

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

CHRISTOPHER MEYER, *et al.*,

Plaintiffs,

v.

JENNIFER SULLIVAN, *et al.*,

Defendants.

Case No. 1:19-cv-3311-JMS-TAB

SETTLEMENT AGREEMENT

Whereas, on August 6, 2019, Plaintiffs Christopher Meyer, Sarah Meyer, and the National Federation of the Blind, Inc. (“Plaintiffs”) filed the above-captioned lawsuit against Defendants Jennifer Sullivan, in her official capacity as Secretary of the Indiana Family and Social Services Administration (“FSSA”), and Adrienne Shields, in her official capacity as Director of the Indiana Division of Family Resources (“DFR”), (collectively, “Defendants”) alleging that Defendants have violated Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131–12134, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by denying Blind persons equally effective access to all print and website communications created or distributed by Defendants and their Contractors concerning government benefits, including health care coverage and food assistance benefits;

Whereas, Defendants deny Plaintiffs’ allegations and the issue of liability has not been litigated; and

Whereas, Plaintiffs and Defendants (collectively, the “Parties”) wish to further their shared goal of providing Blind individuals an equal opportunity to access, participate in, and benefit from Defendants’ programs, services, and activities, including to all related communications, and wish to resolve this litigation without further expense, delay, and risk;

The Parties hereby stipulate and agree as follows:

I. Definitions and Rules of Construction

- A. **“Accessible”** as it pertains to electronic information technology, means that a blind user can independently acquire the same information, engage in the same interactions, and enjoy the same services as a sighted person in an equally effective and equally integrated manner, with equivalent ease of use. As it pertains to written materials, **“Accessible”** means providing such materials to blind individuals in a format usable to them.
- B. **“Accessible format”** includes, but is not limited to, large print, Braille, or digital navigable formats and are supported by computers or digital talking-book players, that are transmitted through CD, flash drive, or other requested media.
- C. **“Accessible forms”** are forms, applications, services, or transactions that are electronically fillable and submissible, produce a savable confirmation of submission for users, are provided in an HTML format option.
- D. **“Action”** refers to the above-referenced litigation, captioned *Meyer v. Walthall*, Case No. 1:19-cv-3311-JMS-TAB (S.D. Ind.).
- E. **“Blind”** is used in its broadest sense to include all persons who have a vision-related disability that requires the use of alternative techniques or assistive technology to access visual information.
- F. The **“Compliance Term”** of this Agreement is 3 years from the Effective Date.
- G. **“Contractors”** means (1) managed care entities that contract with FSSA and/or DFR to administer health, prescription, or other benefit plans to Indiana residents; or (2) website design and operating technicians that provide client-facing website design or operation. Any new entities that are added during the term of this Agreement shall also be covered by this provision.
- H. The **“Effective Date”** refers to the date on which this Settlement Agreement is executed by both Plaintiffs and Defendants.
- I. **“Managed Care Entities”** are Contractors that manage health plans under the Indiana Health Coverage Programs, and as of the effective date of this Agreement include: Anthem, CareSource, Managed Health Services (MHS), MDwise, and UnitedHealthcare. Any new managed care entities that are added during the term of this Agreement shall also be covered by this provision.
- J. **“Settlement Agreement”** or **“this Agreement”** refers to this Settlement Agreement.

- K. “Substantial Proposed Change”** is a proposed material change, modification, alteration, or addition to any of the Websites’ user interface designs (*i.e.*, any interactive control or area a user can manipulate), but content added to the current user interface in accessible formats is not considered a substantial proposed change.
- L. “Web Content”** and/or **“Website Content”** include all textual, visual, and aural content encountered as part of the user experience of the Websites, but do not extend to Orphan Pages, as defined above.
- M. “Web Content Personnel”** are all employees who write or develop programs or code for, or who publish final content to, the client-facing portions of the Websites.
- N. “Websites”** refer to the website of FSSA, <https://www.in.gov/fssa/>, the website of the Indiana Medicaid program, <https://www.in.gov/medicaid/>, and the website of the FSSA Benefits Portal, <https://fssabenefits.in.gov>, and include:
1. All web pages, web applications, resources, services, transactions, and forms within the <https://www.in.gov/fssa/>, <https://www.in.gov/medicaid/>, <https://fssabenefits.in.gov>, and <http://provider.indianamedicaid.com> domains; their subdomains; and related domains; and
 2. All of the information, resource, files, databases, images, graphics, text, audio, video, multimedia, services, code (including Hypertext Markup Language (“HTML”), .Net Framework, C#, Dynamic HTML (including Cascading Style Sheets (“CSS”)), and any other communications sent by or retrieved from <https://www.in.gov/fssa/>, <https://www.in.gov/medicaid/>, <https://fssabenefits.in.gov>, and <http://provider.indianamedicaid.com> to members of the public accessing these domains.

