Notice

Class Action Settlement

Read this notice carefully!

This is a notice about the Medicaid program for adults with developmental disabilities in Idaho. You may have gotten one like this before. This one is different. There is new information.

There is a class action lawsuit about that program. It is called *K.W. v. Armstrong*. The lawsuit is in federal court in the District of Idaho. The case number is 12-cv-22.

The two sides settled one part of the case in September 2015. You might have gotten a notice about that last fall. The Court approved that settlement in June 2016.

The two sides have now come up with a settlement of the rest of the class action case.

Read this notice carefully to make sure you understand it. It probably affects you.

<u>Does this settlement apply to you?</u>

> **The settlement is about the Idaho Medicaid adult developmental disabilities program. It covers everyone in that program. It also covers people who have applied for the program. If you go through the annual assessment process, the settlement applies to you.**

What is the settlement about?

The settlement has 5 main parts.

1 New Model

The Idaho Department of Health and Welfare (IDHW) has agreed to develop a new model for setting personal supports budgets. This might take two years or more. The Department will work with an outside expert to do this. The Department will also send regular updates and encourage people in the program to help develop the new model.

2 Bridge period

While IDHW develops the new model, the current system will change. You will be allowed to appeal your budget amount when you get your budget notice or when you submit your plan.

Everybody who wants someone to help them with an appeal will get someone. Service coordinators and support brokers can be paid to help someone with an appeal. Anyone can get free training about how to do an appeal.

Your budget during this period will be the highest budget you have ever had since July 2011.

3 Health and safety standard

There is a written standard that defines what you need to show to get a higher budget. This standard is called the "health and safety" standard. The standard spells out what documents you need to have to get a higher budget.

4 SIB-R information

The settlement will allow you to get copies of all the SIB-R information about you. That includes the scoring book that the assessor fills out. You will have to sign a form to get these copies.

5 Budget notice

The notice you get each year about your budget amount will change. It will better explain changes in your budget. If you want to appeal your budget, the notice will let you choose to represent yourself or to have someone help you in your appeal.

How can I read the whole settlement agreement?

You can read the whole settlement agreement. You can either get it on the web or get a copy by mail.

To get it on the web, go to:
http://healthandwelfare.idaho.gov/KWSettlement.aspx

To get a copy by mail, call 208-364-1878, or write to:

Idaho Department of Health and Welfare
3232 Elder Street
Boise, ID 83705

What can you do next?

If you agree with the settlement, you do not have to do anything.

If you disagree with any part of the settlement and you want to tell the judge, you must write a letter to the judge. Include your name, address, phone number, and signature on the letter. On the first page of the letter, write in large letters:

"***K.W. v. Armstrong*: objection to settlement**."

If you object, mail your letters to:

Judge B. Lynn Winmill
U.S. District Court
550 West Fort Street
Boise, ID 83702

You must mail your letters on or before **January 5, 2017**.

When and where will the judge make a decision?

The judge will hold a hearing about the settlement:

Courtroom #3
U.S. District Court
550 West Fort Street
Boise, ID 83702

Date: January 12, 2017
Time: 3:30 p.m. Mountain Time

What if I have questions?

If you have questions about the settlement, contact:

ACLU of Idaho
PO Box 1897
Boise, ID 83701
(208) 344-9750, extension 1202
www.OurHealthandWelfare.org

The ACLU of Idaho represents the class in the lawsuit. The class includes all people in the adult DD program or who apply to the program.

All documents filed in the lawsuit are on file with:

U.S. District Court for the District of Idaho
550 West Fort Street
Boise, ID 83702

The case is *K.W. v. Armstrong*, no. 1:12-cv-22-BLW.

Memorandum Decision and Order

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

K.W., by his next friend D.W., et al., Plaintiffs, v. RICHARD ARMSTRONG, in his official capacity as Director of the Idaho Department of Health and Welfare; PAUL LEARY, in his official capacity as Medicaid Administrator of the Idaho Department of Health and Welfare; and the IDAHO DEPARTMENT OF HEALTH AND WELFARE, a department of the State of Idaho, Defendants.	Case No. 1:12-cv-022-BLW (lead case) **MEMORANDUM DECISION AND ORDER**
TOBY SCHULTZ, et al. Plaintiffs, v. RICHARD ARMSTRONG, et al., Defendants.	Case No. 3:12-CV-58-BLW

INTRODUCTION

The Court has before it a motion for preliminary approval of class action settlement and approval of class notices. The motion is supported by a joint brief. For the reasons expressed below, the Court will grant the motion to the extent it seeks preliminary approval of the settlement and approval of the notice to be sent to class members informing them of the settlement and the hearing date for final approval. The Court will deny the motion to the extent it seeks final approval for the revised budget

notice on the ground that it is intertwined with the class settlement and that class members must have an opportunity to comment on the revised budget notice before it can be finally approved.

ANALYSIS

This joint motion seeks preliminary approval of a settlement of the class claims in this case. This history of this litigation has been set forth in detail in prior decisions of this Court and will not be repeated here. The settlement proposes to design a new budget tool with the assistance of an outside consultant and input from class members, among others. While the new budget tool is being developed – a process that might take two years – existing budgets will remain in place for all class members. The settlement also includes approval of a new budget notice that better explains any budget changes, includes the written health and safety criteria, directs class members to free training about handling appeals, and allows class members to identify a suitable representative to help them with an appeal.

The Ninth Circuit maintains a "strong judicial policy" that favors settlements particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig*., 516 F.3d 1095, 1101 (9th Cir. 2008). This case is quite complex.

The process begins with a "preliminary determination." *See Manual for Complex Litigation, Fourth* § 21.632 (FJC 2004). The Court's task at the preliminary approval stage is to determine whether the settlement falls "within the range of possible approval." *Lilly v. Jamba Juice Co.*, 2015 WL 1248027 at *6 (N.D.Cal.2015). Preliminary approval of a settlement is appropriate if "the proposed settlement appears to be the product of

serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Id.*

The proposed settlement now before the Court resolves the central concerns of the class members: Developing an accurate budget tool, revising the budget notice to more clearly inform participants about changes to their budgets, and providing assistance with appeals. These are the same concerns that the Court addressed in its earlier decision. *See Memorandum Decision (Dkt. No. 270).* This settlement comes after four years of zealous litigation where every issue was contested. There is no collusion here, and the settlement has no obvious deficiencies. Moreover, it does not grant preferential treatment to any segment of the class. The Court concludes that it falls within the range of possible approval and hence will grant preliminary approval.

After preliminary approval, the Court must hold a hearing pursuant to Rule 23(e)(2) to make a final determination of whether the settlement is "fair, reasonable, and adequate." To prepare for that final hearing, Rule 23(e)(1) requires that the Court "direct notice in a reasonable manner to all class members who would be bound by" the parties' proposed partial settlement.

The proposed notice contains a summary of the five major points of the settlement in plain English. *See Proposed Notice (Dkt. No. 306-3).* After providing an accurate and readable summary of the settlement, the notice directs readers to a website for further information. The parties propose to send this notice to the following: (1) Mailing a copy of that notice to every known class member; (2) Mailing a copy to every known guardian

of a class member; (3) Mailing a copy to every current adult DD service coordinator, plan developer, or Support Broker; and (4) Providing a copy by email or mail to fifteen organizations that provide advocacy services or other assistance to class members.

The Court finds that this notice is comprehensive and reasonable. For all the reasons expressed above, the Court will grant the joint motion for preliminary approval of the settlement and the notice of settlement, and will set a date below for the hearing on final approval.

The joint motion also appears to seek final approval of the revised budget notice that will be used to inform participants of any changes to their budgets. But the revised budget notice is part of the class settlement and a summary of its features is included in the notice of settlement that will be sent to class members. Thus, the revised budget notice is intertwined with the proposed class settlement, making it inappropriate to give final approval to the revised budget notice before the class members have an opportunity to comment on the entire settlement. The Court will therefore deny the joint motion to the extent it seeks final approval for the revised budget notice, and await the final hearing before making that decision. This finding will not require any changes to the proposed notice that is to be sent to class members informing them of the settlement.

ORDER

In accordance with the Memorandum Decision above,

NOW THEREFORE IT IS HEREBY ORDERED, that the joint motion for preliminary approval of class action settlement and for approval of class notice (docket no. 306) is GRANTED IN PART AND DENIED IN PART. It is granted to the extent it

seeks preliminary approval of the class settlement and approval for the proposed notice that will be sent to class members informing them of the settlement and the final hearing date. It is denied to the extent it seeks final approval of the revised budget notice.

IT IS FURTHER ORDERED, that the final hearing for approval of the class settlement shall be held on **January 12, 2017, at 3:30 p.m.** in the Federal Courthouse in Boise Idaho.

DATED: October 20, 2016

B. Lynn Winmill
Chief Judge
United States District Court

Proposed Class Action Settlement Agreement

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

K.W., by his next friend D.W, *et al.*, Plaintiffs, vs. RICHARD ARMSTRONG, in his official capacity as Director of the Idaho Department of Health and Welfare, *et al.*, Defendants.	)	Case No. 1:12-cv-00022-BLW (lead case) **CLASS ACTION SETTLEMENT AGREEMENT**
TOBY SCHULTZ, *et al.*, Plaintiffs, vs. RICHARD ARMSTRONG, in his official capacity as Director of the Idaho Department of Health and Welfare, *et al.*, Defendants.	)	Case No. 3:12-cv-00058-BLW

I. INTRODUCTION AND PROCEDURAL HISTORY

Plaintiffs are adults with developmental disabilities who qualify for Medicaid services through Idaho's Medicaid Adult Developmental Disability Services program ("DDS program"). When Plaintiffs' DDS program assistance was reduced, they brought this action against the Idaho Department of Health and Welfare ("Department"), its Director and its Medicaid Administrator, in their official capacities, ("Defendants") challenging, among other things, the notices informing them of their budget reductions sent to them by the Department. The United States District Court of Idaho ("Court") enjoined the reductions, and the parties eventually agreed to the terms of a preliminary injunction that maintained the status quo and provided

Plaintiffs with information about their budget reductions. That injunction restored the Plaintiffs' budgets to the levels that they were prior to July 1, 2011.

