

VOLUNTARY RESOLUTION AGREEMENT

BETWEEN THE

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS (OCR)**

AND THE

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR CHILDREN AND FAMILIES**

OCR TRANSACTION NUMBER: 18-306552

I. Introduction

The parties to this Voluntary Resolution Agreement (the “Agreement”) are the United States Department of Health and Human Services, Office for Civil Rights (“OCR”), and the West Virginia Department of Health and Human Resources (“DHHR”). DHHR, through its Bureau for Children and Families, is responsible for ensuring the safety of vulnerable children in West Virginia and administers child protective services through its local field offices in each of the 55 counties in West Virginia. DHHR’s mission is to provide an accessible, integrated, comprehensive, quality service system for West Virginia’s children and families, to help them achieve maximum potential and improve their quality of life. This Agreement resolves a complaint filed by a husband and wife (“Complainants”) who are the paternal aunt and uncle of two small children in Child Protective Services’ custody. The complaint alleges that Child Protective Services discriminated against the Complainants when it denied their request for placement of their niece based on one Complainant’s use of medically prescribed Suboxone and history of opioid use disorder. OCR’s investigation addressed potential violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and its implementing regulation, 45 C.F.R. Part 84 (Section 504), and Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II or ADA). OCR’s investigation also identified systemic deficiencies in DHHR’s Section 504 and Title II policies, practices, and procedures to prevent discrimination against individuals with disabilities in West Virginia’s child welfare system.

Pursuant to Section 504 and Title II, child welfare agencies are required to ensure that individuals with disabilities are afforded an equal opportunity to participate in and benefit from all child welfare programs, activities, and services, including those services aimed at helping children achieve permanency with relatives. See 29 U.S.C. § 794; 45 C.F.R. Part 84, and 42 U.S.C. §§ 12131-12134; 28 C.F.R. Part 35. This may require, among other things, reasonable modifications to an agency’s services and programs and the provision of auxiliary aids and services. 45 C.F.R. § 84.4(a), (b)(vii); 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(3), (b)(7). Child welfare agencies also may not utilize criteria or methods of administration that have the effect of discriminating on the basis of disability. 45 C.F.R. § 84.4(b)(4); see also 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(3); 28 C.F.R. pt. 35, App. B (discussing 28 C.F.R. § 35.130(b)(3)).

A. Parties to the Agreement:

1. United States Department of Health and Human Services, Office for Civil Rights; and
2. West Virginia Department of Health and Human Resources, Bureau for Children and Families.

B. Jurisdiction:

DHHR is a recipient of HHS funds including Titles IV-B and IV-E of the Social Security Act and Medicaid, Substance Abuse Prevention & Treatment Block Grant, Block Grants for Community Mental Health Services, as well as funding for Cancer Prevention, AIDS/HIV Prevention, Tobacco Prevention, and Rape Prevention. DHHR and its various components are obligated to comply with Federal civil rights laws and is subject to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulations, 45 C.F.R. Part 84. Section 504 prohibits discrimination on the basis of disability in all operations of any program or activity receiving Federal financial assistance.

Furthermore, as a public entity providing state government services, DHHR is obligated to comply with Title II of the Americans with Disabilities Act and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by state and local government agencies, including denying opportunities to benefit from services and failing to reasonably modify policies and procedures.

- C. Purpose of the Agreement:** To resolve these matters without further burden or expense of investigation or litigation, DHHR agrees to the terms stipulated in this Agreement and affirms that it will comply with all provisions of Section 504 and Title II of the ADA. DHHR's willingness to enter into this Agreement with OCR in no way constitutes an admission of liability and demonstrates DHHR's ongoing efforts to accommodate individuals with disabilities. The promises, obligations, or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between DHHR and OCR. The actions described in this Agreement fully address the issues described in the complaint. Nothing in this agreement shall be construed to require DHHR to take actions that are not in the best interest of children.

