

MEMORANDUM OF UNDERSTANDING

December 22, 2020

The Alabama Medicaid Agency (Medicaid), the Alabama Department of Mental Health (DMH), the Alabama Department of Human Resources (DHR), collectively known as “The State” entered into a Settlement Agreement with the Alabama Disabilities Advocacy Program (ADAP) and the Center for Public Representation (CPR) on October 19, 2017 in order for the State of Alabama to resolve any contentions about the State’s alleged failure to provide medically necessary Intensive Home-Based Services under the federal Medicaid Act’s Early and Periodic Screening, Diagnostic, and Treatment provision (EPSDT) for children and youth with Serious Emotional Disturbance (SED), Autism Spectrum Disorder (ASD), and Intellectual and Developmental Disabilities (IDD).

The State has in good faith used its best efforts to fulfill the requirements and deadlines set forth in the original Settlement Agreement, but there are timelines that need to be extended because of further extended negotiations and the effect of the COVID-19 pandemic.

The original Settlement Agreement of October 30, 2017, has expired and has not been extended, but the State agrees to use its best efforts to fulfill the commitments set forth below:

I. DEFINITIONS OF AND TIMELINE FOR IMPLEMENTATION OF INTENSIVE HOME-BASED SERVICES

A. As defined in the original Settlement Agreement of October 30, 2017, Intensive Home-Based Services (IHBS) for Medicaid-eligible Children with SED and/or ASD consist of:

1. **Family Support** means services provided to families of children and youth with SED, ASD, or ASD with co-occurring IDD to assist them in understanding the nature of the illness of their family member and how to help the child or youth be maintained in the community. Structured, topic specific psychoeducational services may also be provided directly to the child or youth to assist him or her in understanding the nature of the identified behavioral health disorder and to identify strategies to support restoration of the child or youth to his or her best possible level of functioning.
2. **In-Home Behavioral Support** means positive behavior support therapy and monitoring designed to address challenging behaviors in the home and community for children and youth with ASD or ASD with co-occurring IDD. A behavioral therapist writes and monitors a behavioral management plan that includes specific behavioral objectives and interventions that are designed to diminish, extinguish, or improve specific behaviors related to the child’s or youth’s behavioral health condition. The behavioral therapist supervises and coordinates the interventions and trains others, including a behavioral aide who works with the family to implement the plan in the home and in the community. In-home behavior support includes, but is not

limited to, Applied Behavioral Analysis. The In-Home Behavioral Support team will also provide crisis services.

3. **In-Home Intervention** means a structured, consistent, strength-based therapeutic intervention provided by a team for a child or youth with SED and his or her family for the purpose of treating the child's or youth's behavioral health needs. In-home intervention also addresses the family's ability to provide effective support for the child or youth and enhances the family's capacity to improve the child's or youth's functioning in the home and community. Services are directed towards the identified child or youth and his or her behavioral health needs and goals as identified in the treatment plan or positive-behavior support plan developed by a qualified behavior clinician where appropriate. Services include therapeutic and rehabilitative interventions with the individual and family to correct or ameliorate symptoms of mental health conditions and to reduce the likelihood of the need for more intensive or restrictive services. These services are delivered in the family's home or other community setting and promote a family-based focus in order to evaluate the nature of the difficulties, defuse behavioral health crises, intervene to reduce the likelihood of a recurrence, ensure linkage to needed community services and resources, and improve the child's or youth's ability to self-recognize and self-manage behavioral health issues, as well as the parents' or responsible caregivers' skills to care for their child's or youth's mental health conditions. The In-Home Intervention team provides crisis services to children and youth served by the team.
4. **In-Home Therapy** means a structured, consistent, strength-based therapeutic relationship between a licensed clinician and a child or youth with ASD or ASD and co-occurring IDD and his or her family for the purpose of treating the child's or youth's behavioral health needs. In-home therapy also addresses the family's ability to provide effective support for the child or youth and enhances the family's capacity to improve the child's or youth's functioning in the home and community.
5. **Intensive Care Coordination** means a single case manager (and/or a single treatment team) and a treatment plan that guide the provision of all behavioral health and related support services. The case manager works directly with the child or youth and his or her family, coordinates a child and family team, and prepares and monitors a service plan and/or case plan. Intensive care coordination ensures that Intensive Home-Based Services help meet all the child's or youth's individual behavioral health needs by identifying, coordinating, and monitoring the array of supports and staff that allow the child or youth to remain in his or her home and community. Intensive Care Coordination services assist eligible individuals in gaining access to needed medical, social, educational and other services. The case manager provides these services through telephone contact with recipients, face-to-face contact with recipients, telephone contact with collaterals, or face-to-face contact with collaterals. This is accomplished via needs