The Court later certified a class consisting of "All persons who are participants in or applicants to the Adult Developmental Disability Services program ('DDS program'), administered by the Idaho Department of Health and Welfare as part of the Idaho Medicaid program, and who undergo the annual eligibility determination or reevaluation process." (Dkt. 224). The Court extended the injunction to every member of the class.

Plaintiffs filed their Amended Consolidated Class Action Complaint on July 24, 2014 (Dkt. 148) ("Complaint").[1] Plaintiffs' class action lawsuit alleges (among other things) that the Department's existing budget setting methodology, fair hearing process, and Budget Notice violate the due process and/or equal protection clauses of the Fourteenth Amendment. Plaintiffs' class-wide claims are contained in counts 1 through 6 of their Complaint, entitled: (1) Due Process: Lack of Ascertainable, Non-Arbitrary Standards; (2) Due Process: Lack of Fair Hearing; (3) Due Process: Inadequate Notice; (4) Equal Protection: Arbitrary, Irrational, and Disparate Budget Decisions; (5) Violation of Medicaid Act Budget Methodology Requirements – 42 U.S.C. § 1983; and (6) Violation of Medicaid Act Budget Methodology Requirements – Supremacy Clause (hereafter "class-wide claims"). The individually named Plaintiffs also filed individual claims of discrimination in counts 7 through 10 of the Complaint ("individual claims").

On March 28, 2016, the Court granted in part, and denied in part, Plaintiffs' motion for partial summary judgment on the class-wide and individual claims. Plaintiffs' motion was granted to the extent that it compelled the Department to file within 90 days the following:

[1] Another group of plaintiffs filed a nearly identical lawsuit entitled *Shultz v. Armstrong*, 3:12-cv-00058-BLW, which was consolidated with the present case on April 6, 2013.

(1) A plan for participants to view all portions of the SIB-R necessary to fully challenge a budget reduction and to present any challenged portion of the SIB-R analysis to a hearing officer or other decision maker during an appeal;

(2) A plan to ensure that all participants receive a commitment from a suitable representative to assist the participant before proceeding to informal review and taking any action to confirm a budget reduction produced by the budget tool;

(3) A plan defining the phrase "health and safety" and describing the documentation and other material required of the participant to satisfy that standard; and

(4) A plan to improve the budget tool and conduct regular testing of the tool to ensure its accuracy.

Hereafter, the four plans described immediately above, which were ordered by the Court, will be referenced as the "Court ordered plans." The Court also rejected the Department's third proposed budget notice.

II. JURISDICTION AND VENUE

The Court has jurisdiction over the claims for injunctive and declaratory relief against Defendants pursuant to 28 U.S.C. §§ 1331 and 1343. Venue is proper in the United States District Court for the District of Idaho pursuant to 28 U.S.C. § 1391(b).

III. DEFINITIONS

A. As used in this Class Action Settlement Agreement ("Settlement Agreement" or "Agreement"), the following terms have the following meanings:

1. Bridge Period: means the time period between the date that the Court approves this Settlement Agreement and the date that the new resource allocation model is fully implemented. The new resource allocation model will be deemed "fully

implemented" on the day in which class members' budgets are no longer being calculated using the Budget Tool, but are instead being determined by the new resource allocation model outlined in Section V.A.1-2. of this Agreement.

2. Budget Notice: refers to the annual notice sent to class members, informing them whether they are eligible for DD services in the upcoming year and if so, informs them of their Calculated Budget.

3. Budget Tool: refers to a software program used by the Department to calculate each class member's Calculated Budget based upon the class member's assessed needs.

4. Calculated Budget: refers to the upcoming year budget generated by the assessment of a class member and the Department's Budget Tool. A class member creates an annual service plan based on the Calculated Budget, which is set forth in the Budget Notice that is sent to the participant.

5. Class Member: any person who is a participant in or applicant to the Adult Developmental Disability Services program ("DDS program") administered by the Idaho Department of Health and Welfare as part of the Idaho Medicaid program, and who undergoes the annual eligibility determination or reevaluation process, is a class member.

6. DD Waiver: means Idaho's Medicaid Home and Community-Based Services waiver program, authorized in § 1915(c) of the Social Security Act.

7. Informal Review: When class members receive notice of their Calculated Budgets, they have the opportunity to appeal that budget within 28 days of the date of the Budget Notice. When such an appeal is received by the Department, the Department will conduct its review and will also consider material submitted by the class member or their

Suitable Representative to determine whether the class member has a health or safety need, applying the health and safety standard set forth in **Exhibit 2**, attached hereto. If the class member satisfies the health standard or the safety standard, the Department will add dollars to meet those needs to the class member's Calculated Budget. This review by the Department is known as "Informal Review."

8. Extended Informal Review: During the Bridge Period, class members will be permitted to appeal their Calculated Budget either within 28 days of the date of the Budget Notice, or they may proceed to develop their upcoming year service plan and appeal their Calculated Budget by requesting a fair hearing to contest their Calculated Budget when they submit their upcoming year service plan for approval. When such an appeal is received by the Department, the Department will conduct its review and will also consider material submitted by the class member or their Suitable Representative to determine whether the class member has a health or safety need, applying the health and safety standard set forth in **Exhibit 2**, attached hereto. If the class member satisfies the health standard or the safety standard, the Department will add dollars to meet those needs to the class member's Calculated Budget. When a class member appeals his or her budget at the plan approval stage, the informal review conducted by the Department will be known as "Extended Informal Review."

9. Injunction Budget: means a class member's highest budget since July 1, 2011, which has been used to replace his or her Calculated Budget, per the terms of the preliminary injunction that has been extended in this case per the Court's March 25, 2014 Memorandum Decision and Order (Dkt. 130), and clarified by the Court in subsequent orders dated April 21, 2014 (Dkt. 140) and August 24, 2015 (Dkt. 224).

10. Suitable Representative: means any individual chosen by a class member to assist the class member through Informal Review, Extended Formal Review, or at the fair hearing associated with the class member's Calculated Budget appeal, who has also agreed to assist such class member as chosen during the time that the individual remains willing and able to assist that class member. If a class member does not want anyone to assist or represent him or her, or if a class member elects to assist or represent himself or herself during Informal Review, Extended Formal Review, or at the fair hearing associated with his or her Calculated Budget appeal, such class member will be deemed to be his or her own Suitable Representative. This definition is intended only to define the term for ease of reference in this Agreement; nothing in this definition shall be construed as an acknowledgement or admission by Plaintiffs, or as evidence, that any particular Suitable Representative is adequate or that the provisions for Suitable Representatives in this Agreement are constitutionally adequate. Those provisions are subject to Plaintiffs' monitoring, as provided below, until termination of this Agreement.

IV. RECITALS

A. This Settlement Agreement is entered into by and between Plaintiffs and Defendants (collectively, the "Parties" and individually, "Party") in order for Defendants to comply with the Court's March 28, 2016 Memorandum Decision and Order (Dkt. 270) and the Court ordered plans. This Agreement is evidence of the Parties' agreement to the contents of the Court ordered plans as set forth herein and the form of the Department's Budget Notice, so that these issues can be settled and resolved without the further time, expense, and diversion of resources required by litigating these issues and having the Court impose a remedy upon Defendants in connection with the Court ordered plans.

B. Counsel for both Plaintiffs and Defendants have worked together in an effort to produce the agreements and plans set forth in this Settlement Agreement. It is the intent of the Parties, through and with their counsel, to continue to work together collaboratively and cooperatively to carry out the foregoing agreements and plans to completion.

C. By entering into this Settlement Agreement, Defendants do not admit the truth or validity of any allegations associated with the class-wide and individual claims asserted in this case, and nothing herein shall be construed by the Parties as an admission of liability of or by Defendants.

V. AGREEMENTS

The Parties agree as follows and incorporate the above "Recitals" into the foregoing agreements:

A. Resource Allocation Model. The Department agrees to adopt and implement a new resource allocation model that will determine personal supports budgets for class members, and which will replace the Budget Tool and its calculation of individual budgets for class members. The Parties jointly agree that consultant John Agosta, Vice President at Human Services Research Institute ("HSRI"), and his team shall be retained by the Department to work with and assist the Department adopt and implement such resource allocation model.

1. Consultant Scope of Work. The Parties agree that HSRI's current anticipated scope of work is outlined in the "Memorandum" dated July 10, 2016, attached to this Settlement Agreement as **Exhibit 1**.

2. Action Steps and Estimated Completion. The Parties agree that the following action steps will be taken with HSRI's assistance, consistent with the current anticipated scope of work outlined in **Exhibit 1** attached hereto. The Department will

develop estimated dates for completion with HSRI as the project moves forward, with the goal of completing the last action step below within 24 months of the inaugural meeting with HSRI described in action step one below. If the last action step below is not completed within 24 months of the inaugural meeting, the Parties shall meet and confer in an effort to identify an agreed completion deadline; if the Parties have not agreed on a completion deadline and the last action step below is not completed within 36 months of the inaugural meeting, class counsel may initiate the dispute resolution process set forth in Section V.M. below and, if the deadline remains disputed after that process is completed, Plaintiffs may file an appropriate motion and the Court shall set a reasonable completion deadline.

Action Steps	
1.	Establish practices to assure class member and community stakeholder engagement, active involvement, and communication.
2.	Convene an inaugural meeting with Department staff within 30 days after the Court approves this Agreement.
3.	Revise the service array and associated service definitions (if the Department determines this is needed).
4.	Review present reimbursement rates and make changes (if the Department determines this is needed).
5.	Select a tool to assess individual support needs.
6.	Ensure that means are in place to gather and store data pertaining to supports needs and other project-related data.
7.	Train and certify assessors as qualified to conduct an assessment.
8.	Complete support needs assessments.
9.	Compile a roster of service recipients.
10.	Gather expenditure data per person by service.