II. Definitions

For purposes of this Agreement, the terms listed below shall have the following meaning:

- A. “Child Protective Services” means the components of DHHR responsible for adoption, foster care, and child protective services, including the central office and local offices.
- B. “Client” or “Participant” means any individual who meets the minimal qualification requirements to be eligible for Child Protective Services’ services, programs, or activities, including legal guardianship, foster care, and adoption programs.
- C. “Contractor” means any entity that provides direct services to Participants of DHHR programs under a contractual agreement with reimbursement, which includes monies allocated to DHHR as Federal financial assistance from HHS.
- D. “Disability” is synonymous with the definition of “disability” contained in Section 504 and Title II of the ADA.
- E. “Medication Assisted Treatment” or “MAT,” refers to the use of FDA-approved medications to treat an opioid use disorder or other substance use disorders.
- F. “Reasonable Modification” and “Reasonable Accommodation” means changes or adjustments to DHHR programs or contracted child welfare service providers’ policies, practices, or procedures to avoid discrimination on the basis of disability and to afford individuals with disabilities an equal opportunity to participate in, and benefit from, services provided under a covered program or activity.
- G. “Section 504/ADA Coordinator” means the individual or individuals designated to be responsible for coordination of DHHR’s efforts to comply with and carry out its Section 504 and ADA responsibilities in its child welfare programs.
- H. “Section 504/ADA Grievance Procedure” means DHHR’s process for addressing complaints of disability discrimination from Participants, advocates, attorneys, and other interested parties that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints.
- I. “DHHR” and/or “DHHR staff” means Bureau for Children and Families employees and/or contractors under DHHR’s supervision or control, including but not limited to social workers, child protective workers, foster care and adoption workers, supervisors, volunteers, and administrative staff members.

III. General Provisions

- A. **Recipient Covered by the Agreement:** This Agreement covers all programs, services and activities, which DHHR administers or provides directly or through sub-recipients or contractors, throughout the Term of this Agreement.
- B. **Suspension of Administrative Actions:** Subject to DHHR’s continued performance of the stated obligations and required actions contained in this

Agreement and in conformity with Section III-D, Failure to Comply with the Agreement, OCR shall suspend administrative action on OCR Transaction Number: 18-306552.

- C. **Effective Date and Term of the Agreement:** This Agreement shall become effective on the date it is signed by all parties (the “Effective Date”) and will remain in effect for two (2) years after the Effective Date, at which point if OCR determines that DHHR has substantially complied with this Agreement, then OCR’s review and monitoring of this Agreement shall terminate. Notwithstanding the Term of this Agreement, DHHR acknowledges that it will comply with Section 504, Title II of the ADA, and other applicable Federal nondiscrimination statutes and their implementing regulations, for so long as it continues to receive Federal financial assistance and continues to operate as a public entity providing state government services.

- D. **Failure to Comply with the Agreement:** If OCR determines that DHHR has failed to substantially comply with any provision of this Agreement, the parties will confer and attempt to reach agreement as to what steps may be necessary to resolve the compliance issues to both parties’ satisfaction. If an agreement is not reached, OCR may terminate this Agreement with thirty (30) calendar days’ notice and take appropriate measures to effectuate DHHR’s compliance with Section 504 and Title II of the ADA. Such measures may include OCR reopening its investigation of DHHR’s compliance with Section 504 and Title II of the ADA. OCR may incorporate into its reopened investigation any relevant evidence of noncompliance with the Agreement and any relevant evidence obtained by OCR prior to signing of the Agreement. OCR may also exercise all rights available under Section 504 and Title II of the ADA, including, but not limited to issuing noncompliance findings and the initiation of enforcement proceedings to terminate Federal financial assistance to DHHR.

- E. **Effect on Other Compliance Matters:** The terms of this Agreement do not apply to any other issues, reviews, investigations, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be pending before OCR or any other Federal agency. Any unrelated compliance matter arising from subsequent reviews or investigations shall be addressed and resolved separately. Nothing in this Agreement shall be construed to limit or restrict OCR’s statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to DHHR and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action under Federal laws by other Federal Agencies or with any issues or complaints that relate to any other division of DHHR, including any action or investigation under Section 504 and/or Title II of the ADA.