II. Accessible Print Communications

- A. Recording and Honoring Accessible Format Requests:** When an Accessible Format request (including Braille or large print) has been made by a Blind individual to one of Defendants’ divisions, whether orally or in writing, Defendants’ respective division will document that request in an electronic database. Once the accessible format request has been recorded for a Blind individual, that division shall ensure that all print communications, including but not limited to notices, forms, publications, and other correspondence, are sent to the requesting individual in their requested accessible format, until such time as the requesting individual notifies the division. Defendants shall ensure that all Braille or large print formats are mailed within two (2)

business days of the alert that a print communication has been mailed, unless extenuating circumstances arise, but in no circumstances will that mailing be made more than five (5) days of the alert.

- B. Braille Training:** For all employees preparing Braille documents on behalf of Defendants, Defendants shall ensure that the employees are trained biannually on proper Braille production according to the standards set by the Braille Authority of North America.
- C. Braille Quality Assurance Measures:** Defendants shall establish a process by which all Braille documents that Defendants produce are evaluated to confirm that the documents are properly formatted and all pages are numbered, collated, and stapled. Defendants shall also confirm that the Braille translation is provided in contracted Braille, unless the individual has requested uncontracted Braille, and that the Braille is accurate, readable, and substantially free of errant symbols and characters.
- D. Agency/Division Specific Requests:** After the first accessible format request to DFR, an individual need not make subsequent requests during the eligibility review process. Once an individual's eligibility for benefits has been determined, Defendants will notify the individual requesting an Accessible format, both orally and in writing, that the individual must make separate requests for Accessible formats to each of Defendants' divisions or programs under the Defendants' control, and their respective Managed Care Entities. The notice shall include the contact information for representatives from each of Defendants' divisions, programs, and their respective Managed Care Entities, to whom requests for Accessible formats should be directed.
- E. Contractors' Print Communications:** Once a Blind individual makes a request for Accessible formats to Defendants' Contractors, Defendants shall ensure that their Contractors comply with the requirements of Paragraph A with respect to all print communications related to Defendants' programs, services, or activities. Defendants agree to provide Blind individuals with the contact information for representatives from Defendants' Contractors to whom requests for Accessible formats should be directed.
- F. Accessible Print Communications Policy:** By August 24, 2021, Defendants shall issue an Accessible Print Communications Policy discussing various print communications and accommodations available for Blind users in accordance with the requirements of this Settlement Agreement. The policy shall include a provision clarifying that if the document for which an Accessible format is requested requires a response within a specified time

period, the time period will not begin until the date on which the Accessible format is mailed or sent. Defendants will share the Accessible Print Communications Policy with the Plaintiffs, and the Plaintiffs may provide feedback. The Defendants are not obligated to utilize Plaintiffs' feedback. Defendants agree to make the Accessible Print Communications Policy publicly available via a direct link from the homepages of the Websites.

G. Training on Accessible Format Requests: By August 24, 2021, and annually thereafter for the term of this Agreement, Defendants shall ensure that all employees or agents who interact with members of the public or send out print communications to members of the public on behalf of FSSA or DFR receive training on accessible format requests and Accessibility Policy outlined above, and the requirements of this Agreement.

H. Informal Complaints and Feedback: By August 24, 2021, Defendants shall establish a process through which Defendants will solicit, receive, and address complaints and feedback from the public regarding Defendants' and their Contractors' provision of print communications in Accessible Formats. Defendants will share the Accessible Print Communications Policy, described in Paragraph F above, with the Plaintiffs, and the Plaintiffs may provide feedback. The Defendants are not obligated to utilize Plaintiffs' feedback.

III. Website Accessibility

Defendants shall ensure that all Blind persons have an opportunity that is equal to the opportunity Defendants afford all other persons to access and navigate the websites, as well as their Contractors' websites.

A. Web Accessibility Conformance: By August 24, 2021, Defendants shall ensure that the Websites are Accessible, so that Blind visitors to the Websites can access the same information and engage in the same transactions available to sighted users with an equivalent ease of use. To further provide equivalent ease of use, Defendants shall ensure that all forms, applications, services, or transactions on the websites are accessible forms.