11.	Analyze support needs and historical expenditure data.
12.	Assign service recipients to support levels based on assessment.
13.	Establish and validate service mixes by support level and living setting.
14.	Establish framework for assigning supports budgets by support level and residence type.
15.	Conduct a Systems Impact Study of the prospective changes pertaining to the HCBS waiver and Information Management.
16.	Finalize individualized supports budget policies, including the exceptions review protocol, re-assessment application review, and appeals points.
17.	Review and modify the supports planning protocol to include a prospective personal supports budget within the planning process.
18.	Develop and finalize plan for regular testing of the new model.
19.	Develop and finalize plan to ensure all class members receive a commitment from a Suitable Representative.
20.	Provide training to case managers and others.
21.	Prepare complementing materials.
22.	Establish and implement a communications plan to assure stakeholder engagement.
23.	Establish an implementation plan and execute it.
24.	Establish and initiate evaluation plan.

3. Final Plan for Regular Testing. The Department will submit a final plan to the Court to regularly test the new resource allocation model after it is implemented. Following court approval of the final plan for regular testing, the Department shall regularly test the resource allocation model, according to the approved plan.

4. Final Plan to Obtain Suitable Representative Commitment. The Department will submit a final plan to the Court outlining processes and/or procedures to ensure that all participants who need and want a Suitable Representative receive a

commitment from a Suitable Representative, consistent with the Department's understanding of the Court's March 28, 2016 Order (Dkt. 270). The Parties do not agree on what the Court intended to be the triggering event giving rise to the Department's court-imposed requirement to obtain a commitment from a Suitable Representative for class members (*i.e.*, whether it is the budget appeal and request for fair hearing), and therefore, reserve the right to contest this issue at any time. Notwithstanding any other provision in this Agreement, the Parties do not waive their rights: to file any motions available to them regarding this issue, proceed to trial on this issue, or to appeal any ruling of the Court or seek any other available relief in connection with this issue.

5. Class Member and Stakeholder Involvement. Throughout the development of the new resource allocation model, the Department shall encourage engagement and active involvement of class members, their guardians, and other community stakeholders. The Department shall also report to the class members, their guardians, and community stakeholders of the status of the development of the new resource allocation model and the plans for regular testing and to obtain Suitable Representative commitments; solicit comments from the class members, their guardians, and community stakeholders; and review those comments within 90 days of Court approval of this Agreement and at least once every six months thereafter until the Department's plan for regular testing is approved by the Court. Communications with class members shall use clear language and layout, appropriate to the circumstances of the class members and their guardians.

6. Approval and Implementation. Upon completion of all of the Action Steps listed above:

a. The Department shall give class counsel written notice and a complete copy of all materials describing the final plan for regular testing, and if the Parties are in agreement with respect to the triggering event, the final plan for confirmation of a Suitable Representative that it will submit to the Court for approval (other than any motion documents and supporting legal memoranda or briefs). Within 60 days of the receipt of the notice and materials, class counsel will give written notice to the Department's counsel whether or not they will object to the final plan for regular testing or the final plan for confirmation of a Suitable Representative. If class counsel object to the final plan for regular testing or the final plan for confirmation of a Suitable Representative, and if the Parties cannot otherwise reach agreement through negotiation, the Parties will commence the dispute resolution procedures outlined in Section V.M. below. If class counsel do not object to the final plan for regular testing or the final plan for confirmation of a Suitable Representative, the Department shall file with this Court class counsel's notice of non-objection together with the final plan for regular testing or the final plan for confirmation of a Suitable Representative previously provided to class counsel.

b. Upon this Court's approval of the final plan for regular testing, the Department shall promptly implement such plan as approved. Implementation shall be sufficiently prompt if completed on or before dates agreed by the Parties or set by the Court.

7. Changes. If the Department finds that it must adjust the scope of HSRI's work, or modify or extend any of the estimated dates for completion developed with

HSRI, the Department may only do so if such modification or change is not material, meaning that it will not prevent the development of a new resource allocation model as outlined in **Exhibit 1** attached hereto. If such non-material modifications or extensions are necessary, the Department will give class counsel prior written notice of the proposed change. Within 14 days of the receipt of that notice, class counsel will give written notice to the Department's counsel whether or not they object to the proposed change. If class counsel object to the proposed change, the Parties will commence the dispute resolution procedures outlined in Section V.M. below. If class counsel do not object to the proposed change, the Department may then promptly adopt the change.

B. Bridge Period.

1. Injunction Budget. During the Bridge Period, the Department intends to continue to calculate an annual Calculated Budget for each class member using the Budget Tool. For each class member, the Department shall continue to replace each individual's Calculated Budget with that class member's Injunction Budget, except where the Calculated Budget exceeds the Injunction Budget.

2. Identifying a Suitable Representative. During the Bridge Period, the following shall apply:

a. Every class member shall be allowed to appeal his or her Calculated Budget and go through either Informal Review or Extended Informal Review. The health and safety criteria set forth in **Exhibit 2** attached hereto shall be included with each class member's Budget Notice.

i. When a class member appeals his or her Calculated Budget, the Department shall receive a commitment from a Suitable

Representative before the Department proceeds to Informal Review or Extended Informal Review or takes any action to confirm a budget reduction or sets an initial budget for that class member.

ii. Each class member has the right to represent himself or herself during Informal Review, Extended Informal Review, fair hearing, or any other DDS program administrative proceeding. Each class member also has the right to choose any other person or no one at all to assist and represent the class member during Informal Review, Extended Informal Review, or fair hearing.

iii. On all forms a class member may use to appeal his or her Calculated Budget and thereby request Informal Review, Extended Informal Review, or fair hearing, the Department shall include, using clear language and layout, appropriate to the circumstances of the class members and their guardians:

aa. A place for the class member to indicate whether he or she needs and wants assistance or representation through the budget appeal process.

bb. A place for the class member to indicate that he or she wants to represent himself or herself or have no assistance or representation.

cc. A place for the class member to indicate that he or she wants to be assisted or represented by someone else and has identified a Suitable Representative.

dd. A place for the person selected as a Suitable Representative to provide contact information and sign to indicate the person's willingness to assist and represent the class member.

ee. A place for the class member to indicate that he or she wants to be assisted or represented but has been unable to identify a Suitable Representative.

ff. Information about available training opportunities, as provided for under Section V.B.5.a. below.

gg. Information instructing class members who want assistance or representation through the budget appeals process but who are unable to identify a Suitable Representative to immediately notify the Department and class counsel.

b. Suitable Representative - TSC and SB Assistance. As part of his or her existing duties under IDAPA 16.03.10.727 and 16.03.13.136.02, each Targeted Service Coordinator (TSC) and Support Broker (SB) must assist his or her client class members who need assistance and want to appeal their Calculated Budgets, completely and properly fill out and send in the appeal form requesting a fair hearing within the time period required. TSCs and SBs must also assist their client class members who need assistance, and who need and want a Suitable Representative other than themselves to represent them during that budget appeal process, identify and secure the signature and/or agreement of such Suitable Representative.

i. If a class member needs assistance in doing so, TSCs and SBs must assist their client class members promptly notify the Department when a class member at any time needs and wants a Suitable Representative but does not have one or is unable to find anyone to represent him or her during the budget appeal process.

c. Lack of Suitable Representative. If a class member has informed the Department that he or she needs and wants a Suitable Representative other than himself or herself, and the Department has reason to believe that such class member does not have or is no longer being represented by a Suitable Representative, the Department shall promptly contact the class member or his or her TSC or SB, where appropriate, to investigate the status of such representation.

i. If the Department confirms that such class member does not have a Suitable Representative or that such class member's Suitable Representative has withdrawn, become unable to assist or represent the class member, or indicates an unwillingness to represent the class member, the Department shall suspend its actions in the pending budget appeal proceedings until such time as the class member and/or his or her TSC or SB identify a Suitable Representative to represent the class member. If the Department has confirmed that such class member does not have a Suitable Representative to represent him or her, the Department will work with the class member and/or his or her TSC or SB to identify a Suitable Representative to represent the class member, and the Department shall

also keep a record of the confirmation, including the name and contact information of the class member and his or her guardian, if any.

ii. If a class member is unable to find a Suitable Representative to represent the class member during the budget appeal process (after the Department has worked with the class member, TSC, and/or the SB to identify one), the Department shall promptly notify class counsel (including the name and contact information of the class member or his or her guardian, if any) and directly assist the class member identify a Suitable Representative, before proceeding with the budget appeal process. The notice to class counsel is for monitoring purposes only; class counsel will have no obligation to represent the class member in the administrative proceeding or to identify a Suitable Representative for the class member.

iii. If the Department has reason to believe that a class member, his or her TSC, SB, guardian, provider, or other representative is unreasonably delaying or obstructing any part of the budget appeal process, the Department may ask the hearing officer for guidance or relief to address the delay or obstruction.

3. Informal and Extended Informal Review – Attendant Processes, Procedures, and Notice.

a. Any class member who appeals his or her Calculated Budget and identifies a Suitable Representative who has agreed to serve as the class member's Suitable Representative in the appeal form shall have 20 days from the date that

their appeal request was mailed or faxed within which to gather and submit materials to the Department in order to satisfy the health or safety standards.

b. Within the timeframe that a class member must submit his or her Calculated Budget appeal, if a class member informs the Department and class counsel that he or she does not have a Suitable Representative to assist him or her, such class member shall have 20 days from the date on which they obtain a Suitable Representative within which to gather and submit materials to the Department in order to satisfy the health or safety standards.

c. If a class member or his or her representative at Informal Review, Extended Informal Review, or fair hearing is not a lawyer, the Department will not be represented by a lawyer during the proceeding.

d. If the result of any Informal Review or Extended Informal Review for a class member is that the Department denies the class member a budget increase, the Department shall provide the class member with written notice that contains an individualized explanation of the reasons for the denial and identifies the statutes, rules, or other authority that the Department relies upon for its decision. The Department shall also provide that written notice to the class member's Suitable Representative and the class member's guardian, if any. The class member shall be allowed to contest the Informal Review or Extended Informal Review as part of the pending appeal and in any subsequent proceedings concerning the appeal, including judicial review.

e. Following a class member's appeal of his or her Calculated Budget, for all initial Calculated Budgets that are set for new applicants for DD

services and for all class members whose newly Calculated Budget exceeds his or her Injunction Budget, such class member may submit a plan of supports and services to the Department for prior authorization and so long as the services in the plan are approved under the prior authorization process, are medically necessary, and within the class member's Calculated Budget, such plan shall be approved as the class member's upcoming year service plan for the upcoming plan year by the Department.