- F. **Prohibition Against Retaliation and Intimidation:** DHHR shall not retaliate, intimidate, threaten, coerce or discriminate against any person who has filed a

complaint or who has assisted or participated in the investigation of any matter addressed in this Agreement.

- G. **OCR's Review of DHHR's Compliance with the Agreement:** OCR may review DHHR's compliance with this Agreement at any time while the Agreement is in effect. As part of such review, OCR may require written reports, access to witnesses, copies of documents, and/or inspection of DHHR's offices. Throughout the duration of this Agreement, DHHR agrees to retain the records required by OCR to assess its compliance. OCR will maintain the confidentiality of all documents, files and records received from DHHR; and will not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.
- H. **Non-Waiver Provision:** OCR's failure to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as a waiver of OCR's right to enforce other deadlines or any provisions of this Agreement.
- I. **Entire Agreement:** This Agreement constitutes the entire understanding between DHHR and OCR in resolution of OCR Transaction Number: 18-306552. Any statement, promise, or agreement not contained herein shall not be enforceable through this Agreement.
- J. **Modification of Agreement:** This Agreement may be modified by mutual agreement of the parties in writing.
- K. **Publication or Release of Agreement:** OCR places no restrictions on the publication of this Agreement or its terms. In addition, OCR may be required to release this Agreement and all related materials to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulation, 45 C.F.R. Part 5.
- L. **Third Party Rights:** This Agreement can be enforced only by the parties specified in this Agreement, their legal representatives and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.
- M. **Technical Assistance:** OCR will provide appropriate technical assistance to DHHR regarding compliance with this Agreement, as requested and as reasonably necessary.
- N. **Miscellaneous:** When OCR verifies that DHHR has completed all actions contained in this Agreement, OCR shall consider all matters related to this investigation resolved and so notify DHHR in writing.

- O. **Authority of Signer:** The individual who signs this Agreement on behalf of DHHR represents that he or she is authorized to bind DHHR to the Agreement.
- P. **Severability:** In the event that a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, such provision shall be severed from the Agreement and all other provisions shall remain valid and enforceable; provided, however, that if the severance of any such provision materially alters the rights or obligation of the Parties, they shall, through reasonable, good faith negotiations, agree upon such other amendments hereto as may be necessary to restore the Parties as closely as possible to the relative rights and obligation initially intended to them hereunder.
- Q. **Successor in Interest:** This Agreement is binding on the Parties, and their successors in interest, and DHHR shall have a duty to so notify all such successors in interest of the existence and terms of this Agreement.

IV. **Obligations**

- A. **Recognition:** DHHR recognizes that Participants with disabilities, including individuals with drug addiction and substance use disorders that substantially limit one or more major life activities, those with a record of a drug addiction that substantially limits a major life activity, and those regarded as having an impairment, including drug addiction or Substance Abuse Disorder; and those with disabilities who are erroneously regarded as engaged in the illegal use of drugs must be provided opportunities to benefit from or participate in DHHR's programs, services, and activities that are equal to those extended to Participants without disabilities.¹ Therefore, pursuant to DHHR policy, and in compliance with Section 504 and Title II, DHHR agrees that it will not unlawfully discriminate on the basis of disability in the provision of programs, services, and activities to Participants with disabilities in the child welfare program. Participants who are currently engaging in the illegal use of drugs are not individuals with a disability under the ADA and Section 504, and an entity covered by the ADA and/or Section 504, like DHHR, may generally act on the basis of such use without violating the ADA and Section 504.² See 29 U.S.C. § 705(20)(C)(i-iii); 42 U.S.C. § 12210.
- B. **General Nondiscrimination Requirements:** DHHR, directly and through contractual, licensing, or other arrangements, with respect to any Participant with a disability, agrees to comply with Section 504, Title II, and their implementing regulations, by implementing the provisions of this Agreement.

