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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

C.S. ex rel. K.C.; K.C. ex rel L.C.; T.B. ex rel.
C.B.; B.B. ex rel C.B.; T.C. ex rel L.C., on
their own behalf and on the behalf of all those
similarly situated,

Plaintiff,

v.

FARIBORZ PAKSERESHT, in his official
capacity as Director of Department of Human
Services, State of Oregon; and LILIA
TENINTY, in her official capacity as the
Director of the Office of Developmental
Disabilities Services, Oregon Department of
Human Services,

Defendants.

Case No. 6:17-cv-00564-MC

JOINT STATUS REPORT AND JOINT
MOTION TO CONTINUE STAY

This Court stayed proceedings in this matter on April 18, 2017 (eDoc. 10) and, the following day, issued a preliminary injunction (eDoc. 11). The parties updated the Court on

December 5, 2017 (eDoc 17) and again on June 5, 2018 (eDoc 19). The Court continued the stay and ordered the parties to further update the Court by December 10, 2018. (eDoc. 21).

Current Status

The parties continue to work cooperatively to resolve the issues raised in the complaint. The Defendants continue to work in earnest to develop a new assessment tool, although progress has been slower than anticipated by the parties at the time of the June 2018 report. Mission Analytics Group, Inc., the consultant engaged to develop the new tool, the Oregon Needs Assessment (ONA), completed its initial testing and validation of the tool in June 2017. Defendants engaged Oregon Health & Science University (OHSU) to review the reliability and validity analysis previously done by Mission Analytics. OHSU completed its report on April 3, 2018. As previously reported, OHSU found that the methods Mission Analytics used to develop and test the tool had generally been appropriate. OHSU also found that the ONA has strong “face validity” because items were drawn from other tools commonly used for similar purposes. However, OHSU concluded that inter-rater reliability (IRR) of the tool is not yet established for children due to the low numbers of children included in IRR testing. IRR measures how similar the data collected by different assessors are. OHSU included recommendations to address this issue during implementation. OHSU concluded that “it is reasonable and appropriate to proceed with implementation of the ONA,” provided that the Defendants implement OHSU’s recommendations to continue to assess reliability. Defendants continue to work with OHSU to further evaluate the reliability of the ONA for children.

As the parties reported in June 2018, Defendants began using the ONA as its functional needs assessment beginning July 1, 2018.¹ Defendants are not, however, setting service levels

¹ See 42 C.F.R. 441.535, *see also* ODDS Director’s Message, <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/DD/DirectorMessages/Director's%20message%20-%20ONA%20-%20final.pdf>.

based on the ONA, and the parties continue to anticipate that this Court's injunction will remain in place for some time.

Defendants previously reported that they engaged Human Services Research Institute (HSRI) to develop service group levels and hours allotments for the ONA. In May 2018, HSRI began consumer record reviews with Defendants and stakeholders to develop and evaluate proposed service group levels. HSRI had initially planned to conduct a second records review in July 2018 to develop and evaluate in-home hour ranges for each service group level. But more ONA assessment data were and are needed. HSRI plans to conduct that second records review in spring 2019. Defendants are now targeting January 1, 2020, subject to approval by the federal Centers for Medicare and Medicaid Services as the date they will be prepared to use ONA to set service levels.

At the same time they are developing an assessment tool, Defendants are developing an exceptions process through draft administrative rules. The parties have discussed a schedule for conferring on draft exceptions rules beginning in March 2019 and hope to complete the conferral process by early to mid-summer 2019.

Impact on this Case

Well in advance of the January 1, 2020 target date for use of the ONA to set service levels, the Defendants intend to file a motion to vacate the preliminary injunction. In the June 2018 report, the Defendants projected that they would make such a motion in early 2019. Defendants now project that they will file a motion to vacate in August or September 2019. However, Defendants may move to vacate earlier and even before the expiration of the stay, if an extension of the stay is granted as the parties request below. The parties will meet and confer about any motion to vacate the preliminary injunction and to set a briefing schedule for the motion prior to filing. Plaintiffs do not waive their right to oppose any motion to vacate the preliminary injunction, nor do the Defendants waive their right to file a motion to vacate the preliminary injunction by agreeing to a stay of proceedings.

Motion

Based upon the ongoing cooperation between the parties, the parties move this Court to continue the stay for an additional six months, subject to the Defendants' right to file a motion to vacate the preliminary injunction as described above. Neither the answer nor a response to Plaintiffs' motion for class certification need be filed during that time. However, the parties each reserve the right, upon 30 days' written notice, to reinstate litigation on this case prior to the end of that six-month period should they deem it necessary. The parties agree that the filing of a motion to vacate the preliminary injunction, by itself, will not reinstate the litigation such that an answer and response to Plaintiffs' motion for class certification would be required to be filed before the expiration of the stay.

DATED December 10, 2018.

Respectfully submitted,

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s/ Christina L. Beatty-Walters

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