

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**WALTER STEVEN JACKSON, et al.,**

Plaintiffs,

vs.

No. CIV 87-839 JAP/KBM

**LOS LUNAS CENTER, et al.,**

Defendants,

and

**THE ARC OF NEW MEXICO,**

Intervenor,

and

**MARY TERRAZAS, et al.,**

Intervenors, pro se.

**ORDER PRELIMINARILY APPROVING SETTLEMENT AGREEMENT**

On April 17, 2019, the parties filed a JOINT MOTION TO PRELIMINARILY APPROVE SETTLEMENT AGREEMENT (Doc. 2289) (Motion). In the Motion, the parties ask the Court to give preliminary approval to the parties' Settlement Agreement (Doc. 2289-1) (SA).

On April 18, 2019, the Court heard the Motion. Present for the Plaintiffs were Steven Schwartz, Peter Cubra, Cathy Costanzo, Ann McCartney, Debbie Poulin, Philip Davis, and Jacqueline Mader. Present for Defendants were Jerry A. Walz, Kathy Kunkel, Sally Karingada, Jason Cornwell, Matthew Garcia, Taylor Smith, Daniel Lucero, and Eric Orono. Present for the Intervenors were Maureen Sanders and Jacqueline Mader.

During the hearing, the Court requested clarification of certain paragraphs in the SA. Counsel provided the following clarifications:

1. Section II of the SA provides “Definitions” of SA terms. Paragraph 10 defines the term “Qualified Provider Agreement Initiative,” which the Court understands currently is a work in progress.
2. Section III describes “Actions to Resolve Litigation.” In subsection B, Incident Management, paragraph 8, Defendants state that by December 31, 2019, they will eliminate the backlog of outstanding or overdue incident management investigations. The Court understands that Defendants intend to accomplish this goal by hiring additional staff, and the Court commends them for their commitment.
3. In subsection C, Mortality Review, paragraph 9, Defendants commit to reducing the backlog of mortality review cases, and the Court understands that this will be accomplished by acquiring additional help to review the cases through forming an association with the University of New Mexico’s Health Sciences Center. Defendants state that the backlog described in this section will be resolved by December 31, 2019.
4. In subsection D, Health, paragraph 11(a), Defendants state their commitment to using state employed nurses to perform a “minimum of one unannounced, face to face monthly visit” to each Jackson Class Member designated as “high-acuity pursuant to DD Waiver Standards, Ch 13 ¶ 13.2.13.”
5. In subsection D, Health, paragraph 11(b), Defendants state their commitment to using state behavioral specialists to analyze the behavioral support plans of those identified as “At Risk” individuals. The state behavioral specialists will conduct at least one unannounced monthly face to face visit with these class members. The Court observes that there is a scrivener’s error in the last sentence of that paragraph and “behavioral specialist” should be substituted in place of the word “nurse.”

6. In subsection D, Health, paragraph 11(c), Defendants state that they will use state-employed case management coordinators to conduct an unannounced quarterly visit to the case management agency for each high acuity/high behavioral class member.
7. In subsection G, Individual Quality Review (IQR), paragraph 15, Defendants state their intention of hiring five state employed IQR reviewers and one supervisor. The Court understands that these positions will be permanent and continuous. Lyn Rucker, the Community Monitor, and a state supervisor will evaluate the reviewers and determined whether they are qualified. As of this date, two reviewers have been hired, one of whom has been designated qualified. The other reviewer is under evaluation by Lyn Rucker. Once the three remaining reviewers are hired, they will also be evaluated by Lyn Rucker. The Court understands that on June 30, 2020, Lyn Rucker will cease serving as Community Monitor and thereafter, she will perform contractual work with the Defendants until June 30, 2021 under terms not yet determined.
8. Section V, Compliance and Disengagement, paragraph 17 currently states that the Defendants will implement the Actions described in Section III “within 18 months of the date of the Court’s approval”; however, the Court understands that this sentence should refer to the Court’s “final” approval.
9. Paragraph 18 of Section V establishes a date for Defendants to supply the Court and the Plaintiffs with quarterly reports regarding their progress on the terms of the SA. If the Court enters an Order approving the SA in June 2019, then July 1 will initiate the first quarterly reporting period and the Court understands that Defendant’s first report will be due on October 15, 2019.
10. Paragraph 19 of Section V provides a process for disengaging from Actions described in Section III of the SA. At the hearing, Plaintiffs indicated that while Defendants

may disengage from an Action, Defendants will remain responsible for maintaining compliance with that Action. Later noncompliance with a disengaged action could still serve as a violation of the terms of the SA until the case has been dismissed.

11. In Section VII Miscellaneous, the Court understands the first sentence of Paragraph 25 to read as follows: “If this document is adopted and approved unaltered by Court Order, the parties agree not to appeal from that order.”
12. The Court understands Section VII Miscellaneous, Paragraph 26 to read as follows: “If the Court enters an Order approving this Settlement Agreement and no party appeals such order, the Court will vacate all current and pending Court orders in this case, except for the Court orders listed in Section II, ¶ 5(11), supra.”

IT IS THEREFORE ORDERED THAT:

1. The Court gives preliminary approval to the Settlement Agreement (Doc. 2289-1) as clarified herein;
2. The Court will conduct a hearing on final approval of the Settlement Agreement (Doc. 2289-1) at 10:00 a.m. on June 12, 2019 in the Sixth Floor Courtroom of the United States Courthouse, 421 Gold Ave., Albuquerque, New Mexico 87102.
3. The parties are directed to issue Notice to all Plaintiff Class Members and Intervenors.

  
**SENIOR UNITED STATES DISTRICT JUDGE**