¹ Federal disability rights laws also protect individuals if they: (1) have successfully completed a supervised drug rehabilitation program or have otherwise been successfully rehabilitated and are not currently engaged in the illegal use of drugs; (2) are participating in a supervised drug rehabilitation program and are currently not engaged in the illegal use of drugs; or (3) are erroneously regarded as engaging in such use, but are not engaging in such use. 29 U.S.C. § 705(20)(C)(ii); 42 U.S.C. § 12210(b).

² Also, Federal disability rights laws prohibit covered entities from denying health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services. See 29 U.S.C. § 705(20)(C)(iii); 42 U.S.C. § 12210(c).

1. DHHR will not exclude from or otherwise deny the benefits of its services, programs, or activities to any Participant with a disability on the basis of disability. DHHR will also not exclude or otherwise deny equal services, programs, or activities to a Participant or other individual because of their relationship or association with a Participant with a disability. See 42 U.S.C. § 12132; 29 U.S.C. § 794(a); 28 C.F.R. § 35.130(a), (g); 45 C.F.R. §§ 84.4(a), 84.52(a).
2. DHHR will ensure that Participants with disabilities (or individuals who associate with or have a relationship with a person with a disability) are afforded an opportunity to preserve and reunify their families that is equal to the opportunity that DHHR offers to Participants without disabilities. Similarly, DHHR will ensure that Participants with disabilities are afforded opportunities to serve as legal guardians, foster parents, and adoptive parents that is equal to the opportunity that DHHR offers to Participants without disabilities. 28 C.F.R. § 35.130(b), (g); 45 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2).
3. DHHR will ensure that its safety requirements are based on actual risks that pertain to the Participant with a disability and not on mere speculation, generalizations, or stereotypes about individuals with disabilities. See 28 C.F.R. § 35.130(h); 45 C.F.R. §§ 84.4(b), 84.52(a)(2)-(5).
4. DHHR will make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless DHHR can demonstrate that making a modification would fundamentally alter the nature of the service, program, or activity. Reasonable modifications should be appropriately tailored to the needs of the Participant with a disability. See 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(a), (b)(vii).
5. DHHR will furnish appropriate auxiliary aids and services when necessary to afford qualified Participants with disabilities and their companions an equal opportunity to participate in and enjoy the benefits of DHHR's child welfare services, programs, and activities. 28 C.F.R. § 35.160(b)(1); 45 C.F.R. § 84.52(d).
6. DHHR will ensure it has grievance procedures providing for prompt and equitable resolution of complaints alleging disability discrimination, and will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA and Section 504, including any investigation of any complaint communicated to it alleging noncompliance or otherwise alleging disability discrimination. 28 C.F.R. § 35.107; 45 C.F.R. § 84.7.

7. DHHR will ensure that no surcharge will be placed on a particular Participant with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required for DHHR to provide such Participant(s) with nondiscriminatory treatment. 28 C.F.R. § 35.130(f); 45 C.F.R. §§ 84.4(a), 84.52(d).
8. DHHR will not coerce, intimidate, threaten, interfere, or engage in other discriminatory or retaliatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by Title II and Section 504, including making a request for reasonable modifications or auxiliary aids and services and filing a disability discrimination complaint with DHHR or OCR. See 45 C.F.R. § 84.61, incorporating 45 C.F.R. § 80.7(e).
9. DHHR will obligate its sub-recipients and Contractors to comply with Section 504 and Title II in all DHHR's sub-recipient and Contractor agreements.
10. Nothing in this agreement prohibits DHHR from removing a child from a Participant with a disability or denying the placement of a child with a Participant with a disability if DHHR determines the Participant represents a direct threat to the safety of the child. However, DHHR will not base decisions about whether the Participant with a disability represents a direct threat to the safety of a child on stereotypes or generalizations about persons with disabilities, or a Participant's diagnosis or intelligence measures (e.g., IQ scores) or a Participant's history of an opioid use disorder or participation in MAT alone. Rather, DHHR will base such decisions on an individualized assessment of the parent with a disability, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration, and severity of the risk to the child; the probability that the potential injury to the child will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. 28 C.F.R. § 35.139; 45 C.F.R. § 84.4(a), (b)(1), (b)(4).