4. Suitable Representative - Reimbursement of TSCs and SBs. During the Bridge Period, the following shall apply:

a. If a class member does not have a non-paid Suitable Representative to assist him or her through an appeal of his or her Calculated Budget, the Department shall reimburse a TSC or SB chosen by such class member under the conditions set forth in this Agreement to represent a class member during Informal Review, Extended Informal Review, or fair hearing for such budget appeal.

b. For any authorized TSC or SB who has been selected by the class member to represent such class member and has attended one of the live training workshops or certified their completion of all of the video modules described below, the Department shall reimburse such TSC or SB for up to eight (8) hours of time spent providing representation and related advocacy to a class member through the date of the fair hearing for the Calculated Budget appeal, at existing rates for TSC/SB services if all of the following conditions have been satisfied:

i. The TSC or SB has agreed to, and is in compliance with, the terms of the supplemental provider agreement governing suitable representation for class members.

ii. The TSC or SB has submitted a claim form to the Department for payment for such representation and advocacy.

iii. The TSC or SB has documented, for each class member, the dates, time spent, and activities associated with providing representation and related advocacy. This documentation shall be made available to the Department, or its representatives, upon request.

c. The Department will approve reasonable additional time requests by an authorized TSC or SB, consistent with the terms of this Agreement, over the initial permitted and authorized eight (8) hours, if the TSC or SB is in compliance with the conditions set forth in Section V.B.4.b.i-iii. above, and such time is verified by documentation and actually spent on representation and related advocacy, up through the date of the fair hearing for the Calculated Budget appeal. The Department shall use the curriculum topics in the training program as the guide to define the scope of permissible and reimbursable representation and related advocacy of an authorized TSC or SB.

d. The Department shall document the time its employees, agents, or other representatives spend on each Calculated Budget appeal.

e. The Department shall maintain and make available a list of all program TSCs and SBs who are eligible to assist class members who appeal their Calculated Budgets. The Department shall send out a letter to all program TSCs

and SBs encouraging them to decide whether they will agree to the supplemental provider agreement governing suitable representation of class members and complete the live training workshops or video modules within a specified period of time so that they can be automatically placed on the list of eligible TSCs and SBs who can assist class members who appeal their Calculated Budgets. If a TSC or SB does not intend to agree to the terms of the supplemental provider agreement or complete the training within a specified time, or wishes to opt out of the list, they must promptly let the Department know.

f. If a class member's TSC or SB is unwilling or unable to assist him or her through the Calculated Budget appeal, such class member may select another authorized and qualifying TSC or SB on the above-described list to assist him or her through such appeal.

g. The Department shall encourage TSCs and SBs to contact class counsel if at any time the TSC/SB believes that an overwhelming caseload makes it impossible to provide adequate representation to a class member.

5. Suitable Representatives Training. During the Bridge Period, the following shall apply:

a. The Department shall contract with and pay the costs for one or more independent training provider(s) to develop and deliver a training program for current and prospective Suitable Representatives. The independent training provider(s) shall be independent of the Department, its current hearing officers, and its contractors. Other than to provide contract monitoring and quality assurance of the contract, the Department shall not attempt to influence the

training program. If the Department has communication with the independent training provider(s) about the training program for contract monitoring and quality assurance, class counsel shall be provided the opportunity to be present. At a minimum, the training program shall include:

i. A curriculum that covers (1) how to request Informal Review, Extended Informal Review, and fair hearing; (2) criteria used during Informal Review, Extended Informal Review, and fair hearing; (3) all applicable procedural and substantive rules, including under the Idaho Administrative Code and the Code of Federal Regulations, and HIPAA requirements associated with participant information and data; (4) gathering appropriate information and documents, both from the Department and from others; (5) class member rights and opportunities under the Partial Declaratory Judgment (Dkt. 301) and this Settlement Agreement; (6) how the SIB-R, Inventory of Individual Needs, Budget Tool, and Independent Assessment Provider processes work; (7) effective negotiation; (8) recruiting and preparing witnesses for hearing; (9) cross-examination; (10) preparing and introducing exhibits; (11) preserving an adequate record for judicial review; and (12) effective advocacy skills for use during Informal Review, Extended Informal Review, and fair hearing.

ii. A three-hour or longer comprehensive live training workshop held at least once each year in each of the Department's seven geographical regions, covering all of the curricular items listed above. The facilitator of each live training workshop shall pre-register attendees.

If, within 48 hours there are no enrolled attendees, the live training workshop shall be cancelled.

iii. Video modules, covering all of the curricular items listed above, made available on the Internet and by mail.

iv. Written materials, covering all of the curricular items listed above, made available on the Internet and by mail.

v. A telephone hotline through which qualified trainers are available to answer questions within one business day on the curricular items listed above.

vi. Dissemination of timely updates on changes to rules, criteria, procedures, processes, and other issues covered in the training program curriculum.

vii. Certification of completion for individuals who complete the training.

viii. Training evaluations for use by individuals who complete the training.

ix. Guidance to TSCs and SBs about how to record and submit their time to the Department documenting the time spent on representation and related advocacy of a class member through a Calculated Budget appeal, the standard against which the Department will approve additional time requests, and a TSC's or SB's rights if the Department denies additional time requests.

b. Prior to the finalization of any aspect of the training program discussed above, the training provider(s) shall submit all training material to the Department and class counsel for review to enable contract monitoring and quality assurance and to ensure that the training material complies with contract requirements and this Agreement.

6. Implementing Forms, Processes, and Procedures. The Department will develop and implement all forms, processes, and procedures necessary to effectuate the Bridge Period requirements, described throughout Section V.B of this Agreement. The Department will give class counsel an opportunity to review all proposed forms, processes**,** and procedures. Within 14 days of receiving copies of any proposed form, process, or procedure, class counsel will give written notice to the Department's counsel whether or not they object to the proposal. If class counsel object, the Parties will commence the dispute resolution procedures outlined in Section V.M. below. If class counsel do not object, the Department may then promptly implement the form, process, or procedure.

C. Definitions for Health and Safety. The Department shall follow the criteria set forth in **Exhibit 2**, attached hereto, whenever determining under Idaho Code § 56-255(3)(e)(ii) whether "health and safety issues are identified" to allow a budget modification, including in Informal Review and Extended Informal Review.

D. Plan for Disclosure of the SIB-R Booklet and Related Material. Upon request, the Department shall provide each class member, as well as the class member's guardians and other authorized representatives, if any, with copies of all of the completed SIB-R booklets and all screenshots of the class member's raw SIB-R ratings as entered into the SIB-R computer

software. To request these copies, a class member or their guardian or authorized representative will complete and sign an "Acknowledgment Regarding SIB-R Response Booklet" form, attached hereto as **Exhibit 3**.

E. **The Budget Notice.** The Parties jointly request the Court to approve the form(s) of the Budget Notice attached hereto as **Exhibit 4**. If approved by the Court, the Department shall use that Budget Notice until the new resource allocation model is fully implemented. The Department shall also provide that written notice to the class member's existing Suitable Representative, if known, and the class member's guardian, if any. The class member shall be allowed to appeal the Calculated Budget through a fair hearing request. When the new resource allocation model is fully implemented, as defined in this Agreement, the Department shall provide class members with written notice that complies with due process.

F. **Service and Support Plan Denials.** If the Department denies, in whole or in part, a service or support plan that a class member submits to the Department for approval, the Department shall provide the class member with a written notice that contains an individualized explanation of the reasons for the denial. The Department shall also provide that written notice to the class member's existing Suitable Representative, if known, and the class member's guardian, if any. The class member shall be allowed to appeal the denial through a fair hearing request.

G. **Staff and Contractor Training.** Within 90 days of final court approval of this Agreement, the Department shall train all of its relevant staff, including all relevant contractors and those contractors' staff, on the requirements of this Agreement. The Department shall keep records of the dates of training efforts, training materials, and names of all staff and contractor staff who received training.

H. Class Member Communication. Within 30 days of the approval of this Agreement, the Department shall send a letter to all class members and their guardians drafted by Plaintiffs' class counsel, with reasonable input by the Department, announcing the resolution of this matter and explaining in clear language and layout, appropriate for the circumstances of class members and their guardians, the provisions of this Agreement. If the Parties cannot agree on the content of the letter, the Department shall send its own letter and shall also send a letter prepared by class counsel to all class members and their guardians at the same time. The Department shall also make the information contained in the letter(s) available on its primary web page for the adult developmental disabilities services programs.

I. Implementation, Conditions, and Program Compliance.

1. Implementation. The implementation of this Settlement Agreement shall begin immediately as of the date on which this Agreement is approved and entered as an order of the Court.

2. Legislative Approval and Funding.

a. The Idaho Legislature has the authority under the Idaho Constitution and laws to appropriate funds for, amend laws pertaining to, and approve rules that apply to, the Department's system of services for individuals with developmental disabilities. The Parties understand and agree that any agreement by the Department is contingent upon the receipt of funding, appropriations, limitations, necessary approvals, or other expenditure authority from the Idaho Legislature. The Parties understand that if any agreement made by the Department requires a rule change or modification under the Idaho

Administrative Procedures Act ("IDAPA"), such change or modification is subject to approval by the Idaho Legislature.

b. The Parties understand that if any agreement made by the Department requires an amendment to any portion of Idaho's DD Waiver, such amendment is subject to approval by the Centers for Medicare & Medicaid Services ("CMS").

c. The Department, while empowered to enter into and implement this Settlement Agreement, does not speak for the Idaho Legislature or CMS. The Department shall take all appropriate measures to seek and secure the funding and approvals necessary to implement the terms of this Settlement Agreement with the Idaho Legislature and CMS. If the Department fails to attain the necessary appropriations or approval to comply with this Agreement, Plaintiffs retain all rights to enforce the terms of this Agreement, to enter into enforcement proceedings, or to withdraw their consent to this Agreement and revive any claims otherwise barred by operation of this Agreement. In the event claims are revived, this case shall be returned to active status and Defendants shall retain all rights, and all defenses shall be revived.

