UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

VERONICA EXLEY, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 3:14-cv-01230 (JAM)
v.	)	
	)	
SYLVIA M. BURWELL,	)	
Secretary of Health and Human Services,	)	
	)	
Defendant.	)	
	)	

~~REVISED [PROPOSED]~~ SETTLEMENT AGREEMENT

I. INTRODUCTION

WHEREAS the parties desire to resolve amicably all claims raised in this suit without admission of liability;

WHEREAS the parties have agreed upon mutually satisfactory terms for the complete resolution of this Federal Rule of Civil Procedure 23(b)(2) class action litigation;

NOW THEREFORE, the plaintiffs and defendant hereby consent to the entry of this Settlement Agreement with the following terms.

II. DEFINITIONS

1. "ALJ" refers to "Administrative Law Judge" and "ALJ Hearing" refers to Medicare appeal hearings conducted by ALJs.
2. "Approval Date" means the date upon which the Court approves this Settlement Agreement, after having determined that it is adequate, fair, reasonable, equitable, and just to the Class as a whole, after: (i) notice to

the Class; (ii) an opportunity for class members to submit timely objections to the Settlement Agreement; and (iii) a hearing on the fairness of the settlement.

3. "Beneficiary" and "Beneficiaries" mean individuals claiming entitlement to Medicare benefits.
4. "Beneficiary Appellants" means Beneficiaries who have or will have submitted (by themselves or by an authorized representative) a timely request for an ALJ Hearing to the Office of Medicare Hearings and Appeals.
5. "Class Counsel" or "Plaintiffs' Counsel" means the Center for Medicare Advocacy, Inc.
6. The "Class" or "Class Members" means the class that was certified by order of the Court in this action on June 10, 2015 (ECF # 67).
7. "Court" means the United States District Court for the District of Connecticut.
8. "Defendant" or "the Secretary" means the Secretary of Health and Human Services, in his or her official capacity.
9. "OMHA" refers to the Office of Medicare Hearings and Appeals of the Department of Health and Human Services.
10. "Parties" refers to Plaintiffs and Defendant.
11. "Plaintiffs" means the named plaintiffs and intervenor-plaintiff in this action.

III. ENTIRE AGREEMENT

The terms of this Settlement Agreement and any attachments thereto are the exclusive and full agreement of the Parties will respect to all claims for declaratory

and injunctive relief and attorney's fees and costs as set forth in this Settlement Agreement and in the Complaint and Complaint in Intervention. No representations or inducements or promises to compromise this action or enter into this Settlement Agreement have been made, other than those recited or referenced in this Settlement Agreement.

IV. APPROVAL

1. This Settlement Agreement is expressly conditioned upon its approval by the Court.
2. The terms of this Settlement Agreement are fair, reasonable, and adequate. The entry of this Settlement Agreement is in the best interest of the Parties and the public.

V. FINAL JUDGMENT

If, after the fairness hearing, the Court approves this Settlement Agreement as fair, reasonable, and adequate, the Court shall direct entry of Final Judgment (the "Final Judgment") dismissing this action with prejudice, pursuant to the terms of this Settlement Agreement and Fed. R. Civ. P. 41, except that the Court shall retain jurisdiction for the limited purposes described in Section VI of this Settlement Agreement. The Final Judgment shall incorporate and be subject to the terms of the Settlement Agreement.

VI. CONTINUING JURISDICTION

The Court will retain continuing jurisdiction for a period not to exceed three years from the Approval Date for the sole purposes of (i) enforcing the provisions of the Settlement Agreement in the event that one of the Parties claims that there has been a breach of any of those provisions and the Parties cannot resolve the dispute after diligent and good faith efforts, (ii) modifying the Settlement Agreement if

requested by the Defendant pursuant to Section VII, and (iii) entering any other order authorized by the Settlement Agreement.

VII. MODIFICATION

1. The Parties recognize that Defendant is required to comply with applicable statutes and regulations, including any future revisions to the statutes and regulations that govern Medicare coverage and that nothing in this Settlement Agreement shall prohibit Defendant from modifying its policies and procedures to comply with any relevant statutory or regulatory changes, or to make appropriate programmatic changes, so long as such programmatic changes are consistent with the purpose of promoting and facilitating timely ALJ decisions for Beneficiary Appellants.
2. If Defendant believes that it is necessary or advisable to modify any of the commitments set forth in Section VIII herein, Defendant may do so after complying with the provisions of this subparagraph. First, Defendant shall provide notice to Plaintiffs' Counsel by letter of its proposed modification and the reasons Defendant considers such modification necessary or advisable. Second, Defendant shall permit Plaintiffs' Counsel to comment in writing on its proposed modification and shall consider such comments in good faith. Third, no earlier than 30 calendar days after the date on which Defendant provided notice of the proposed modification to Plaintiffs' Counsel, Defendant may effectuate its proposed modification by a motion pursuant to section VI(ii). Nothing in this Agreement shall be construed to provide for judicial review in any court of Defendant's determination to effectuate a modification of any of the commitments set forth in Section VII herein.

VIII. INJUNCTIVE PROVISIONS

1. Defendant will commit to maintaining a policy of providing all Beneficiary Appellants, subject to restrictions listed in Section VIII.2 below, with priority over other appellants in receiving ALJ decisions (or other appropriate disposition of their appeals, such as dismissals or remands). As is currently the case, Defendant may occasionally need to give certain Beneficiaries priority over the appeals of other Beneficiaries. Also, as is currently the case, this policy will apply to all Beneficiaries, regardless of whether their particular statutory claim entitles them to an ALJ decision (or other disposition) within a specific time frame (for example, 90 days).

