Department of Social and Health Services is the Defendant.

### **4. What does the proposed Settlement Agreement provide?**

The main points of the proposed Settlement Agreement are described below. You can review the entire Agreement, which is available at [www.sylaw.com/MTEsettlement](http://www.sylaw.com/MTEsettlement). The Agreement will only become effective if the Court approves the Agreement after the Final Hearing.

#### **• \$4,000,000 Settlement Fund**

The Agreement provides for a \$4,000,000 Settlement Fund to pay for claims submitted by Settlement Recipient Class Members and Settlement Provider Class Members, attorneys' fees, litigation costs, payments for all potential disputed claims relating to the Collective Bargaining Agreements in effect during the Class Period, claims administration costs, and case contribution awards.

- **Claims Process for *Recipient* Class Members**

A Settlement Recipient Class Member, on his or her own behalf or through his or her parents and/or legal guardian, will be eligible for payment from the Settlement Fund by submitting a claim form (included, with instructions, as part of this notice) that attests to the following four items:

1. The Recipient received Medicaid-funded personal care services and was under the age of 18 when the services were provided;
2. The Recipient received personal care services in excess of the amount DSHS authorized during the Class Period (July 1, 2005 through November 30, 2011);
3. The name of the provider(s) of personal care services and the amount and date of the personal care services (month/year); and
4. The out-of-pocket costs associated with those personal care services.

The claims must also be documented with some evidence of payment(s) or obligation, such as (but not limited to) cancelled checks, credit card account statements, checking account statements, provider ledgers or signed letters from the provider or the provider's employer documenting the amount paid or due (so long as the letter clearly connects payments with the personal care service dates by at least the month/year). The Recipient must also authorize the Claims Administrator to obtain any necessity information from DSHS and/or the identified personal care provider to confirm the Recipient's attestation and documentation. Note: Reimbursement is available only for payments made to cover the difference between authorized hours and the claimant's base hours at the time of payment. See WAC 388-106-0125 for an explanation of base hours and classification groups.

- **Claims Process for *Provider* Class Members**

A Settlement Provider Class Member will be eligible for payment from the Settlement Fund by submitting a claim form (included, with instructions, as part of this notice) that attests to the following four items:

1. The Provider was a qualified Individual Provider who was living with, and provided services to, a recipient of Medicaid-funded personal care services who was under the age of 18 when the services were provided;
2. The Provider provided personal care services in excess of the amount authorized by DSHS during the Class Period (July 1, 2005 through November 30, 2011);
3. The date (month/year) that personal care services in excess of the authorized amount were provided; and
4. The Provider was not paid for those services.

The Provider must also authorize the Claims Administrator to obtain any necessity information from DSHS and/or the relevant Medicaid-funded personal care recipient to confirm the Provider's attestation. All valid provider claims will be compensated at a per-month "proxy" amount of \$450 per month, unless there are insufficient funds to pay each claim at 100%.

A Claims Administrator will review the claims to confirm that the four requisite items are present in the relevant claim forms and that the submitted documentation supports the claimed amounts. The Claims Administrator will also confirm that the Provider was on the list provided by DSHS of potential Settlement Class Members during the time of the claim, and that claimed sums are not duplicative.

The Claims Administrator must provide a Claimant with a deficient claim form an opportunity to fix any problems. Class Counsel can assist the Claimant with fixing any problems with her/his claim.

- **Collective Bargaining Agreement Settlement Amount**

The proposed Settlement Agreement includes an *Appendix A*, which contains a separate agreement between Defendant, Service Employees International Union ("SEIU") 775, SEIU Healthcare NW Health

Benefits Trust (“HBT”) and SEIU Healthcare NW Training Partnership (“TP”), referred to as the “CBA Settlement.” Under the CBA Settlement, SEIU 775 shall receive \$115,000, HBT shall receive \$30,000, and TP shall receive \$5,000 from the Settlement Fund, in exchange for a release of some potential claims against Defendant.