J. <u>Monitoring and Access to Information During Settlement Agreement</u>.

1. The Department, including its DDS program assessment and training contractors, through Department's counsel, shall produce any records and answer any questions reasonably requested by class counsel within 30 days, at no cost to Plaintiffs or class counsel. If at any time the Department believes that class counsel's requests are unreasonable, the Parties will commence the dispute resolution procedures outlined in

Section V.M. below. The Department's counsel shall prepare a privilege log of the kind required by Federal Rule of Civil Procedure 26(b)(5) (or its successors) for any documents upon which they claim privilege; if there is a dispute over whether documents are privileged, the Parties will commence the dispute resolution procedures outlined in Section V.M. below and the Party asserting privilege bears the burden of establishing that a document is privileged.

2. The Department, through its counsel, will provide class counsel with regular updates on the development of the new resource allocation model, the final plan for regular testing, and the final plan to obtain Suitable Representative commitment. The Department shall provide updates at least once every two weeks, unless the Parties agree to alternative update schedules, until the new resource allocation model is fully implemented and both final plans are approved by the Court. The new resource allocation model will be deemed "fully implemented" on the day in which class members' budgets are no longer being calculated using the Budget Tool, but are instead being determined by the new resource allocation model outlined in Section V.A.1-2. of this Agreement.

3. The Department shall ask the following interview questions as part of its annual Adult Services Outcome Review:

a. Traditional and Self Direction participant/guardian interviews:

i. Did you appeal the budget that the Department calculated for you last year?

ii. Did you need someone to assist you through the budget appeal process last year? Did you want someone to assist you through the budget appeal process last year?

iii. Do you have someone who is willing and able to assist or represent you in an appeal if you need more services?

iv. Did anyone assist or represent you in an appeal in the past year?

v. If so, did you have any concerns about that representation or assistance? (Explain)

b. Traditional TSC interview and Self Direction Support Broker interviews:

i. Have you completed training to represent participants in appeals?

ii. If so, do you feel that the training is adequate?

iii. Have you assisted or represented any participants in an appeal in the past year?

iv. Have you had any difficulties assisting or representing participants in appeals? (Explain)

4. The Department shall reimburse class counsel up to the sum of $9,000, for any funds spent by class counsel (or their organizations) to facilitate in-person monitoring conferences with class members in locations in the State of Idaho and class counsel's dissemination of information to class members through other means to assist in monitoring. To obtain reimbursement, class counsel must submit an itemized statement

to the Department's counsel outlining the total amount spent, including to whom funds were paid and the amount paid to each individual or entity in order to facilitate the conferences. If there are any disputes about the reimbursement, the Parties shall commence the dispute resolution process set forth in Section V.M. below. This reimbursement shall be in addition to any attorney fees and costs agreed by the Parties in this Settlement Agreement or awarded by the Court. If class counsel provide to the Department an announcement of planned monitoring conferences that can be printed on a single standard sheet of paper, the Department shall promptly mail the announcement to every known class member and guardian of a class member, using the addresses in the Department's records.

5. The Department, through its counsel, shall notify class counsel in writing within 20 days of discovering that it has failed or will fail to comply with any requirement of this Agreement, whether inadvertently or otherwise. The notice shall describe the cause of the failure to comply and the measures taken to prevent or minimize the failure. The Department shall take reasonable measures to avoid or minimize any such failure.

6. The Parties will request that the Court schedule regular status teleconferences, to be held at least quarterly, until the Parties agree they are no longer needed or are needed on a more infrequent basis. The Department will pay any costs of these teleconferences.

K. <u>Completion and Termination and Dismissal of Class-Wide Claims</u>.

1. <u>Completion and Termination</u>. This Settlement Agreement shall terminate 24 months after the latest of the following dates:

a. The date the Court approves the final plan for regular testing.

b. The date the Court approves the final plan for confirmation of a Suitable Representative.

c. The date the new resource allocation model is fully implemented. The new resource allocation model will be deemed "fully implemented" on the day in which class members' budgets are no longer being calculated using the Budget Tool, but are instead being determined by the new resource allocation model outlined in Section V.A.1-2. of this Agreement.

2. If there is a dispute between the Parties over the date from which the termination date of this Agreement is calculated, the Parties will commence the dispute resolution procedures outlined in Section V.M. below, and the date from which the termination date of this Agreement is calculated shall be the date determined through the dispute resolution process.

3. The Court shall retain jurisdiction of this action for purposes of enforcing the obligations in this Settlement Agreement only until the date of termination, as calculated above, unless:

a. The Parties jointly move the Court to terminate this Settlement Agreement before then, provided the Department has complied with this Settlement Agreement and maintained compliance through the date of the joint motion; or

b. Plaintiffs dispute that the Department is in compliance with the Agreement by the termination date as computed above, in which case the dispute resolution procedures described in Sections V.M. below shall apply. The Parties

shall meet six months prior to the computed termination date to determine whether there will likely be a dispute as to whether the Department is in compliance with the Agreement on the computed termination date.

4. The Parties agree that once this Settlement Agreement is terminated, as set forth in this Section V.K., the class-wide claims contained in counts 1 through 6 of Plaintiffs' Complaint shall be dismissed with prejudice.

L. <u>Noncompliance Procedure</u>.

1. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of a class member, if a Party believes that an opposing Party has failed to fulfill any obligation under this Agreement, such Party shall, prior to initiating any court proceeding to remedy such failure, give written notice to the alleged noncompliant Party which, with specificity, sets forth the details of the alleged noncompliance.

2. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of a class member, the Party against whom noncompliance is alleged shall have 14 days from the date of such written notice to respond to the opposing Party in writing by denying that noncompliance has occurred, or by accepting (without necessarily admitting) the allegation of noncompliance and proposing steps that such Party will take, and by when, to cure the alleged noncompliance.

3. If Plaintiffs or Defendants fail to respond within 14 days, the Party alleging noncompliance may seek an appropriate judicial remedy.

4. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of a class member, if the Party against whom noncompliance is alleged denies such noncompliance, or if that Party timely responds and there is still a dispute between the Parties about noncompliance, the Parties will commence the dispute resolution procedures outlined in Section V.M. below.

M. Dispute Resolution.

1. Parties Will Continue to Confer. The Parties agree that, during the term of this Agreement, they will continue to engage in good faith negotiations regarding all terms and conditions of this Agreement.

2. Dispute Resolution Procedure. In all cases where the terms of this Agreement require or allow the Parties to follow dispute resolution procedures, class counsel and Defendants' counsel shall meet and confer in person at a mutually agreeable time and place and use their good-faith, best efforts to discuss and resolve the dispute. If the Parties are unable to resolve the dispute within 14 days, or another time frame mutually agreeable to the Parties, either Party may file an appropriate motion with the Court in this matter to address the issue(s) or dispute(s) that could not be resolved through the dispute resolution procedures.

N. Attorney Fees.

1. Class counsel will provide to Defendants' counsel an itemized statement of fees and costs that they may claim through the date this Agreement is preliminarily approved by the Court, no later than 30 days after the Court preliminarily approves this Agreement. If the Parties are unable to reach a negotiated agreement as to fees and costs through the date that the Court preliminarily approves this Agreement, Plaintiffs will

petition the Court for an award of fees for services performed through the date that the Court preliminary approves this Settlement Agreement.

2. The Parties agree to bear their own attorneys' fees and costs relating to ordinary monitoring of and compliance with this Agreement and any orders or judgment that the Court enters with respect to this Agreement. However, either Party may petition the Court for an award of attorneys' fees and costs if the applicable dispute resolution or noncompliance procedures set forth in this Agreement fail and a motion, petition, or court decision or order therefore resolves a dispute arising under this Agreement (including disputes over approval, compliance, enforcement, interpretation, modification, clarification, or termination under the Agreement). As to any such claims for attorneys' fees or costs, the Parties agree that the 42 U.S.C. § 1988 standard for fee awards will apply, including as to whether fees may be assessed against Plaintiffs, whether a Party is a prevailing Party entitled to an award, and the appropriate amount of an award.

O. <u>Subsequent Court Proceedings</u>.

1. <u>Joint Motion to Approve Settlement Agreement and Form of Judgment</u>. The Parties agree to jointly file this Settlement Agreement and ask the Court to enter an order administratively terminating the class action claims, the form of which has been approved by counsel for the Parties and is attached hereto as **Exhibit 5**, asking the Court to approve this Settlement Agreement and retain jurisdiction over this matter for the purpose of assuring compliance with the terms of this Settlement Agreement until termination of the Agreement as provided under Section V.K. above.

2. <u>Joint Application for Preliminary Approval</u>. The Parties agree to file a joint motion with the Court, and to take all other steps necessary, to request a fairness

hearing pursuant to Federal Rule of Civil Procedure 23(e) and to seek the Court's preliminary approval of the Settlement Agreement. The Parties will cooperate in presenting this Settlement Agreement to the Court at the fairness hearing. If the Court withholds its approval of any portion of this Settlement Agreement for any reason, or if any post-judgment motions or appeals are filed by third parties, the Parties shall meet and confer to determine whether this Settlement Agreement can be amended or modified in a manner that is mutually acceptable to the Parties and that will secure the Court's approval. If this is not attainable, this Settlement Agreement shall be null and void.

3. Preliminary Approval and Notice to the Class. Upon the Court's granting of preliminary approval of the terms of this Settlement Agreement, the Parties will provide notice to the class in a manner agreed upon by the Parties and/or ordered by the Court pursuant to Federal Rule of Civil Procedure 23(e). The Parties will jointly prepare a notice of this Settlement Agreement which describes the Agreement, the process for filing written objections, and includes the date for the fairness hearing.