B. Web Accessibility Policy: By August 24, 2021, Defendants shall adopt and implement a Web Accessibility Policy. By August 24, 2021, Defendants shall:

1. Distribute the Web Accessibility Policy to all Web Content Personnel.
2. Provide a copy of the Web Accessibility Policy to each new Web Content Personnel and Contractor responsible for web content;

3. Redistribute the Web Accessibility Policy annually to all Web Content Personnel, and Contractors responsible for web content;
 4. Make publicly available, and directly link from the homepages of the Websites, a statement of Defendants' Web Accessibility Policy to ensure that Blind individuals can participate in, and access all benefits of the services, programs, and activities of the Websites; and
 5. Accompany the public posting of the Web Accessibility Policy with an accessible means of submitting accessibility questions and problems; and
 6. Plaintiffs are permitted to provide feedback on such a policy, but Defendants are not obligated to adopt Plaintiffs' proposed policies.
- C. Web Accessibility Feedback:** By August 24, 2021, Defendants shall provide a notice, prominently and directly linked from the homepage of each Website, soliciting feedback from visitors to the Websites on how the accessibility of the website can be improved.
- D. Assistance for Blind Website Users:** By August 24, 2021, Defendants shall train their personnel to automatically escalate calls from Blind users who encounter difficulties using the Websites. Defendants shall establish procedures for promptly directing requests for assistance to such dedicated personnel including notifying the public that caller assistance is available to users with disabilities and describing the process to obtain that assistance.
- E. Web Accessibility Training:** By August 24, 2021, and at least once annually thereafter, Defendants shall provide mandatory web accessibility training to all client-facing Web Content Personnel on how to conform all web content and services with the Accessibility requirements under the terms of this Settlement Agreement. Defendants shall ensure that Contractors are familiar with the requirements of this Settlement Agreement to the extent necessary to perform the duties under their contract.
- F. Accessibility Testing:** By August 24, 2021, Defendants shall test for Accessibility every six (6) months on all Websites.
- G. Reporting:** By August 24, 2021, and every six (6) months thereafter during the Compliance Term, Defendants shall provide Plaintiffs with a summary of the results of the monitoring Defendants performed of their and their Contractors' websites pursuant to Paragraph F of this section.

H. User Accessibility Testing Group: By August 24, 2021, and at least once annually for the Compliance Term, and whenever a substantial proposed change to the Websites is implemented, such changes shall be voluntarily tested by Blind individuals solicited by Defendants by posting on the Defendants websites. If no Blind individual volunteers each year to test the Websites, Defendants, may reach out to the National Federation of the Blind to assist in identifying Blind participants for the voluntary User Accessibility Testing Group.

I. Contractors' Websites: By August 24, 2021, with respect to the public-facing Websites operated by Defendants' Contractors, Defendants shall:

1. Assure that all Websites conform to the Accessibility standard outlined in this Settlement Agreement.
2. Make mandatory that any new contract entered into after the Effective Date of this Settlement Agreement requires Websites to be Accessible as described in this Settlement Agreement.
3. Monitor all Websites every six months to assure compliance. Defendants shall instruct the Contractor to promptly correct any noncompliance. Defendants shall monitor any non-compliant Website.
4. Instruct all Contractors that, by August 24, 2021, they shall:
 - i. Begin conducting pre-release accessibility testing of new websites, and substantial updates to existing Websites to ensure that all new websites, and substantial updates are in compliance with this Settlement Agreement;
 - ii. Refrain from releasing any new website or substantial update to an existing website that, through testing, has identified substantial issues until the identified issues are resolved. This does not apply to emergency fixes.

IV. Enforcement

A. Dispute Resolution and Court Enforcement: If Plaintiffs believe that any portion of this Settlement Agreement has been violated, they shall give notice (including reasonable particulars) of such violation to Defendants. Defendants must respond to such notice as soon as practicable but no later than forty-five (45) days thereafter. The Parties shall negotiate in good faith in an attempt to resolve any dispute relating thereto. If the parties are unable to

reach a mutually acceptable resolution, Plaintiffs may seek court enforcement of compliance with this Settlement Agreement. Nothing in this Settlement Agreement, however, shall prevent Plaintiffs from: (1) filing a separate lawsuit against Defendants for any violations or potential violations of the ADA or any other federal or state law, other than the violations alleged in Plaintiffs' Complaint; or (2) filing a separate lawsuit against Defendants for actions or omissions that constitute a violation of this Settlement Agreement if such actions or omissions also constitute a violation of the ADA and cause an injury to Plaintiffs or any other party.

V. Attorneys' Fees and Costs

- A. Plaintiffs' attorneys' fees, expenses, and costs will be resolved in the manner set out in the Confidential Addendum to the Settlement Agreement, incorporated and attached hereto as Exhibit A.
- B. Within sixty (60) days after the amount of Plaintiffs' attorneys' fees, expenses, and costs has been decided, Defendants shall make payment to the trust account of Brown, Goldstein & Levy, LLP, 120 E. Baltimore Street, Suite 2500, Baltimore, MD 21202, Attention: Joseph B. Espo, for Plaintiffs' determined reasonable attorneys' fees, expenses, and costs in this litigation.