- **attorneys’ fees, Litigation Costs, and Costs of Claims Administration**

Under the proposed Settlement Agreement, Class Counsel will apply for their attorneys’ fees from the Settlement Fund, based upon their normal hourly rates and the hours spent on the litigation. In addition, litigation costs (money Class Counsel paid out of pocket on behalf of the Classes) and costs for claims administration will be requested to be paid from the Settlement Fund. Class Counsel’s attorneys’ fees, litigation costs, and claims administration costs are subject to review and must be approved by the Court.

- **Case Contribution Awards**

Case contribution awards of up to \$25,000 for each Class Representative (M.T.E. and Sheryl Wagner Houlihan) for a total of no more than \$50,000 will be requested from the Settlement Fund. The Court must approve the case contribution awards.

- **Insufficient Funds or Excess Funds**

If, after payment of the Collective Bargaining Agreement Settlement Amount, attorneys’ fees, case contribution awards, litigation costs, and claims administration costs, there are insufficient funds to pay 100% of all valid claims then all valid claims, including both Recipient and Provider claims, shall be paid on a *pro rata* (percentage) distribution of their approved claim amount.

After payment of the Collective Bargaining Settlement Amount, attorneys’ fees, case contribution awards, litigation costs, claims administration costs, and all valid claims at 100%, if there are excess funds in the Settlement Trust Fund, then those excess funds shall be returned to the State of Washington.

## **5. When will the Settlement Funds be available?**

The Court must finally approve the proposed Settlement Agreement, and if any Class Members appeal, a final adjudication of any appeal(s) must be made before the funds are available.

## **6. How do I respond to the proposed Settlement Agreement?**

- **You May Submit a Claim**

As described above, you may submit claims if you are a member of either the Settlement Recipient Class or the Settlement Provider Class. Claims must be received by the Claims Administrator by April 20, 2016. Please follow the instructions with the enclosed claim form to submit your claim. Additional claim forms can be downloaded from [www.symslaw.com/MTEsettlement](http://www.symslaw.com/MTEsettlement).

- **You May Exclude Yourself or Your Dependent (Opt Out)**

If you wish to exclude yourself or your dependent from the Class, you must write a letter stating that you wish to be excluded or send in the enclosed Exclusion or “Opt-Out” Form. Your letter or form must be postmarked by April 20, 2016 and sent to:

M.T.E. v. DSHS  
Claims Administrator  
P.O. Box 3266  
Portland, OR 97208-3266

If you opt out of one of the Classes, you will not be entitled to make a claim or receive a payment if the proposed Settlement Agreement is approved. You will, however, retain any rights you may have to pursue an individual claim for back benefits or breach of contract damages against DSHS regarding its application of WAC 388-106-0213, the Children’s Assessment Rule. If you believe that you have such

claims, you may wish to consult with an attorney. You should confer with the attorney about the relevant statute of limitations.

- **You May Comment on, Object to, or Support the Proposed Settlement Agreement**

The Court will hold a final hearing on the proposed Settlement Agreement on May 20, 2016 at 9:00 a.m., Thurston County Courthouse, 2000 Lakeridge Drive SW, Room 204, Olympia, WA 98502.

You are not required to attend the hearing, and you are not required to be present to submit comments for consideration. All comments on the proposed Settlement Agreement, however, must be submitted in advance and in writing to the Court.

You may attend the hearing, and you may bring a legal representative if you wish at your own expense. You must tell the Court in advance and in writing that you plan to come to the hearing to object to, comment on, or formally support the proposed Settlement Agreement or the Class Representatives' request for payment of attorneys' fees, litigation costs, costs of claims administration, or case contribution awards.