P. Modification. Any modification of this Settlement Agreement shall be executed in writing by the Parties, shall be filed with the Court, and shall not be effective until the Court approves the modified agreement and retains jurisdiction to enforce it.

Q. Incorporation. The materials contained in the Exhibits and any other appendices or attachments to this Agreement, as they are referenced in the main body of the Agreement, are included and fully incorporated into this Agreement as if fully set forth in the main body.

R. Binding Effect. The Agreement shall be applicable to, and binding upon, all Parties, their employees, assigns, agents, and contractors charged with the implementation of any portion of this Agreement, and their successors in office, and it shall inure to the benefit of and

be binding upon the legal representatives and any successors of the Parties. If the Department contracts with an outside provider for any of the services provided in this Agreement, the Agreement shall be binding on any contracted parties, including agents and assigns. The Department shall ensure that all appropriate Department agencies and all Department officers, servants, employees, attorneys, and others in active concert or participation with the Department take any actions necessary for the Department to comply with provisions of this Agreement.

S. **Scope of this Settlement Agreement.** The Parties agree that this Settlement Agreement is meant to fully address, resolve, and settle all class-wide claims contained in counts 1 through 6 of Plaintiffs' Complaint and the relief requested in connection with those claims. The Parties agree that the class-wide claims contained in counts 1 through 6 do not cover acts or omissions under the final plans or new resource allocation model that the Department must develop under this Settlement Agreement. The individual claims, contained in counts 7 through 10 in Plaintiffs' Complaint, remain unresolved and are set to proceed to trial in this matter.

T. **Non-Waiver.** Failure by any Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver, including of its right to enforce other deadlines and provisions of this Agreement. Nothing in this Agreement is meant to create or require a waiver of the privileges and protections afforded to the Parties by the attorney work product doctrine or the attorney client privilege. Nothing in this Agreement shall affect or limit Plaintiffs' ability to move for leave to file amended or supplemental pleadings as to matters outside the Scope of this Settlement Agreement as defined in Section V.S. above, or not subject to the dispute resolution procedures in this Agreement; to file any other lawsuit, or to move for consolidation of any other lawsuit with this action as to matters outside the Scope of this Settlement Agreement as defined

in Section V.S. above or not subject to the dispute resolution proceedings in this Agreement; or to raise any claims for relief regarding future acts or omissions of Defendants outside the Scope of this Settlement Agreement as defined in Section V.S. above or not subject to the dispute resolution procedures in this Agreement; nor shall anything in this Agreement affect or limit Defendants' defenses, objections, or arguments against any such motion or lawsuit. As to matters subject to the dispute resolution procedures in this Agreement, nothing shall affect or limit Plaintiffs' ability to raise those issues, by motion or otherwise, after completing the dispute resolution procedures required under the Agreement.

U. Good Faith Negotiations. The Parties represent and acknowledge this Agreement is the result of extensive, thorough and good faith negotiations. The Parties further represent and acknowledge that the terms of this Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of making a full and final compromise and settlement of all class-wide claims set forth in the Complaint, and for the express purpose—contingent on the Agreement being approved, implemented, and terminated—of precluding any further or additional claims arising out of the class-wide allegations set forth in the Complaint. The Parties agree that the provisions of this Settlement Agreement are lawful, fair, adequate, and a reasonable resolution of the class-wide claims.

V. Authority to Execute. Each Party to this Agreement represents and warrants that those who have signed this Agreement are duly authorized to enter into this Agreement and to bind the Party for whom they sign to the terms and conditions of this Agreement.

W. Non-Admission of Liability. Nothing in this Agreement shall be construed as an acknowledgement, an admission, or evidence of liability of the Department under federal or

state law, and this Settlement Agreement shall not be used as evidence of liability in this or any other civil or criminal proceeding.

SO STIPULATED:

For Plaintiffs:

DATED: September 15, 2016

AMERICAN CIVIL LIBERTIES UNION OF IDAHO FOUNDATION

By: /s/ *Richard Alan Eppink*
Richard Alan Eppink

HERZFELD & PIOTROWSKI, LLP

By: /s/ *James M. Piotrowski*
James M. Piotrowski, of the firm

For Defendants:

DATED: September 15, 2016

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ *Cynthia Yee-Wallace*
Cynthia Yee-Wallace
Deputy Attorney General

By: /s/ *Clay R. Smith*
Clay R. Smith
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 15, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Richard Alan Eppink
reppink@acluidaho.org

James Piotrowski
jpiotrowski@idunionlaw.com

Marty Durand
marty@idunionlaw.com

/s/ Cynthia Yee-Wallace

EXHIBIT 1

HSRI Scope of Work

Human Services Research Institute
7690 SW Mohawk St., Bldg. K
Tualatin, OR 97062
(503) 924-3783
www.hsri.org

Memorandum

To: Cynthia L. Yee-Wallace, Office of the Idaho Attorney General
From: John Agosta
Date: July 10, 2016
RE: Establishing a "personal supports budget" framework in Idaho

Staff at the Office of the Idaho Attorney General requested that Human Services Research Institute (HSRI) prepare a scope of work for the Department of Health and Welfare (DHW) to illustrate the steps that must be completed to design and implement means for assigning personal supports budgets[1] to adults with intellectual and developmental disabilities (IDD) receiving Medicaid home and Community Based Services (HCBS). What follows is: (a) a general overview of what such an initiative entails, (b) a description of the several tasks involved, (c) a brief explanation of cost considerations, and (d) a summary description of the staff resources HSRI would apply to the initiative.

When reviewing these tasks, consider that the overall approach to establishing a supports framework is described, but that embedded within these tasks are numerous decision points that will require the attention of Department leadership. In this regard, at issue are the respective roles that Department and HSRI staff will play to complete each task. We expect further discussion to address this issue so that particulars associated with each task could be refined and the cost of the associated work determined.

Overview of Work to Establish Personal Supports Budgets

Without question, appropriately supporting people with IDD requires a substantial financial commitment. Individuals with IDD have disabilities that are life-long that often require day-to-day services and supports. IDD services are among the costliest long-term services, and jurisdictions make varying choices regarding what services will be made available to whom and at what cost.

Yet, *how* services are delivered is just as important as *what* is offered. People with IDD want to live their lives in the community, just like everyone else. They also want control over their lives.

[1] The term "resource allocation" is often used to describe work whereby systematic means are used to assign individualized targeted allocations. The term is accurate insofar as it describes an output to a particular process, i.e., resources are allocated, but focuses perspective on policy makers and their primary intention – to allocate resources. HSRI prefers to focus perspective throughout this work on service recipients. From this perspective, each person is assigned a *personal supports budget* over which they will exercise some degree of authority to select the services they need. There are operational nuances to this general approach that limit the individual's authority over his or her budget, but HSRI finds that the phrase "personal supports budget" better frames the overall intention to suggest that the approach carries benefits for service recipients that are consistent with the principles of self-determination. The challenge throughout is to assure that the system changes finally enacted deliver on this promise.

Based in great measure on these demands, emerging changes in systems of support for people with IDD are part of a continuing evolution that began decades ago. Along the way, terms like *normalization, dignity of risk, inclusion, participation* and *natural supports* served as rallying points to push along further change. More recently, the concept of *self-determination* has taken root, carrying with it a desire for finding ways to offer individual service recipients authority over what supports they receive, how they are received, and from whom.

In this era, policy makers wanting to restructure systems to promote fiscal discipline and efficiency must also seek to embed opportunities for self-direction within new practices. At the core of such systems is a personal supports budget that the individual may apply within the bounds of an approved service plan to secure needed supports. In essence, this is a *prospectively-determined* amount of funds that a jurisdiction makes available to a participant. Implicit in this definition are two key concepts: the *jurisdiction determines the budget amount* for each individual, and that information is provided to the participant *prospectively,* i.e. the individual is told what amount will be allocated *before* developing a service plan, rather than after the plan is completed. The allocated amount is often fixed, though a range may be specified. Participants may think of this as a "pre-approved" allocation. In addition, an *exceptions review* process for addressing extraordinary needs that exceed initial allocations must also be made available.

An objective assessment of support needs is an important part of the process because it provides information about the kinds of long-term help people need. This information is used to assign an individual their supports budget that can be spent on services to meet those needs. This is accomplished by assigning each person to a *support level* that is aligned with the intensity of the individual's needs. A support level corresponds to a budget amount.

In this work, it is essential that the assessment measure used to evaluate support need must have documented validity for this purpose, and must also be accurate and reliable. This not only suggests selecting a tool with known psychometric properties, but also ensuring that assessors are trained and qualified to administer objective assessments.

Assessing individual support need, however, is but one element involved with setting supports budgets, and so contributing to desired systems change. Because the ultimate result is that individuals apply these budgets to select the services they need to yield the outcomes they prefer, several other tasks must also be completed to achieve this end. Given this broader context, this work must also take into account at least the following:

- The <u>policy ideals and intentions</u> of policy makers;
- The <u>service array</u> that individuals might access, and the associated <u>rate reimbursement schedule</u> for services in the array;
- Means for individuals to develop <u>person-centered support plans</u> that take into account the supports budget, and other potential resources as well;
- Establishing <u>new policies, procedures</u>, and in some circumstances, <u>administrative rules</u> for governing the implementation of new practices, including those to assure that service recipients are properly notified of their supports budget, and advised of how

they may request special considerations (e.g., seek a re-assessment), or appeal particular actions;

- Means for compiling and reviewing the data generated given implementation of a supports budget framework so that the Department may make data-based decisions regarding allocating its resources going forward; and
- Means applied throughout the process to engage stakeholders to keep them informed of the changes planned, the policy decisions made, and to gather feedback to guide the effort.

In addition, it is not unusual in this process for states to revise their Medicaid strategy, and so amend their Home and Community Based Services (HCBS) waiver agreement with the Center on Medicare and Medicaid Services (CMS). Such action depends on the decisions made by the Department regarding changes it seeks within the service array, rates and other operational aspects of the waiver.