C. Designation of Responsible Employee: Within thirty (30) calendar days of the Effective Date of this Agreement, DHHR shall appoint or otherwise designate a staff member to coordinate its efforts to comply with Section 504 and Title II of the ADA, their implementing regulations, and the provisions of this Agreement. The Section 504/ADA Coordinator shall be responsible for:

1. Providing oversight to the local offices to ensure department-wide compliance with Section 504 and Title II.

2. Reviewing and amending as necessary all DHHR policies, procedures, safety assessment tools, protocols, training materials, and regulations that cite drug addiction, opioid use disorder, substance use disorder, or any similar phrases to emphasize that individuals with a drug addiction or substance use disorder, including persons receiving MAT, are entitled to the protections of Section 504 and Title II in specific circumstances. The amended materials and regulations should also reflect the requirement under Section 504 and Title II that individuals with disabilities must be treated on a case-by-case basis consistent with facts and objective evidence, and may not be treated on the basis of generalizations or stereotypes.
3. Developing training and professional development opportunities for DHHR staff, including child protective services workers, foster care and adoption workers, supervisors, and other DHHR volunteers and employees on its nondiscrimination policies and procedures, including increasing knowledge of resources and methodologies available to assist Participants with disabilities to achieve appropriate goals.

D. Notice of Nondiscrimination: Within thirty (30) calendar days of the Effective Date of this Agreement, DHHR shall adopt the Notice of Nondiscrimination Policy set forth in Appendix A. The policy will be submitted to OCR for review and approval. Once OCR approves, DHHR shall also prominently display the Notice of Nondiscrimination Policy, attached as Appendix A, in its waiting areas or lobbies and shall publish the Nondiscrimination Policy in DHHR's brochures, website, and/or other existing promotional materials.

E. Nondiscrimination Policies and Procedures: Within one hundred eighty days (180) calendar days of the appointment of the Section 504/ADA coordinator of this Agreement, and in collaboration with the 504/ADA Coordinator, DHHR shall revise and or develop disability nondiscrimination policies and procedures regarding Section 504 and the ADA. DHHR will submit the new or revised nondiscrimination policies to OCR for approval. The nondiscrimination policies and procedures should, at a minimum, include:

1. An explanation that drug addiction and substance use disorder, including opioid use disorder, are disabilities under Section 504 and Title II when they substantially limit a major life activity. These laws protect qualified individuals with drug addiction or substance use disorder that substantially limits a major life activity when: 1) individuals have successfully completed a supervised drug rehabilitation program or have otherwise been successfully rehabilitated and are not currently engaged in the illegal use of drugs; 2) individuals are participating in a supervised drug rehabilitation program and are currently not engaged in the illegal use of drugs; or 3) individuals are

erroneously regarded as engaging in such use, but are not engaging in such use.