If you choose to submit written comments or appear at the Court hearing, your letter must be received no later than April 20, 2016 and must be mailed to:

Richard E. Spoonmore and Eleanor Hamburger,  
Class Counsel  
SIRIANNI YOUTZ SPOONMORE HAMBURGER  
999 Third Avenue, Suite 3650  
Seattle, WA 98104

John K. McIlhenny, Jr., William McGinty and  
Martin Wyckoff  
OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 40124  
Olympia, WA 98504-0124

## 7. Where can I get more information?

For information, you may visit the website for Class Counsel: [www.symslaw.com/MTEsettlement](http://www.symslaw.com/MTEsettlement). You can contact DSHS at (360) 725-3449. If you are an individual provider, you can also call the SEIU 775 Member Resource Center at 1 (866) 371-3200. You may also call or write Class Counsel to request copies of any of the documents in this matter:

Richard E. Spoonmore and Eleanor Hamburger, Class Counsel  
SIRIANNI YOUTZ SPOONMORE HAMBURGER  
999 Third Avenue, Suite 3650 Seattle, WA 98104  
Tel. (206) 838-3210  
Email: [ehamburger@sylaw.com](mailto:ehamburger@sylaw.com) or [rspoonmore@sylaw.com](mailto:rspoonmore@sylaw.com)

Если Вы желаете прочитать это извещение на русском языке, пожалуйста, посетите [WEBSITE].

如果您想閱讀中文的本通知書，請前往網站 [WEBSITE].

Nếu quý vị muốn đọc thông báo này bằng tiếng Việt Nam, xin đến [WEBSITE].

이 통지서를 한국어로 읽으시기 원할 경우는 [WEBSITE]을 방문하십시오.

Haddii aad jeclaan lahayd inaad akhrido ogeysiiskan oo Somali ah, fadlan tag [WEBSITE].

ប្រសិនបើអ្នកចង់អានសេចក្តីជូនដំណឹងនេះជាភាសាខ្មែរ សូមទៅកាន់ [WEBSITE]។

Si desea leer esta notificación en español, por favor diríjase a [WEBSITE].

ຖ້າຫາກວ່າທ່ານຢາກຈະອ່ານໃບຜັງງານໃບນີ້ເປັນພາສາລາວ, ກະລຸນາໄປທີ່ [WEBSITE]

### **EXCLUSION or “OPT-OUT” FORM**

Page 6 of 6



## **Appendix 3**

## Legal Notice:

A class action lawsuit has been filed against the Washington Department of Social and Health Services over its application of an invalid rule, WAC 388-106-0213. The lawsuit seeks back benefits for affected child Medicaid recipients and unpaid wages for personal care providers who lived with the child to whom they provided paid caregiving, from July 1, 2005 to November 30, 2011.

The lawsuit is called *M.T.E. et al., v. Wash. Dep't of Soc. & Health Servcs.* A Thurston County Superior Court judge has preliminarily approved a Settlement Agreement between the parties. The Settlement Agreement establishes a process whereby affected child Medicaid recipients and their families who paid out-of-pocket for personal care services that, but for the application of WAC 388-106-0213, would have been covered, may submit claims for reimbursement. The Settlement Agreement also provides for a claims process by which Individual Providers of Medicaid-funded personal care services who worked for a child Medicaid recipient with whom they lived, and who worked more hours than those authorized by DSHS, may obtain a "proxy" payment for the unpaid work performed.

Claims must be submitted by no later than April 20, 2016. Copies of claim forms may be downloaded from [www.sylaw.com/MTEsettlement](http://www.sylaw.com/MTEsettlement).

If you want to opt out of this lawsuit, you have to file a notice requesting exclusion by April 20, 2016.

If you want to use your own lawyer, your lawyer must appear in the case by April 20, 2016.

For more details about the Settlement Agreement and the claims process, please go to [www.sylaw.com/MTEsettlement](http://www.sylaw.com/MTEsettlement). You may also call Class Counsel, Sirianni Youtz Spoonemore Hamburger at (206) 838-3210 or the Department of Social and Health Services at (360) 725-3449.

## **Appendix 4**

*M.T.E. and Wagner v. DSHS*  
**RECIPIENT CERTIFICATION OF PAYMENT(S)**

I certify that I or my dependent(s)/ward(s) received Medicaid-funded personal care services while under the age of 18 years, between July 1, 2005 and November 30, 2011.

I certify that I or my dependent(s)/ward(s) received personal care services in excess of the amount authorized by the Department of Social and Health Services (DSHS), for which I paid out-of-pocket, as set forth on the claim form on the back of this page and any additional pages.