assessment, case planning, service arrangement, social support, re-assessment and follow-up and monitoring.

6. **Intensive Home-Based Services** means a collection of discrete clinical interventions including In-Home Intervention, In-Home Therapy, In-Home Behavioral Support, Intensive Care Coordination, Family Support, Peer Support, and Therapeutic Mentoring, as defined in this paragraph, that are provided to a child or youth in any setting where he or she may reside or in other community settings.
7. **Peer Support** provides structured, scheduled activities that promote socialization, recovery, self-advocacy, development of natural supports, and maintenance of community living skills, provided by Certified Peer Specialists (Adult, Child/Adolescent, and Family Peer Specialists). Peer Support service actively engages and empowers a child or youth and his or her identified supports in leading and directing the design of the service plan and thereby ensures that the plan reflects the needs and preferences of the child or youth (and family when appropriate) with the goal of active participation in this process. Additionally, this service provides support and coaching interventions to children and youth (and family when appropriate) to promote recovery, resiliency and healthy lifestyles and to reduce identifiable behavioral health and physical health risks and increase healthy behaviors intended to prevent the onset of disease or lessen the impact of existing chronic health conditions. Peer supports provide effective techniques that focus on the child's or youth's self-management and decision making about healthy choices which ultimately are expected to extend the child's or youth's lifespan. Family peer support specialists assist children, youth, and families to participate in the wraparound planning process, access services, and navigate complicated child-serving agencies.
8. **Therapeutic Mentoring** means providing a structured one-on-one intervention to a child or youth for the purpose of addressing daily living, social, and communication skills. This service includes supporting, coaching, and preparing the child or youth in age-appropriate behaviors, interpersonal communication, problem solving and conflict resolution, and in relating appropriately to other children and adolescents, as well as adults, in social activities. Therapeutic mentoring may take place in a variety of settings, including home, school, or social and recreational activities. Therapeutic Mentoring also helps a child or youth develop independent living, social and communication skills, and provides education, training, and support services for children and youth and their families through structured, one-to-one, strength-based support services between a therapeutic mentor and a child or youth. Therapeutic mentoring services include supporting, coaching, and training a child or youth in age-appropriate behaviors, interpersonal communication, problem solving, conflict resolution, and relating appropriately to peers and adults.

B. Timeline for Implementation of IHBS for Medicaid-eligible children with SED

1. After consultation with ADAP and CPR, the appropriate state agencies will develop and implement any necessary policy and procedures related to service eligibility, billing requirements, and needed staff development related to ensuring the appropriate implementation of the new or expanded intensive home-based services (IHBS) for children and youth with SED.
 - a. For Intensive Care Coordination, In-Home Intervention, Therapeutic Mentoring, Adult Peer Support, Youth Peer Support, Parent Peer Support, Family Support and Education, policies and procedures necessary for implementation were finalized by February 1, 2019.
 - b. All residual policies, including any necessary changes to certification standards, policy and/or procedure manuals, provisions of the Alabama Code and/or the Alabama Administrative Code, will be finalized by August 1, 2021, but any such changes to policies and procedures will not delay the implementation of these services, nor otherwise modify the eligibility criteria or program specifications for these services.