2. An explanation that MAT is not the illegal use of drugs and that an individual's time participating in MAT is not akin to the illegal use of drugs. (For example, participation in a MAT program does not indicate that an individual is trading one addiction for another or using MAT to get high.)
 3. A process for requesting reasonable modifications and auxiliary aids and services within each DHHR office. The policy must make clear that an individual does not need to reference Title II, Section 504, their implementing regulations, or any provisions therein, or use any terms of art, such as "reasonable modification," to make such a request. Such policy must require that such requests be addressed and reasonable modifications provided to a Participant with disabilities, or the request be otherwise resolved, in a timely manner to ensure the individual has an equal opportunity to participate in DHHR programs.
 4. A statement informing Participants with disabilities that DHHR will not impose a surcharge on a particular Participant with a disability or any group of Participants with disabilities to cover the costs of measures, such as the provision of auxiliary aids and services, reasonable modifications, or program accessibility, that are required for DHHR to provide such Participant(s) with nondiscriminatory treatment.
 5. A statement informing Participants with disabilities of the right under Section 504 and Title II to file a complaint and/or a grievance alleging discrimination on the basis of disability to DHHR and to OCR.
 6. A statement informing Participants that DHHR will not coerce, intimidate, threaten, interfere, or engage in other discriminatory or retaliatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by Section 504 and the ADA, including making a request for reasonable modifications or auxiliary aids and services or filing a disability discrimination complaint with DHHR or OCR.
- F. **Grievance Procedure:** With thirty (30) calendar days of the appointment of the Section 504/ADA coordinator, DHHR shall revise its Grievance Procedure to make clear that said procedure provides for the prompt and equitable resolution of complaints alleging discrimination on the protected bases covered by Section 504 and Title II of the ADA, as set forth in Appendix C. The revised policy will be submitted to OCR for review and approval.

- G. Staff Training:** Within one hundred eighty (180) calendar days of the appointment of the Section 504/ADA coordinator, DHHR, with input from the Section 504/ADA Coordinator, shall develop and provide mandatory annual training for its DHHR staff covering compliance with Federal civil rights laws, including Section 504 and Title II of the ADA and working with Participants with disabilities, including individuals in recovery from a substance use disorder. All new DHHR staff must also complete this training during the on-boarding process within thirty (30) days of the new staff member's start date. On an annual basis after the first training, DHHR will provide a mandatory refresher training. The training materials, agenda, and resume(s) of the person(s) administering the training shall be submitted to OCR for review and approval. All trainings conducted pursuant to this provision will be conducted in an interactive format so as to ensure staff's engagement with the materials and their ability to ask and receive answers to follow-up questions.
- H. Documentation:** DHHR will maintain documentation of its training materials under this Section and documentation that each DHHR staff member has received the training required by this Section.
- I. Other Action:** Within fifteen (15) calendar days of the Effective Date of this Agreement, DHHR will take action to file this agreement with the Court with respect to the Complainants referenced in this matter. This shall include filing a brief or memorandum with the Court notifying the Court of the allegations made by the Complainants in this matter, and notifying the court that DHHR and OCR have entered into this Agreement. OCR has no expectations of the Court with regard to its determination of the best interests of the children involved as part of its decision of the custody of the children.

V. Reporting Requirements

DHHR agrees to provide OCR with the following:

- A.** No later than forty-five (45) calendar days after the Effective Date of this Agreement, copies of:
 - 1. DHHR's Notice of Non-Discrimination; and
 - 2. DHHR's Grievance Procedure.
- B.** No later than one hundred eighty (180) calendar days of the appointment of the Section 504/ADA coordinator, copies of new or revised nondiscrimination policies and procedures regarding Section 504 and the ADA.
- C.** No later than one hundred eighty (180) calendar days of the appointment of the Section 504/ADA coordinator, a copy of training materials that DHHR proposes to use to train DHHR staff members regarding compliance with Section 504 and Title II of the ADA and working with Participants with disabilities.

- D. No later than one hundred eighty (180) calendar days of the appointment of the Section 504/ADA coordinator, copies of DHHR’s pamphlets, brochures, website and/or other existing promotional material in which the Notice of Nondiscrimination Policy was published pursuant to this Agreement, Section IV.D, Notice of Nondiscrimination.

- E. No later than twelve (12) months and twenty four (24) months after the Effective Date of this Agreement, a list of DHHR staff members who attended the training required by this agreement.

- F. At twelve (12) months and twenty four (24) months after the Effective Date of this Agreement, letters describing:
 - (1) the number and type of grievances and complaints filed by or on behalf of Participants (pursuant to this Agreement, Section II, Definitions) alleging discrimination on any protected basis under Section 504 or Title II of the ADA, with DHHR and/or a member of its staff and/or with any Federal, state, or local agency;
 - (2) the number and type of requests for accommodations or modifications received from individuals with disabilities; and
 - (3) the status and/or outcome of each such grievance/complaint and request for accommodation or modification.