Tasks Associated with Establishing a Supports Budget Framework

Given the many complementing activities that must be undertaken to establish a supports budget framework, we divided the proposed tasks into six groups:

1. **Set the Foundation**: These tasks establish the fundamental intentions of the work and its guiding principles. In addition, DHW must decide if systems adjustments will be undertaken, such as to alter the service array or reimbursement rates, and what, if anything must be done, to seek approval from CMS to alter the state's Home and Community Based Services waiver agreement.

   Task 1: Convene an inaugural meeting with Department staff.

   Task 2: *(if needed)* Revise the service array and associated service definitions.

   Task 3: *(if needed)* Review present reimbursement rates and make changes.

2. **Gather Necessary Information**: These tasks refer to the several activities that must be completed to gather data to establish a roster of service recipients, identify the support needs of each person, and document their past service use and expenditures.

   Task 4: Select a tool to assess individual support needs.

   Task 5: Ensure that means are in place to gather and store data pertaining to supports needs and other project-related data.

   Task 6: Train and certify assessors as qualified to conduct an assessment.

   Task 7: Complete support needs assessments.

   Task 8: Compile a roster of service recipients.

   Task 9: Gather expenditure data per person by service.

   Task 10: Analyze support needs and historical expenditure data.

3. **Establish Personal Support Budgets**: These tasks refer to those associated with applying the data that was gathered previously to establish a framework for assigning each person a supports budget, given their support level and type of residence.

   Task 11: Assign service recipients to support levels based on assessment.

   Task 12: Establish and validate service mixes by support level and living setting.

   Task 13: Establish framework for assigning supports budgets by support level and residence type.

4. **Develop Complementing Infrastructure:** These tasks relate to building the necessary supporting structure to ensure that the personal supports budget framework can be implemented successfully.

   Task 14: Conduct a Systems Impact Study of the prospective changes pertaining to the HCBS waiver and Information Management.

   Task 15: Finalize individualized supports budget policies, including the exceptions review protocol, re-assessment application review, and appeals points.

   Task 16: Review and modify the supports planning protocol to include a prospective personal supports budget within the planning process.

   Task 17: Provide training to case managers and others.

   Task 18: Prepare complementing materials.

5. **Communicate with Stakeholders**: Communicating with stakeholders throughout the process will help to support successful implementation and reduce anxiety around the change. This task will also allow the state to receive feedback preemptively and discover any areas where adjustments or changes may be necessary.

   Task 19: Establish and implement a communications plan to assure stakeholder engagement.

6. **Implement and Evaluate the Framework:** These tasks relate to the final steps in this process— implementing and evaluating your personal support budget system once all the groundwork has been laid.

   Task 20: Establish an implementation plan and execute it.

   Task 21: Establish and initiate evaluation plan.

When reviewing this task list we emphasize that:

- Many decision points are embedded within these tasks, and as DHW decides on how it wants to proceed, the activities associated with particular tasks will take shape. For instance, what DHW decides regarding the composition of its service array and rates of reimbursement will dictate what additional activities may, or may not, be required to settle on these foundational elements. Likewise, what tool DHW selects to assess support needs will influence later activities pertaining to training assessors, gathering

data, storing data, and assigning individuals to support levels. As a result, the tasks shown below illustrate what must be done overall, but many tasks will need to be unbundled, and specific activities decided upon.

- Each task listed will have associated with it divisions of labor involving staff from DHW, HSRI, and potential third parties. It will be necessary to consider each task, and decide on what entities, and staff, will be assigned responsibility for which activities. In turn, these decisions will influence the pace of the work and its cost. Regardless of these eventual agreements, it is essential that DHW assign to the work a "project manager" to oversee the work and ensure that DHW staff follow through on the activities the Department must complete.
- The tasks are sequenced from beginning to end, as shown in the accompanying graphic. Particular tasks or activities within a task may be undertaken simultaneously. Moreover, as shown, some tasks, such as "communication with stakeholders" will have associated activities that extend throughout the project.

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1. Tasks to Set the Foundation (Tasks 1-3)

Task 1: Convene an inaugural meeting with Department staff.

An inaugural two-day meeting in Boise will be held involving leadership within the Department and other state agencies as warranted to discuss the proposed project tasks. The agenda for the meeting should include discussion on at least these topics:

- The Department's strategic system goals and guiding principles;
- The general logistics of the project including preferred timelines;
- The division of labor between DHW, HSRI, and potential third parties, including how the project will be managed within DHW;
- The major operational decisions that have been or must be made;
- Key stakeholders and planned communication with these stakeholders;
- The present service array and rate schedule, with emphasis on deciding on if the Department will take further action to adjust either.
    - We recognize that the Department may elect to maintain its present service array and rate schedules. Note that without service and rate adjustments, assumptions made later regarding anticipated service use by support level will be tied to the historical service menu and rates. This result may not be preferred by the Department. Based on the initial analyses shown below in Tasks 2-3, the Department may decide on altering service definitions, or adding/subtracting services from its array. These analyses may also lead the Department to decide on a rates study to adjust its current service reimbursement schedule. It is imperative that these decisions be made early on for two reasons. First, changes

Tentative Project Task Sequence -- Start Through Rollout *(Idaho DHW 7/11/16)*

		Start	Roll Out
	Set the Foundation		
1	Convene meeting with Department staff	■■■◆	
2	*(if needed)* Revise service array	■■■■■■◆	
3	*(if needed)* Review/revise reimbursement rates	■■■■■■■■■■■■■■■■■■■■■■■■■■◆	
	Gather Necessary Information		
4	Select a tool to assess individual support needs	■■■■■■◆	
5	Set means to gather and store data	■■■■■■■■■■■■■■◆	
6	Train and endorse assessors	■■■■■■■■➔➔	
7	Complete support needs assessment	■■■■■■■■■■■■■■■➔➔	
8	Compile a roster of service recipients	■■■■■■■■➔➔	
9	Receive expenditure data	■■■■■◆	
10	Analyze support needs and expenditure data	■■■■■■■■➔➔	
	Establish Personal Support Budgets		
11	Assign service recipients to support levels	■■■■■■■■■■■■■■➔➔	
12	Establish and validate service mixes	■■■■■■◆	
13	Establish framework for assigning supports budgets	■■■■■■◆	
	Develop Complementing Infrastructure		
14	Conduct Systems Impact Study (HCBS waiver amend)	■■■■■■■■■■■■■■➔➔	
15	Finalize individualized supports budget policies	■■■■■■■■■■■■■■◆	
16	Review and modify the supports planning protocol	■■■■■■■■■■■■■■◆	
17	Provide training to case managers	■■■■■■■■■➔➔	
18	Finalize complementing materials	■■■■■◆	
	Communicate with Stakeholders		
19	Establish and implement a communications plan	■■■■■■■■■■■➔➔	
	Implement and Evaluate the Framework		
20	Establish an implementation plan and execute it	■■■■■■■■■■■■➔➔	
21	Establish and initiate evaluation plan	■■■■■■■■■■■■➔➔	

■ Denotes project activity ➔➔ Denotes project activity continues ◆ Denotes project task completed

to the service array or rates work will add expense to the project and must be worked into the task array or rates work will add expense to the project and must be worked into the task list. Second, decisions to alter the service array or rates will require additional work for DHW to amend its HCBS waiver (See Task 14).

The Department may rely on the HSRI team to take the lead on many tasks. Still, it will require significant collaboration with Idaho staff to be successful.

HSRI will take the lead to work with the Department to finalize an agenda, and establish logistics to convene this two-day meeting. Afterwards, HSRI will prepare a revised scope of work to illustrate what work will be performed, by whom.

Task 2: (If needed) Review the present service array and make changes.

The purpose of this task is to review what services the DHW offers, how these services are defined, and then decide whether any particular service definition will be adjusted or if any services will be added to the array. DHW staff may be satisfied overall with the current array, however, pausing to consider potential changes to the array given the Department's policy intentions is advisable. For this task, we will complete the following activities:

2.1. Work with Department staff to compile a list of services and associated service definitions currently in place. We anticipate that this information may be easily gathered from review of the state's HCBS waiver.

2.2. Analyze service definitions in relation to overall system direction, policy goals, and supports budget model development. This analysis should include a determination of whether current service definitions are sufficiently narrowly defined to allow the Department to more closely align rates with the actual cost of service delivery.

In addition, HSRI will identify services that DHW may not currently offer but have been found to facilitate independence in the community for people with IDD. Most popularly, states consider changes to strengthen the supports offered to individuals living home with family, promote employment outcomes, and enhance opportunities that complement Medicaid financed services with alternative "natural supports" (e.g., peer support, community guides, exchange networks).

Providing a comprehensive array of services with clear definitions allows jurisdictions to improve their control over the supports actually delivered while further aligning service systems with support needs and identified policy goals.

2.3. DHW decides on whether it will adjust or expand its service array, and if so, does so. Given completion of the previous activities, DHW will decide on what changes, if any, it will make to its service array. If changes are sought, additional work is required to finalize definitions and/or prepare new service definitions.

Task 3: (If needed) Review present reimbursement rates and make changes.

The purpose of this task is to review current service reimbursement rates with DHW and decide if further study and subsequent adjustments are warranted. In addition, if new

services are added to the array, rates for these services will need to be decided on. Again, DHW staff may be satisfied with the present rate schedule. Still, pausing here to consider adjustments is advisable. Any number of cost drivers may be discussed, such as the unit of service, vacancy factors, if any, that are embedded in particular rates, assumptions regarding staff development costs or productivity, staff benefits, or administrative overhead. In addition, for some services, such as community residences or selected day services, payment tiers may be established to align with relative individual support levels. Given such consideration, DHW may seek to adjust rates to ensure that rates are fair, sufficient, and in sync with its policy intentions. To complete this task, we will complete the following activities:

3.1. Work with Department staff to compile the rate schedule related to the existing service array. We anticipate that this information may be easily gathered from review of the state's HCBS waiver or other local sources.

3.2. Analyze the rates by service and the assumptions embedded within each rate. Project staff will work with DHW to unbundle each rate to understand the assumptions embedded within each rate (e.g., vacancy rate, staff development, administrative overhead). Further, staff will contrast the rates in Idaho with rates applied elsewhere for similar services. Afterwards, staff will present its findings to DHW so that it may decide on its next steps.