2. After consultation with ADAP and CPR, Medicaid and appropriate state agencies initiated a statewide outreach and training program for providers related to the new or expanded Intensive Home-Based Services for children and youth with SED according to the schedule below:
 - a. Provider outreach and training on Intensive Care Coordination began on or after February 1, 2019, and were completed not later than August 1, 2020, except ongoing training will occur to meet the requirements for certification.
 - b. Provider outreach and training on In-Home Intervention begun on February 1, 2019, and were completed not later than August 1, 2020, except ongoing training will occur to meet the requirements for certification.
 - c. Provider outreach and training on Adult Peer Support began on or January 1, 2019 and were completed not later than October 1, 2020, except ongoing training will occur to meet the requirements for certification.
 - d. Provider outreach and training on Youth Peer Support began on January 1, 2019, and were completed not later than October 1, 2020, except ongoing training will occur to meet the requirements for certification.
 - e. Provider outreach and training on Parent Peer Support began on July 1, 2019, and were completed not later than October 1, 2020, except ongoing training will occur to meet the requirements for certification.
 - f. Provider outreach and training on Family Support and Education, also denominated Psychoeducational Services, began on January 1, 2019, and were completed not later than June 1, 2019, except ongoing training will occur to meet the requirements for certification; and
 - g. Provider outreach and training on Therapeutic Mentoring began on July 1, 2019, and were completed not later than October 1, 2020, except ongoing training will occur to meet the requirements for certification.

3. Appropriate state agencies will implement and will continue the following IHBS for children and youth with SFD:
 - a. Adult Peer Support
 - b. Youth Peer Support
 - c. Intensive Care Coordination
 - d. In-Home Intervention
 - e. Family Support and Education, also denominated as Psychoeducational Services
 - f. Parent Peer Support
 - g. Therapeutic Mentoring.

C. Timeline for Implementation of IHBS for Medicaid-Eligible Children with ASD

1. By February 22, 2019, Medicaid and relevant partner agencies, in conjunction with the ASD Working Group, developed needed eligibility criteria, medical necessity criteria, and policy and program specifications (including access, service coordination, staff qualifications, and staff training requirements) for each of the Intensive Home-Based Services contemplated by this Agreement for children and youth with ASD: Intensive Care Coordination, Therapeutic Mentoring, Behavioral Support, In-Home Therapy, Psychoeducational Services, and Peer Support.
2. Medicaid developed and submitted to the Centers for Medicare and Medicaid Services (CMS) a State Plan Amendment by December 21, 2018 for each of the Intensive Home-Based Services contemplated by this Agreement for children and youth with ASD: Intensive Care Coordination, Therapeutic Mentoring, Behavioral Support, In-Home Therapy, Psychoeducational Services, and Peer Support, in consultation with the ASD Working Group. Medicaid revised the State Plan in May 2019 to reflect any final changes to the eligibility criteria, medical necessity criteria, and policy and program specifications necessary to conform the State Plan to the final specifications agreed upon by the Parties, as provided in Section C.1 above.
3. By February 22, 2019, relevant state agencies initiated a statewide outreach program for providers and initiate the development of a training program related to the new or expanded Intensive Home-Based Services provided for in this agreement for children and youth with ASD, including Intensive Care Coordination, Therapeutic Mentoring, Behavioral Support, In-Home Therapy, Psychoeducational Services, and Peer Support, in consultation with the ASD Working Group.
4. By November 1, 2019, relevant state agencies made necessary policy and procedures changes related to service eligibility, billing requirements, and needed staff development related to ensuring the complete implementation of the new Intensive Home-Based services for children and youth with ASD described above, but any such changes to policies and procedures did delay

the implementation of these services, but otherwise did not modify the eligibility criteria or program specifications for these services.