VI. Signatures

The individuals signing represent that they are authorized to execute this Agreement and legally bind the parties to this Agreement.



 Bill J. Crouch, Cabinet Secretary
 West Virginia Department of Health and Human
 Resources

 4/22/20
 Date



 Jamie Rahn Ballay, Acting Regional Manager
 Office for Civil Rights, Mid-Atlantic Region
 U.S. Department of Health and Human Services

 4/22/2020
 Date

Appendix A

Notice of Nondiscrimination Policy

The West Virginia Department of Health and Human Resources (“DHHR”) complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex. DHHR does not exclude people or treat them differently because of race, color, national origin, age, disability, or sex.

If you have questions or need assistance, contact the [Section 504/ADA Coordinator Title].

If you believe that DHHR has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with the:

[Section 504/ADA Coordinator Title]
West Virginia Department of Health and Human Resources

You can file a grievance in person or by mail, email, or in person. If you need help filing a grievance, the [title] is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
1-800-368-1019, 800-537-7697 (TDD)

Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.

Appendix B

Notice of Nondiscrimination Policy (short-form for 1 page documents)

[For pamphlets, brochures and purchased advertising where space is limited, DHHR may use the following short-form Nondiscrimination Policy:]

The West Virginia Department of Health and Human Resources complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.

Appendix C

Grievance Procedure

It is the policy of the West Virginia Department of Health and Human Resources (DHHR) not to discriminate on the basis of race, color, national origin, sex, age, or disability. DHHR has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging discrimination.

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, sex, age, or disability may file a grievance under this procedure. It is against the law for DHHR to retaliate against anyone who opposes discrimination, files a grievance, or participates in the investigation of a grievance.

Procedure:

- Grievances must be submitted to [Section 504/ADA Coordinator Title], within sixty (60) calendar days of the date the person filing the grievance becomes aware of the alleged discriminatory action.
- A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- The [Section 504/ADA Coordinator Title] (or his/her designee) shall conduct an investigation of the complaint. This investigation may be informal, but it will be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The [Section 504/ADA Coordinator Title] will maintain the files and records of DHHR relating to such grievances. To the extent possible, and in accordance with applicable law, the [Section 504/ADA Coordinator Title] will take appropriate steps to preserve the confidentiality of files and records relating to grievances and will share them only with those who have a need to know.
- The [Section 504/ADA Coordinator Title] will issue a written decision on the grievance, based on a preponderance of the evidence, no later than thirty (30) calendar days after its filing, including a notice to the complainant of his or her right to pursue further administrative or legal remedies. The person filing the grievance may appeal the decision of the [Section 504/ADA Coordinator Title] by writing to the Director of DHHR within fifteen (15) calendar days of receiving the [Section 504/ADA Coordinator Title]'s decision. The Director of DHHR shall issue a written decision in response to the appeal no later than thirty (30) calendar days after its filing.

The availability and use of this grievance procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, sex, age, or disability in court or with the U.S. Department of Health and Human Services, Office for Civil Rights. A person can file a complaint of discrimination

electronically through the Office for Civil Rights Complaint Portal, which is available at: <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
1-800-368-1019, 800-537-7697 (TDD)

Complaint forms are available at: <http://www.hhs.gov/ocr/office/file/index.html>. Such complaints must be filed within one hundred eighty (180) calendar days of the date of the alleged discrimination.

DHHR will make appropriate arrangements to ensure that individuals with disabilities and individuals with limited English proficiency are provided auxiliary aids and services or language assistance services, respectively, if needed to participate in this grievance process. Such arrangements may include, but are not limited to, providing qualified interpreters, providing recorded material for individuals with low vision, or assuring a barrier-free location for the proceedings. The [Section 504/ADA Coordinator Title] will be responsible for such arrangements.