2. (a) In a particular appeal, if a Beneficiary is represented by a non-beneficiary party with appeal rights, or by an individual who also represents a non-beneficiary party with appeal rights (hereafter "representative"), the Beneficiary's case will not be eligible for the Beneficiary Prioritization Policy, unless: (1) the Beneficiary is or would be liable for the costs (other than deductibles and co-insurance) of the items or services in dispute; or (2) the case involves a denial of a pre-service request for coverage.

   (b) If a Beneficiary files a request for an ALJ hearing that is not prioritized under the criteria set forth in subparagraph (a), above, the OMHA Chief Administrative Law Judge shall use her authority under the OMHA Appeal Prioritization Policy to prioritize the Beneficiary's appeal when the Beneficiary is financially responsible for related items or services that have been denied and that the beneficiary has appealed, or when the denial under appeal is preventing the beneficiary from receiving additional related items or services. To have such an appeal prioritized under this subparagraph, the

Beneficiary's representative must submit, with the request for hearing or upon request from OMHA, either (1) a list of the appeal numbers and status of the related appeals, and a declaration stating or affirming that there are pending appeals by the Beneficiary at OMHA or lower levels of the Medicare claims appeal process related to the appealed claim for which the Beneficiary is financially-responsible; or (2) a declaration stating that the denial under appeal is preventing the beneficiary from receiving additional related items or services.

3. Within six months of the Approval Date, Defendant will agree to introduce a new unified request form to replace the current Request for ALJ Hearing form (CMS-20034A/B) and Request for Review of Dismissal form (HHS-725). The new form will allow beneficiaries to self-identify, and also add provisions for Medicare Part D requests as there is currently no official form for Part D requests. The form will also include a phone number in large print (18 point font) to direct the visually impaired to OMHA for assistance on obtaining a large print form. There will also be an associated revision of instructions for requesting an ALJ Hearing issued by Medicare Part A and Part B qualified independent contractors (QICs), Part D independent review entities (IREs), and quality improvement organizations (QIOs). The instructions will include: (i) the toll-free number established for the Division Director's staff (see Section VIII.5, below) who will be available to trouble-shoot problems in appeals filed by Beneficiary Appellants; (ii) a complete address associated with instructions for Beneficiary Appellants to send requests to the OMHA "Beneficiary Mail Stop"; (iii) a plain-language description that draws the attention of Beneficiary Appellants, and those who may be assisting them, to

encourage them to send appeals to the OMHA "Beneficiary Mail Stop" if the appeal qualifies for prioritization; and (iv) information on obtaining large-print instructions.

4. Within three months of the Approval Date, OMHA will publish additional information on its website and update this information monthly. See attached chart (Attachment 1), indicating the data that OMHA will publish. OMHA will provide such additional information from Fiscal Year 2015 forward until the end of defendant's obligations under the Agreement.
5. Within 30 calendar days of the Approval Date, OMHA will designate a Headquarters Division Director to oversee inquiries about appeals initiated by Beneficiary Appellants, and to address any complaints or questions concerning the processing of those appeals. In addition, OMHA will establish a toll-free help line for Beneficiary Appellants (and those who may be helping them), which the Division Director's staff will answer during normal, Eastern Standard Time business hours, with voicemail function activated.
6. Within three months of the Approval Date, Defendant, acting through the Centers for Medicare and Medicaid Services (CMS), will modify the written scripts provided to contractors who staff the 1-800-Medicare toll-free assistance line to properly route Beneficiaries with questions regarding appeals pending at OMHA (including the toll-free number of the OMHA Division Director's staff assigned to address problems with ALJ appeals) and to highlight the Beneficiary prioritization policy for ALJ appeals.
7. The Parties agree to as-needed teleconferences or in-person meetings between counsel if written correspondence does not resolve disagreements about implementation of the Settlement Agreement. If in-person meetings are

necessary, they shall be held in Washington, D.C. Defendant shall not be liable to pay attorney fees, costs, or expenses in connection with any correspondence, teleconferences or meetings to discuss issues or disagreements about implementation of the Settlement Agreement.

IX. DURATION OF COMMITMENTS

Defendant will maintain all of the commitments made in this Settlement Agreement for three years from the Approval Date.

X. ATTORNEY'S FEES

Defendant agrees to pay $47,500 to Plaintiffs' Counsel in full resolution of all claims for attorney fees and costs that Plaintiffs' Counsel might have incurred in this litigation, including future work. Defendant will make best efforts to issue payment to Plaintiffs' Counsel within 60 days of the Approval Date.

XI. RELEASE

1. In consideration of the promises of Defendant as set forth in this Settlement Agreement, the Plaintiffs and all Class Members, and their heirs, administrators, successors, or assigns (together, the "Releasors"), hereby release and forever discharge Defendant and the United States Department of Health and Human Services (HHS), along with Defendant's and HHS's administrators, successors, officers, employees, and agents (together the "Releasees") from any and all claims and causes of action that have been asserted or could have been asserted in this action by reason of, or with respect to, Plaintiffs' allegations as set forth in the First Amended Complaint in this litigation (ECF # 49).

2. The above release shall not affect in any way the right of any Class Member to seek any and all individual relief that is otherwise available in satisfaction of an individual claim against Defendant for Medicare benefits that is not based upon the allegations set for the Section XI.1 above.

XII. SAVING CLAUSE

Nothing in this Agreement is intended to create a right to an ALJ Hearing not otherwise provided for by statute or regulation.

The undersigned representatives of the Parties certify that they are fully authorized to consent to the Court's entry of the terms and conditions of this Settlement Agreement.

Dated: May 24, 2016

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