

This notice arises out of the plaintiffs and defendants having agreed to settle the Lawsuit. The parties' agreement is incorporated into a 35-page Settlement Agreement ("Agreement"). The Agreement is not yet effective, and will not, under the law, become effective until Judge Whitworth, after the plaintiff class members are given an opportunity to object to or otherwise comment on the Agreement, finally approves it as "fair, reasonable, and adequate," as those terms are understood under the governing law.

This notice (a) summarizes plaintiffs' claims in the Lawsuit, and its history, *see* § II below; (b) reviews the principal terms of the Agreement, *see* § III below; (c) identifies the designated class counsel for the plaintiff class, including their names, mailing addresses, and e-mail addresses, *see* § IV below; (d) explains why this notice is being posted in all DMH facilities and administrative agents (as defined below) throughout the State, and is being otherwise posted, published, and distributed, *see* § V below; (e) explains how plaintiffs may object to the Agreement, *see* § VI below; and (f) explains how plaintiffs can get more information about the Lawsuit, including a copy of the full Agreement, *see* § VII below.

If you are a member of the plaintiff class, this notice is for YOU. You are encouraged to read it carefully.

II. The Lawsuit and Plaintiffs' Claims

Plaintiffs filed this class action case in April 2010. In their complaint, they raised claims under two federal statutes: the Americans with Disabilities Act ("ADA") and the Rehabilitation Act of 1974 ("RA"). (Plaintiffs did not present any federal or state constitutional claims). Plaintiffs claimed specifically that defendants, in discharging their responsibilities to afford mental health services, had violated their rights by discriminating against them based on their deafness. They claimed further that such discrimination had resulted in the denial of mental health services for which they were eligible, or the provision of such services that were not effective in affording them an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to hearing persons.

In their complaint, plaintiffs sought an order requiring defendants to change the policies and practices alleged to discriminate against them. Plaintiffs did not seek any money damages against defendants.

In their answer to the complaint, defendants denied any and all wrongdoing.

Following the filing of defendants' answer to the complaint, plaintiffs and defendants engaged in discovery. In the discovery process, plaintiffs and defendants are permitted to discover information (by way of written questions, requests for documents, and oral depositions) about the other side's case. Defendants' discovery in the Lawsuit was directed toward discovery of information about plaintiffs' claims. Plaintiffs' discovery in the Lawsuit was directed toward

discovery about relevant DMH and DSS policy and practice and defendants' defenses to the Lawsuit.

In November 2010, the Honorable Fernando J. Gaitan, Jr., Chief Judge for the Western District of Missouri, directed that plaintiffs and defendants in the Lawsuit participate in a mediation, with Judge Whitworth as the mediator, for purposes of trying to arrive at a settlement of the case.

The mediation process ordered by Judge Gaitan ultimately came to involve numerous conferences with Judge Whitworth (in which not only counsel for the parties participated, but also DMH and DSS officials), and, in between such conferences, numerous in-person and telephone conferences and the exchange of written proposals and counter-proposals for settlement of the case between counsel for the parties. The duration of the mediation process (which was supervised by Judge Whitworth), from Judge Gaitan's order directing the parties to participate in it to the parties' execution of the Agreement, was more than fourteen months.

The parties finally executed the Agreement (by their counsel) on February 10, 2012.

On February 29, 2012, Judge Whitworth tentatively approved the Agreement as fair, reasonable and adequate, but, in accordance with governing law, provided for a process under which plaintiff class members would be afforded an opportunity to object to the Agreement and for the court's consideration of any such objections before it ruled as to whether the Agreement should be finally approved as fair, reasonable and adequate. The process ordered by Judge Whitworth is specifically described in §§ V-VI below.

III. The Agreement

The principal terms of the Agreement are as follows.