5. By December 1, 2020, appropriate state agencies will implement the following services for children and youth with ASD: Intensive Care Coordination, Therapeutic Mentoring, Behavioral Support, In-Home Therapy, Psychoeducational Services, and Peer Support.

II. OTHER COMMITMENTS

- A. **General Commitments.** The State agrees to implement the provisions set forth in this MOU to expand Intensive Home-Based Services throughout the State of Alabama for Medicaid-eligible children and youth with SED or ASD, to make its best efforts to secure the funding contemplated by this MOU, and to maintain the services, policies, and practices outlined in this MOU.
- B. **Outreach and Education.** For purposes of educating Medicaid recipients about the program improvements described in this MOU, Medicaid will actively communicate with recipients as required by federal law and the CMS State Medicaid Manual. For purposes of educating providers about the EPSDT requirements and program improvements described in this MOU, Medicaid shall communicate these improvements by amending provider regulations, as necessary, and by drafting and distributing provider alerts, updates, and education materials.
- C. **Data.** The relevant State agencies shall provide copies of data reports that are necessary to assess the implementation of these services and monitoring to the extent it is feasible. These reports will be provided on a regular basis (at a minimum quarterly).
- D. **Funding Contingency.** The implementation of the timeline set forth above shall be contingent upon funding for these services by the Alabama Legislature.
- E. **Monitoring.** ADAP will monitor the MOU. The State shall afford ADAP reasonable access, consistent with state and federal law and after reasonable notice to the relevant state agency, to documents and records relevant to the implementation of all provisions of the MOU, including but not limited to policies and procedures, manuals, hiring and billing data, agency staff, and other similar information relevant to the State's implementation of the MOU. ADAP and CPR will not use these documents or records except in monitoring the terms of this MOU. The State agrees to continue to pay ADAP and CPR reasonable monitoring fees consistent with the fee schedule found in the original Settlement Agreement, which has expired, during the term of this MOU, which ends September 30, 2021.

F. **Counsel Meetings.** Counsel for the Parties will meet at least once each quarter to assess the State's progress in implementing each of the provisions of this MOU and to discuss any obstacles to its full and timely implementation.

III. MISCELLANEOUS.

This Memorandum of Understanding may be executed in two or more counterparts, each of which shall constitute an original instrument and all of which together shall constitute one and the same MOU.

The State, ADAP, and CPR accept this Memorandum of Understanding, which will remain in effect through Sept. 30, 2021.

Stephanie M. Azar
Commissioner
Alabama Medicaid Agency

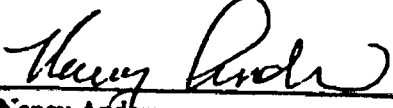
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Kimberly G. Boswell
Commissioner
Alabama Department of Mental Health

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Nancy T. Buckner
Commissioner
Alabama Department of Human Resources

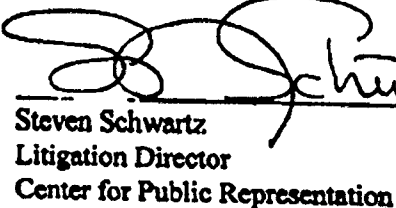
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Nancy Anderson
Associate Director
Alabama Disabilities Advocacy Program (ADAP)

12/26/20

DATE



Steven Schwartz
Litigation Director
Center for Public Representation

12/23/20

DATE

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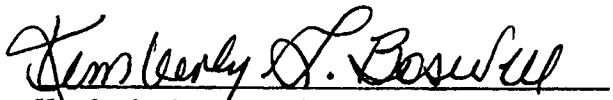
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01/04/2021

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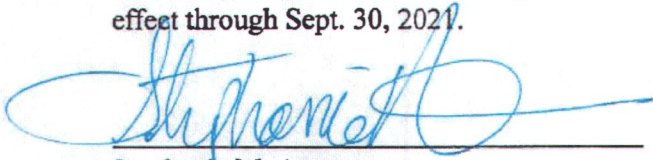
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1-6-2021

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