Settlement Agreement

The parties agree to settle Ekloff et al v. Rodgers et al (No. 06-15580), currently pending in the United States Court of Appeals for the Ninth Circuit, on the following terms:

1. **Coverage**: Incontinence briefs, including pull-ups, are covered for AHCCCS members who have a documented disability, in order to prevent skin breakdown, and to enable participation in social, community, therapeutic, and educational activities.

   Coverage shall be determined by:

   a. Documentation of a disability that causes incontinence of bowel and/or bladder; and

   b. A prescription from the PCP or attending physician ordering the incontinence briefs.

2. **Age Limit**: Coverage for incontinence briefs is limited to members over age three (3) and under age twenty-one (21).

3. **Number of Briefs per Month**: The benefit is limited to 240 briefs per month, except in cases involving members who are diagnosed with chronic diarrhea and/or spastic bladder. In these cases, more than 240 briefs shall be authorized when evidence of medical necessity is provided by the prescribing physician.

4. **Prior Authorization**: Prior authorization will be permitted to ascertain that:

   a. the member is over age three (3) and under age twenty-one (21);

   b. the member has a disability that causes incontinence of bladder and/or bowel;

   c. a physician has prescribed incontinence briefs as medically necessary; and

   d. the prescription is for 240 briefs or fewer per month, unless evidence of medical necessity for over 240 briefs is provided.

   e. A physician prescription supporting medical necessity may be required for specialty briefs (for instance, hypo-allergenic briefs) or for briefs different from the standard briefs supplied by the health plan.

5. **Number of Prior Authorizations Per Year**: AHCCCS health plans may require a new prior authorization to be issued every twelve (12) months. Prior authorization for a

renewal of an existing prescription may be provided by the physician through telephone contact with the member, rather than an in-person physician visit.

6. **Dispute Resolution**: Any disputes regarding prior authorization will be addressed through the existing administrative appeal system (A.A.C. R9-34-101 *et seq.*). If an AHCCCS health plan denies a request for prior authorization, the health plan shall provide a notice in writing outlining (1) the specific reason for the denial, citing to the particular prior authorization criteria, in paragraph four above, that it believes are not met, and (2) the citation to the relevant policy or regulation supporting the denial.

7. **Class Notice**: Pursuant to Fed.R.Civ.P. Rule 23(e), notice of the terms of this settlement agreement will be provided by AHCCCS through the DDD and EPD ALTCS health plans to the class of AHCCCS eligible children under twenty-one (21) who are incontinent due to their disabilities and to their parents.

8. **Provider Notice**: Notice of the terms of this settlement agreement shall be provided to providers through the health plans/program contractors, via a notice on the AHCCCS website, and through Claims Clues within thirty (30) days of approval of this settlement agreement.

9. **Policy and Rule Revision**: All AHCCCS policies and rules shall be modified to be consistent with the terms of this settlement agreement within nine (9) months of approval of this settlement agreement.

10. **Obtaining Supplies**: Members will be required to obtain incontinence briefs from the in-network providers contracted with the health plans. AHCCCS health plans and in-network providers will be required by contract to provide standard adequate types of briefs, including pull-ups.

11. **Reimbursement**: Defendants' liability for reimbursement for purchases of incontinence briefs begins on June 25, 2005, when the Complaint in this action was filed in District Court, and ends the date that notice is provided to the class. Defendants shall reimburse members for out-of-pocket expenses for the purchase of briefs from the date of the denial or June 25, 2005, whichever is later, when the AHCCCS member can provide proof of the following:

    a. The AHCCCS member is over age three (3) and under age twenty-one (21) and has a disability that results in incontinence of bladder and/or bowel;

    b. The AHCCCS member had a prescription for briefs which was denied by the AHCCCS health plan;

    c. The AHCCCS member purchased briefs at personal cost after the prescription was denied; and

d. The AHCCCS member provides receipts for the purchases sought to be reimbursed.

12. **Attorneys Fees and Costs**: The parties agree that this settlement agreement shall not compromise the Plaintiffs' right to an award of fees and costs.

13. **Court Approval of Settlement and Dismissal**: The parties agree to submit this settlement agreement to the District Court pursuant to Fed.R.Civ.P. Rule 23(e). The parties agree that the briefing schedule in the United States Court of Appeals for the Ninth Circuit will be stayed pending this approval. Defendants agree to dismiss their appeal in the United States Court Appeals for the Ninth Circuit (No. 06-15580) pursuant to Fed.R.App.P. Rule 42 after the District Court approves this settlement.

14. **U.S. District Court Stay and Substitution of Terms**: A stay issued by the District Court on June 13, 2006 will expire on July 1, 2006. The parties agree that the terms of this settlement agreement should be in effect after July 1, 2006 and pending approval of this settlement, rather than the Court's orders of March 3, 2006 and April 17, 2006. The parties agree to file the necessary pleadings with the District Court regarding this provision.

15. **Jurisdiction and Enforcement**: Once the District Court approves this settlement agreement, the case in the District Court (No. CIV05-407-TUC-RCC) will be dismissed with prejudice. However, the Court will reserve and retain jurisdiction to hear issues of alleged violations of the terms of this agreement pursuant to the following procedures:

a. Individual disputes over any aspect of the issues raised in this case or this agreement will be heard through the AHCCCS grievance and appeal procedures followed, if necessary, by judicial review in Arizona state courts.

b. The Plaintiffs shall give Defendants written notice of any allegation of systemic violation of the terms of this agreement (i.e. recurring issues that have not been resolved by individual grievances and appeals), said notice to be in writing and in specific detail so that Defendants may investigate the allegations being made.

c. However, if Plaintiffs allege that Defendants have failed to adopt written rules and policies to implement the terms of this settlement agreement within nine (9) months of court approval, or have modified or violated the terms of the settlement agreement by written rule or policy, Plaintiffs may seek relief in District Court without exhausting the AHCCCS administrative grievance and appeals process. Plaintiffs shall first give Defendants written notice of the allegations before seeking relief from the District Court.

d. Defendants shall have 60 days from receipt of notice of Plaintiffs' allegations (pursuant to subparts b. or c. of this paragraph) to investigate and cure the alleged

issue. After 60 days, the Plaintiffs may seek further intervention by the District Court if the issue remains unresolved.

16. **Change in Law:** The provisions of this settlement agreement shall remain in effect unless there is a change in the federal Medicaid statute or regulations that directly affects the coverage of incontinence briefs under Title XIX. If Defendants believe that a change in the federal Medicaid statute directly affects the terms of this settlement agreement, Defendants shall give Plaintiffs' counsel notice of the change within 30 days of when Defendants found out about the change. The notice shall include the following:

    a. The federal change in law;

    b. When Defendants were informed of the change;

    c. The manner in which Defendants believe the change affects the terms of the settlement agreement; and

    d. The basis of Defendants' conclusion in paragraph c.

    Plaintiffs shall have 30 days from receipt of the notice to either advise Defendants that Plaintiffs agree with Defendants' interpretation or that they disagree and will file a motion in court to request judicial intervention or interpretation.

Signed this 28th day of June, 2006.

/s Jennifer L. Nye
Sally Hart
Jennifer L. Nye
Robin Murphy
ARIZONA CENTER FOR DISABILITY LAW
Attorneys for Plaintiffs

Signed this 28th day of June, 2006

/s Logan T. Johnston
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