I certify that the information provided in this Claim Form is true and correct. I understand that the payment of my claim may involve federally funded Medicaid dollars.

I authorize Epiq Systems to obtain any necessary information from the Washington Department of Social and Health Services and/or the personal care providers identified on the attached claim form to confirm this certification.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\* \* \*

Type or Print Your Name (required): \_\_\_\_\_

Name of Person who received services (required): \_\_\_\_\_

Date of Birth of the person who received services (required): \_\_\_\_\_

You **must** include the following elements of proof with this claim form: (1) proof of uncovered personal care service dates (month/year); (2) identity of the personal care provider(s); and (3) proof of the unreimbursed charges. Please see the enclosed "Instructions for Claim Form" material under "Documentation" for a list of the type of documents that must be submitted to establish each element.

Current Address: \_\_\_\_\_  
(Street or P.O. Box)

\_\_\_\_\_  
City, State and Zip Code

Daytime/Evening  
Telephone Numbers: \_\_\_\_\_ (day) \_\_\_\_\_ (eve.)

Please include your DSHS identification number: \_\_\_\_\_

*M.T.E. and Wagner v. DSHS* Settlement Fund Claim Form

**RECIPIENT CLAIM FORM FOR:** \_\_\_\_\_

Please print your name and DSHS ID number here

**NOTE:** If you need additional pages for more claims, you may either make a copy of this blank claim form or obtain additional forms from [www.sylaw.com/MTESettlement](http://www.sylaw.com/MTESettlement). You must also fill out the back side of this form to be eligible for reimbursement.

Date of Service (at least month and year)	Provider Name, Address and Phone Number (if available)	Amount You Paid for the Service	I certify that the personal care services I paid for were in excess of those authorized by DSHS for that month/year (Yes/No)

Please attach all documents that show that you received and incurred a debt for the services identified above, such as itemized statements, cancelled checks, credit card statements, receipts, treatment summaries, etc.

**DO NOT SEND ORIGINALS AS THEY WILL NOT BE RETURNED TO YOU.**

*M.T.E. and Wagner v. DSHS*  
**PROVIDER CERTIFICATION OF WORK**

I certify that I was a qualified Individual Provider of Medicaid-funded personal care services living with and providing services to a recipient of Medicaid-funded personal care services who was, at the time of service, under the age of 18 years, between July 1, 2005 and November 30, 2011 (the "Class Period").

I certify that I provided personal care services in excess of the amount authorized by DSHS during the identified months in the Class Period.

I further certify that I was not paid for the personal care services performed in excess of the amount authorized by DSHS during the identified months.

I certify that the information provided in this Claim Form is true and correct. I understand that the payment of my claim may involve federally funded Medicaid dollars.

I authorize Epiq Systems to obtain any necessary information from the Washington Department of Social and Health Services and/or the Medicaid recipient to whom I provided services who is identified on the attached claim form to confirm this certification.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Your Name (required): \_\_\_\_\_

Name of Person who received services (required): \_\_\_\_\_

Date of Birth of the person who received services (required): \_\_\_\_\_

You **must** include the following information with this claim form: (1) the dates when you lived with a child Medicaid recipient and provided personal care services in excess of those authorized by DSHS (month/year); (2) the address at which you lived; and (3) the child Medicaid recipient to whom you provided personal care services. Please see the enclosed "Instructions for Claim Form" material under "Documentation" for a list of the type of documents that must be submitted to establish each element.

Current Address: \_\_\_\_\_  
(Street or P.O. Box)

\_\_\_\_\_  
City, State and Zip Code

Daytime/Evening  
Telephone Numbers: \_\_\_\_\_ (day) \_\_\_\_\_ (eve.)

Please include your DSHS identification number: \_\_\_\_\_

## M.T.E. v. DSHS Settlement Fund Claim Form

**PROVIDER CLAIM FORM FOR:** \_\_\_\_\_  
Please print your name and DSHS ID number here

**NOTE:** If you need additional pages for more claims, you may either make a copy of this blank claim form or obtain additional forms from [www.sylaw.com/MTESettlement](http://www.sylaw.com/MTESettlement). You must also fill out the back side of this form to be eligible for reimbursement.