1. **Statewide Coordinator.** The DMH defendants will hire a full-time State Coordinator for Deaf Services ("Coordinator") or two half-time Regional Coordinators for Deaf Services ("Regional Coordinators"). A representative of the Missouri Association for the Deaf (which is one of the plaintiffs in the Lawsuit) would be an active member of the DMH Hiring Committee for the Coordinator or Regional Coordinators, and would participate in the review of applications, interviews, and hiring recommendation. The Coordinator or Regional Coordinators will be responsible for coordinating the system of care for plaintiffs established and maintained under the Agreement, including the establishment of a system of care that is uniform throughout the state, insofar as such uniformity is practicable. Except as specifically provided in the Agreement, the Coordinator or Regional Coordinators will be required to be American Sign Language (ASL) fluent and have a graduate degree as a mental health clinician, and preference will be given to applicants with experience in the delivery of mental health services to deaf persons.

2. **Standards of Care.** DMH will publish and enforce “Clinical Standards of Care” for inpatient and outpatient mental health treatment of plaintiffs at or by all DMH facilities and administrative agents (as defined in § V below). The Standards of Care will provide that, except for communications with an ASL-fluent clinician or ASL-fluent case manager, qualified interpreters should be provided whenever a consumer of DMH services is receiving an initial assessment, an annual or other periodic reassessment, a treatment planning or discharge planning meeting, or a psychotherapy/psychoeducational session (individual or group), unless it is determined that the individual receiving the care does not use ASL to communicate. The Standards shall take into consideration that not all individuals use ASL to communicate and that it will be necessary to make reasonable good faith efforts to provide alternative communication methods for those individuals when receiving a category of mental health service. The Standards will be published as DMH Department Operating Regulations (DORs) and will be incorporated into DMH contracts with administrative agents.

3. **Community Services - Specialized Outpatient Centers.** DMH will establish one or two Specialized Outpatient Centers (in Kansas City, St. Louis, or both) for the provision of statewide mental health services to consumers who are deaf. The centers are to be staffed with ASL-fluent clinicians, case managers, and case manager assistants who will provide psychotherapy, case management and community support services, either on site or by video telehealth to consumers at Administrative Agents statewide. If all such positions cannot be filled by staff who are ASL fluent, the nonfluent staff members will receive specialized training in mental health treatment for persons who are deaf. Through the Center(s), DMH will be able to serve everyone in the state either in person or by video hook-up. Consumers will have a choice of receiving outpatient services from the Administrative Agent for their area or at a Specialized Outpatient Center.

4. **Community Services--Deaf Services Inpatient Unit.** DMH also will establish a specialized Inpatient Deaf Services Unit. DMH is planning to establish the inpatient unit at Truman Behavioral Health in Kansas City. The unit will be staffed with clinicians, case managers, and case manager assistants who are ASL fluent. If all such positions cannot be filled by staff who are ASL fluent, the nonfluent staff members will receive specialized training in mental health treatment for persons who are deaf. The training is described below.

5. **Training for Professional Staff.** DMH will make training available to professional staff at the Specialized Outpatient Center(s) and the Inpatient Deaf Services Unit (clinicians, case managers and assistant case managers) in the following areas: Deaf Culture; ASL (its features, its importance to and use within the deaf community); medical and psychosocial aspects of the deaf population; English fluency limitations in the deaf population, including speech reading and reading/writing limitations; fund of information limitations in the deaf population; how mental illness symptoms may differentially present in the deaf vs. hearing; how diagnosis, treatment effectiveness and treatment efficacy differ in regard to deaf vs. hearing individuals; effective working relationships between interpreters and clinicians.

6. **Sign Language Interpreters.** DMH will ensure the timely provision of qualified American Sign Language (ASL) interpreters to plaintiffs in accordance with the Clinical Standards of Care. DMH will also make available to qualified interpreters a training program underwritten, in part, and covering the topic of interpreting in mental health settings. DMH will also make training available for interpreters covering the topic of interpreting in mental health settings. In choosing interpreters to work in mental health treatment with patients who are deaf or hard of hearing, DMH will prefer those who have completed the training over those who have not.

7. **Crisis Line.** DMH will ensure the continued maintenance of a 24-hour-a-day/seven-day-a-week crisis line with an Access Crisis Intervention (“ACI”) with TTY capacity and access to voice interpretation for plaintiffs, if the existing crisis line (maintained by or through Leadership Education and Advocacy for the Deaf Institute) ceases to exist or reduces its operation to less than 24 hours a day/seven days a week.

8. **Reporting.** DMH will periodically prepare for plaintiffs’ counsel a series of reports setting forth specifically described statistical data and other information bearing on the extent of such compliance.