VI. Dismissal of the Action with Prejudice/Retention of Jurisdiction

- A. Upon payment of Plaintiffs' reasonable attorneys' fees, expenses, and costs, Plaintiffs agree to dismiss the Action and all claims that were or could have been asserted with prejudice pursuant to Fed. R. Civ. P. 41(a). No Stipulation of Dismissal shall be filed before the issue of Plaintiffs' attorneys' fees, expenses, and costs has been finally resolved and those fees, expenses, and costs have been paid.
- B. The Court shall retain jurisdiction to determine Plaintiffs' reasonable attorneys' fees, expenses, and costs. The remaining issue of Plaintiffs' attorneys' fees, expenses, and costs leaves this case as a live controversy until settled.

VII. Release

- A. Effective with the dismissal, Plaintiffs waive and release claims for declaratory and injunctive relief and any claims for damages against Defendants and their agents, successors, assigns, and officers that are based on the allegations asserted in Plaintiffs' Complaint in this Action and that accrued prior to the Effective Date.

VIII. Notices

- A. Any notice or communication provided under this Settlement Agreement shall be made in writing and shall be delivered or sent by way of the U.S. Postal Service, private commercial carrier, hand delivery, facsimile transmission, or electronic mail to the addresses below or to such other addresses as may be specified in writing by any Party:
- a. To Plaintiffs: Joseph B. Espo, Brown, Goldstein & Levy LLP, 120 East Baltimore Street, Suite 2500, Baltimore, Maryland 21202, jbe@browngold.com.
 - b. To Defendants: Kelly S. Earls, Office of the Indiana Attorney General, 302 West Washington Street, IGCS-5th Floor, Indianapolis, Indiana 46204, kelly.earls@atg.in.gov.

IX. General Provisions

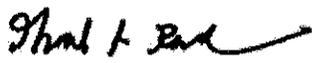
- A. This Settlement Agreement contains the entire agreement of the Parties concerning the subject matter described herein.
- B. If any provision of this Settlement Agreement is determined to be invalid, unenforceable, or otherwise contrary to applicable law, such provision shall be deemed restated to reflect as nearly as possible and to the fullest extent permitted by applicable law its original intent and shall not, in any event, affect any other provisions, all of which shall remain valid and enforceable to the fullest extent permitted by applicable law.
- C. This Settlement Agreement shall be binding on Defendants' agencies, divisions, departments, and/or offices, and all successors, assignees, employees, contractors, and all those working for or on behalf of Defendants. In the event that either Defendant seeks to transfer or assign all or part of her interest in any service, program, or activity covered by this Settlement Agreement, including program-related communications, and the successor or assign intends on carrying on the same or similar use of the Websites and other program-related communications, Defendants shall obtain the written accession of the successor or assign to any obligations remaining under this Settlement Agreement for the remaining term of this Agreement.
- D. Failure by Plaintiffs to seek enforcement of this Settlement Agreement pursuant to its terms with respect to any instance or provision shall not be

construed as a waiver to such enforcement with regard to other instances or provisions.

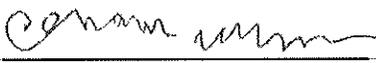
- E. Defendants shall provide a copy of this Settlement Agreement to any person upon an Access to Public Records Act (APRA) request. Plaintiffs are free to distribute copies as they choose.
- F. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Settlement Agreement.
- G. This Settlement Agreement is subject to statutory approvals, including, but not limited to Ind. Code 4-6-2-11.

THE NATIONAL FEDERATION OF THE
BLIND

Date: 5/20/21

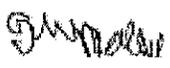

By _____
Mark Riccobono, President

Date: 5/24/2021



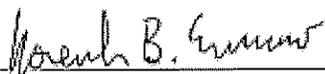
Christopher Meyer

Date: 5/24/2021



Sarah Meyer

Approved as to form only:



Joseph B. Espo (*admitted pro hac vice*)
Chelsea J. Crawford (*admitted pro hac vice*)
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Attorneys for Plaintiffs

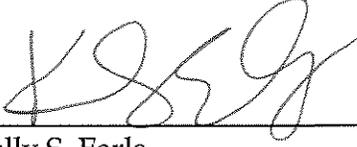
FOR DEFENDANTS JENNIFER SULLIVAN,
IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE INDIANA FAMILY
AND SOCIAL SERVICES ADMINISTRATION,
AND ADRIENNE SHIELDS, IN HER
OFFICIAL CAPACITY AS DIRECTOR OF THE
INDIANA DIVISION OF FAMILY
RESOURCES

Date: 05/27/2021

By Adrienne M. Shields
Adrienne Shields, Director of Indiana Division
of Family Resources, Indiana Family Social
Services Administration

Approved as to form only:

Date: 6/10/14



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