[illegible]

## CLAIM FORM INSTRUCTIONS

You must complete a Claim Form in order to receive payment from the Settlement Fund. Please follow these instructions.

**All claims must be received by the Claims Administrator no later than April 20, 2016 .**  
**Any claims received after this date will not be eligible for payment.**

### A. FRONT AND BACK OF CLAIM FORM MUST BE COMPLETED

**Recipient Claimants:** Please identify: (1) the dates (month/year) in which you paid for additional personal care services, (2) the identity of the provider who rendered personal care services in excess of that authorized by DSHS; (3) the provider's address and telephone number (if available); and (4) the amount you paid for the services. If you do not know the dates, you may wish to contact your care provider.

**Provider Claimants:** Please identify the date (month/year) during which you worked in excess of DSHS authorized hours for the child Medicaid recipient with whom you lived and to whom you were authorized to provide care. For each month of unpaid caregiving, you must provide on the Claim Form: (1) the date of unpaid caregiving (month/year); (2) the name of the child Medicaid recipient to whom you provided unpaid caregiving; (3) the shared address for both you and the child Medicaid recipient at the time of service; and (4) an attestation (statement) that you were not paid for the additional work.

**All Claimants:** *You must sign the CERTIFICATION on the back of the form that the information you have provided is true and correct and authorizing the Claims Administrator and DSHS to investigate your claim.*

### B. DOCUMENTATION

**Recipient Claimants** must also send in evidence of the service dates (month/year) and payment:

1. Service dates can be evidenced by provider notes, an appointment schedule/log, invoices seeking payment that include dates of service, or other evidence of similar reliability.
2. Proof of payment or may consist of cancelled checks, credit card account statements, provider ledgers, invoices stamped "paid" or showing amounts due, checking account statements, signed letters from the provider or provider's employer documenting the amount paid (so long as the letter connects payments with service dates), or other evidence of similar reliability.

### C. ALL OF YOUR CLAIMS MUST BE SUBMITTED IN ONE MAILING

You may obtain additional copies of the Claim Form or make copies of it yourself. Documents that you submit will not be returned, so please do not send originals.

### D. MAIL YOUR CLAIM FORM

Your Claim Form, with documentation if required, must be received by April 20, 2016 . It should be mailed to:

M.T.E. v. DSHS  
Claims Administrator  
P.O. Box 3266  
Portland, OR 97208-3266

You may not submit Claim Forms by telephone, fax, e-mail or other means. If you want verification that your Claim Form was received, then you must mail your Claim Form using registered or certified mail.

### E. INVESTIGATION

The Claims Administrator and/or DSHS may independently confirm any claim. By submitting a Claim Form, you agree that such an investigation may be made. The failure to cooperate may be grounds for denial.

### F. PAYMENT OF CLAIMS

The Claims Administrator will process all claims and determine whether you may be paid out of the Settlement Funds. Payment is contingent upon final Court approval of the proposed Settlement Agreement. This process may take several months. If your claim is approved by the Claims Administrator and authorized by the Court, you will be mailed a check for the approved amount of the claim. If your claim is denied, in whole or in part, the Claims Administrator will provide a letter of explanation. You will be given an opportunity to correct any problems. If you disagree with the Claims Administrator's determination, then you may follow the steps set forth in the denial letter to appeal.

If you have questions about how to complete this Claim Form, your claims, or how to appeal a denial, contact Richard E. Spoonemore or Eleanor Hamburger, Class Counsel, SIRIANNI YOUTZ SPOONEMORE HAMBURGER, 999 Third Avenue, Suite 3650, Seattle, WA 98104, Tel. (206) 838-3210, email [ehamburger@syllaw.com](mailto:ehamburger@syllaw.com) or [rspoonemore@syllaw.com](mailto:rspoonemore@syllaw.com).