9. **Enforcement of Agreement and its Duration; Dismissal of Plaintiffs’ Claims.** The effective date of the Agreement shall be the date the court finally approves the Agreement as fair reasonable and adequate, if it does so, *see* § V below. The Agreement shall expire on July 1, 2016, unless the court, for good cause, extends the duration of the Agreement. If and when the court finally approves the Agreement, all of plaintiffs’ claims will be dismissed; meaning, in part, that they (plaintiffs) cannot reopen (relitigate) any issues resolved by the Agreement, but may enforce the Agreement against the defendants if and to the extent that the defendants are not in compliance with their duties under it.

10. **Denial of Wrongdoing and Liability.** Defendants deny any wrongdoing on their part under the ADA and the RA, the Agreement providing that “by entering into the Agreement, defendants make no admission of wrongdoing and no admission of liability in the Lawsuit and neither the Agreement nor the court’s approval of the Agreement, if any, may be construed as an adjudication of defendants’ liability in the Lawsuit.”

IV. The Attorneys Representing the Plaintiff Class

The class certification order in *Comas* designates three of plaintiffs’ attorneys as class counsel for plaintiffs. These attorneys (“plaintiffs’ class counsel” or “class counsel”) are as follows.

Robert E. Lehrer
Law Offices, Robert E. Lehrer
36 S. Wabash Ave. Suite 1310
Chicago, IL 60603
rlehrer@rlehrerlaw.com

Kenneth M. Chackes
Chackes, Carlson & Halquist, LLP
230 S. Bemiston Ave. Suite 800
St. Louis, MO 63105
kchackes@cch-law.com

John J. Amman
Legal Clinic
Saint Louis University School of Law
321 N. Spring Street
St. Louis, MO 63108
ammannjj@slu.edu

No plaintiff class member has ever been charged for the services of plaintiffs' attorneys in the Lawsuit (including the services of plaintiffs' class counsel) nor, if Judge Whitworth finally approves the Agreement as fair, reasonable, and adequate, and it becomes effective, will any class member be charged for any such services in connection with implementation of the Agreement in the future. Specifically, under the Agreement, if finally approved, any attorney fees to which plaintiffs' counsel are entitled will be paid by defendants. Similarly, if plaintiffs' attorneys are entitled, under the law, to reimbursement of costs and litigation expenses they incurred in the Lawsuit, defendants will meet those costs and expenses as well.

V. This Notice and the Opportunity to Object to the Agreement

Judge Whitworth has ordered that this notice be prominently posted at, among other facilities and venues, every DMH facility, every Administrative Agent, and every community placement in Missouri until the date of the fairness hearing, described below in ¶ VI.2. Under the Agreement, "DMH facilities" are defined as "facilities directly operated by DMH, if such facilities are ones providing outpatient or inpatient mental health services to plaintiffs"; "administrative agents" are defined as "community mental health centers (including affiliated centers)" throughout Missouri with which DMH contacts to provide mental health services to plaintiffs"; and "community placements" are defined as "residential facilities operated by DMH or an administrative agent at which one or more plaintiffs reside." Judge Whitworth has also ordered this notice be posted on the DMH and DSS, MO Health Net Division, websites, at www.dmh.mo.gov and www.dss.mo.gov/mhd until the date of the fairness hearing, described below in ¶ VI.2. Judge Whitworth made this order because the law requires that, before any claims in class action suits like the Lawsuit are settled, as in the Agreement, the court presiding over the case must: (a) give "reasonable" notice to the plaintiff class of the settlement terms, including, as here, the dismissal of claims, based on a finding that, under all the circumstances, the agreement or other document incorporating the settlement, is fair, reasonable, and adequate; (b) afford plaintiff class members an opportunity to object to the settlement as not fair, reasonable, and adequate; and (c) conduct a "fairness hearing" respecting the settlement to

consider any objections to it (as here incorporated into the Agreement) that class members file; (d) decide whether or not finally to approve the dismissals as fair, reasonable, and adequate.

This notice, as published and posted as described just above, is the reasonable notice to class members that the law requires be given. Judge Whitworth has approved the notice.

VI. Objecting to or Commenting on The Agreement and to the Court's Final Approval of it as Fair, Reasonable and Adequate.

1. The Court's hearing concerning whether to finally approve the Agreement as fair, reasonable and adequate. The court will hold the fairness hearing in the Lawsuit, see § V above, at 9:00 a.m. on Monday, May 7, 2012, in Courtroom 3-A of the United States Courthouse, 80 Lafayette Street, Jefferson City, Missouri 65101. (The court may, depending on several factors, choose to conduct the hearing telephonically). The subject of the fairness hearing is whether the court should finally approve the Agreement as fair reasonable and adequate under the law. The court will make its decision as to this issue based on any written objections to the Agreement received from plaintiff class members (see ¶ 2 below), any written submissions by plaintiffs or defendants' counsel in support of a finding of the Agreement as fair, reasonable and adequate, and any oral argument presented or any evidence presented at the fairness hearing.

2. How to object to or comment on the Agreement. You may object to the Agreement and contend that the court should not finally approve it as fair, reasonable and adequate if you are a member of the plaintiff class in the Lawsuit. If you are a member of the plaintiff class, and you have no objections to the Agreement, you need not do anything in response to this Notice and your assent to the Agreement will be assumed. At the same time, your comments about the Agreement, even if not objections to it, are welcome. **TO OBJECT TO OR COMMENT ON THE AGREEMENT, YOU OR YOUR LAWYER MUST SEND A LETTER TO ONE OR MORE OF THE THREE CLASS COUNSEL LISTED IN § IV ABOVE. DO NOT SEND YOUR OBJECTIONS OR COMMENTS TO THE COURT. YOU DO NOT NEED A LAWYER TO SUBMIT OBJECTIONS TO OR COMMENT ON THE AGREEMENT.** The letter must include the short form name and number of the Lawsuit(s) ("*Comas*," "2-10-cv-04085") and your name and mailing address (and, if you have one, your e-mail address). The letter should include a statement of each objection or comment you may have, a summary of the reasons for any objection, and a description of any law or case supporting the objection. Also, if you or your lawyer wish to appear at the fairness hearing to present your objections or comments orally (or, if the hearing is conducted telephonically, to participate in it orally, by telephone), the statement should explain the reasons why you believe that you or your lawyers' personal appearance at or telephonic participation in the fairness hearing is necessary in order adequately to present the objections or comments to the court, how long you or your lawyer will need to present them at the hearing, and whether you are requesting a sign language interpreter to assist you in presenting your objections or comments. If the letter includes such a request to appear or participate telephonically at the fairness hearing, then Judge Whitworth will rule upon the request prior to the hearing, and if he grants such a request, you will be notified of

the ruling at least five days prior to the fairness hearing, so that you and/or your lawyer can arrange to be present at the hearing or participate in it telephonically. (If Judge Whitworth grants your request to appear or participate telephonically at the fairness hearing, and a sign language interpreter has been requested, then one will be provided to you without charge).

To be considered by the court, your objection or comment letter and any other materials must be postmarked on or before April 16, 2012. Any objections or comments that are postmarked by this date, and are received by plaintiff class counsel, will, reasonably promptly after class counsel's receipt of them, be transmitted to the court and to defendants' counsel. It is possible that plaintiffs' attorneys or defendants' attorneys will choose to submit a memorandum to the court responding to some or all of plaintiffs' objections to and/or comments about the Agreement, if any. If they do so, then they will serve a copy of such a memorandum, at least five days prior to the fairness hearing, upon all class members who have transmitted to class counsel written objections or other comments.

VII. Getting More Information

This notice only summarizes the history of the Lawsuit and does not review every provision of the Agreement, only the principal ones. However, if a plaintiff class member in the Lawsuit wishes to find out more about the history of the case, he or she should direct questions to one or more of plaintiffs' class counsel (listed in § IV above). Further, any class member may secure a copy of the complete Agreement (free-of-charge) by directing a written request for it to one of plaintiffs' class counsel. A link to a copy of the Agreement also appears on the DMH website, at www.dmh.mo.gov.

Notice approved by:

Dated: March 1, 2012

/s/ *Matt J. Whitworth*

MATT J. WHITWORTH
United States Magistrate Judge