3.3. DHW decides on whether it will adjust its service reimbursement rates, and if so, proceeds. Given completion of the previous activities, DHW will decide on what changes, if any, it will make to its rate schedule. In addition to the review of the present schedule undertaken in Activity 3.2, if DHW decides to complete rate work, it generally involves:

- Reviewing background materials that include waiver applications, service definitions and standards, and provider manuals. Other materials will likely include any documentation that explains how the current rates were established, and provider audit reports.
- Meeting with providers to acquire feedback throughout the activity. An integral factor in the success of a rate-setting project is gaining buy-in from the provider community. Providers should be engaged throughout the project and should be given meaningful opportunities to participate.
- Designing, deploying, collecting, and analyzing a provider survey. A major source of the data that will inform any changes to provider rates will be a provider survey. The team will design a Microsoft Excel-based survey, which all providers will be invited to complete. The survey will be 'in the field' for four-to-six weeks.
- Conducting research on independent data sources (primarily wage levels) and conducting any required special studies, research, or analysis to further develop factors to populate the independent cost models. This will include review of BLS statistics, but also may involve review of such factors as the density of service recipients in various parts of the State, comparisons of utilization patterns in different regions, and distances between providers and service recipients. Other

special studies may include focus groups of providers of certain services to discuss specific issues or detailed analysis of service definitions and rates in comparison states.

- Proposing values for the cost components in each of the rate models per service. Specifically, the team will build the rates for each service by proposing specific wages and benefit packages for direct care workers, productivity adjustments to account for non-billable activities, administrative and program support allowances, and other service-specific factors, which may include mileage, group sizes, supplies, and other costs.
- Presenting resulting draft rate structures and rate models to DHW. This presentation will outline the rate-related concerns previously identified during the rate study process, and outline how the rate structures attempt to address these issues. Additional accompanying documentation will compare the assumptions for each rate model to the provider survey results as well as any other source materials (e.g., BLS wages). Feedback from DHW will be used to revise the rate models.
- These revised rate models will then be shared with the providers and other stakeholders. This release of draft rate models will commence a 30-day public comment period. The team will establish a dedicated email address to accept comments. The team will compile all feedback, identify the unique comments, and produce a document that provides a written response to each comment and indicates whether any change to the rate model(s) was made as a result.
- Following the public comment period, the rate structures and rate models will be finalized. Finalized rates will serve as the basis for pricing the supports budget framework as well as estimating overall fiscal impacts.

2. Tasks to Gather Necessary Information (Tasks 4-10)

Task 4: Select a tool to assess individual support needs.

The purpose of this task is for DHW to select a tool or tools to assess individual support needs. While supports needs assessment is just one element of many within a supports budget framework, it is among the most essential. Without accurate and reliable assessments of support need, the entire framework is jeopardized.

In advance of considering what assessment tool the Department might select, staff should re-affirm the driving rationale and function for assessment. We presume, for instance, that the Department seeks a tool to assess support needs with two additional applications: (a) to inform supports planning, and (b) to help align individual support need with the type and amount of services a particular person would typically use (i.e., to build personal support budgets). One these intentions are affirmed; the task is completed through the following activities:

4.1. DHW decides on its tool selection process. Various means might be applied to select a tool. For instance, to advise its decision DHW leadership might name a small group of staff,

form a committee of stakeholders, or settle on some other group composition. Aside from the group's composition, DHW must settle on the process that will be applied to select the tool, including nominating tools for review, the review criteria, and the process for rating tools. We anticipate that DHW will name a small group to review assessment options available and seek its recommendation.

Regardless of its process, the criteria that should be applied are the same. The tool selected must cover areas such as:

- Be valid for assessing support need across essential life domains. This includes covering domains such as:
  - *Activities of Daily Living (ADLs*) – ADLs include skills such as bathing, maintaining personal hygiene, dressing, mobility inside and outside the home, transferring, using the toilet, and communicating with others.
  - *Instrumental Activities of Daily Living (IADLs*) – IADLs are an additional set of life functions necessary for maintaining a person's immediate environment.
  - *Cognition/Memory* –Areas to explore include noted difficulties in areas of attention/concentration, learning, perception, task completion, awareness, communication, decision-making, memory, planning or problem-solving.
  - *Medical Conditions/Diagnoses* – Medical conditions that affect an individual's daily functioning.
  - *Challenging Behavior* –Characterized as those behaviors that are: self-injurious, hurtful to others, destructive to property, disruptive, unusual or repetitive, socially offensive, uncooperative or withdrawn, or inattentive.
- The tool must query for sufficient *Background Information* to identify who was assessed by tying individual demographic information to the assessment.
- Result in scores that are consistently accurate and reliable. To ensure that the instrument does indeed test what it purports to test (validity), and does so regardless of the interviewer/rater/respondent (reliability), it is critical that the assessment tool have documented validity and reliability. This standardization is imperative as results must be compiled and used to contrast support need across a population. To further ensure accuracy and reliability, the tool's creators should be amenable to, and ideally provide support for, training of those conducting the assessments.
- Be scored in measureable ways to distinguish relative need, low to high, across targeted domains and among those assessed.
- Be constructed in ways to promote easy automation of data entry, aggregation, and scoring. Automating the survey/interview protocol can potentially reduce data entry errors, and facilitate interview protocols. Data automation is also critical for collection across sites, sharing of data, and analysis of data. Some tools have pre-

designated vendors to provide this service while others require the state to find and hire their own vendor for this process after procuring the tool itself.

- Be affordable. A tool may have great appeal in terms of its capacity for assessing support need, but the range of costs for using the tool must be taken into account. This includes costs for using the tool (e.g., licensing fees or royalties, copies, user manuals, scoring sheets), training assessors, and collecting and securely storing results on an electronic platform for analyses).

4.2. Identify tools for review. DHW will identify the tools it will review. Numerous instruments exist for assessing support needs, with varying strengths and shortcomings[2]. All cover the general topic of support need, but do so in different ways, and with varying documented psychometric testing. A handful of these tools have been used to establish supports budgets, or are moving in that direction. Below is a list of seven tools that have been used, or contemplated for use, in establishing support budgets:

- The Inventory for Client and Agency planning (ICAP) – used in varying ways to allocate resources in at least Texas, South Dakota, and Mississippi (being developed). http://icaptool.com/
- The interRAI suite- used in various applications dependent on the specific tool and end-use. This tool can be used to create resource utilization groups that can be associated with budgets. The interRAI suite consists of tools that measure a wide spectrum of support needs, including for individuals with IDD. (http://www.interrai.org).
- The Health Risk Screening Tool (HRST) – a web-based instrument developed to detect health related issues in vulnerable populations. This tool screens for health risks associated with a wide variety of disabilities, including developmental disabilities, physical disabilities, disabilities associated with aging and many other conditions. http://hrstonline.com/
- Functional Screen - used in Wisconsin to assess program eligibility for its managed care program, Family Care, and to set supports budgets within the state's self-directed service option called IRIS. https://www.dhs.wisconsin.gov/functionalscreen/index.htm
- Questionnaire for Situational Information (QSI) - used in Florida within its iBudget initiative. http://apd.myflorida.com/brochures/qsi-and-you-brochure.pdf
- Level of Need (LON) measure – now retired in Connecticut, though still may be used in the District of Columbia.

[2] Taylor, B., Aiken, F. & Agosta, J. (2015) *Analysis of instruments to assess support needs of people with intellectual and developmental disabilities.* Tualatin OR: Human Services Research Institute (for the CO Department of Human Services).

- Supports Intensity Scale – though it is understood that DHW is not interested in this tool, the Supports Intensity Scale is nonetheless the most popularly used tool, given that at least 20 states and three Canadian provinces are using the scale, with several applying results to help build support budgets. https://aaidd.org/sis

4.3. Facilitate meetings of the selection group so that it may rate tools. The selection group that DHW convenes will review the nominated tools, consider the applications DHW anticipates, and rate the tools. HSRI will advise this group's deliberations only insofar that it will ensure that the tools ultimately sent forward to DHW leadership will provide the data needed to form support levels and eventually build supports budgets.

4.4. DHW selects the assessment tool. Given the ratings generated by the selection group, DHW will select the assessment instrument that will be used. Selecting a tool and following through with all associated requirements for applying it is a crucial decision for Department policymakers to make. Aside from cost considerations, the choice made will affect many other aspects of the project.

Task 5: Ensure that means are in place to gather and store data pertaining to supports needs and other project-related data.

The purpose of this task is to ensure that appropriate electronic accommodations have been made to ensure that the data collected may be compiled, secured, and utilized to complete the project's objectives. In brief, this requires secure computer server space to host the following types of information for each service recipient: (a) identifying information, including demographics, (b) acuity data related to the individual's support needs assessment, and (c) historical service use and expenditure data. Further, the platform should include, or be compatible with, a safe means for DHW and HSRI to exchange data, such as through a secure file transfer protocol (FTP) site.

With such information securely stored and accessible, HSRI can develop and execute the analyses necessary to: (a) keep DHW informed of the progress being made on assessments, (b) make data-based decisions regarding the work, and (c) assign individuals to support levels and corresponding personal supports budgets. Overall, completing this task successfully is essential to the work.

Regardless of the instrument DHW selects, a means must be established to gather and make available to HSRI these results. The ease in doing so is dependent on the tool that is selected and the accommodations for data gathering and compilation associated with the tool. If the tool selected does not come with associated data collection software, DHW will need to devise a means for electronically collecting and compiling such data. HSRI must have access to assessment results.

One initial activity is proposed:

5.1: Complete a Business Associate Agreement between the Department and HSRI. This agreement will allow the Department to send to HSRI data pertaining to its service recipients, and allow for access to support needs data. Most often, states have a protocol for establishing this agreement and secure means for data transfer.

Task 6: Train and certify assessors as qualified to conduct an assessment.

The purpose of this task is to further ensure that, no matter the tool the Department selects, all assessments are administered with fidelity to the instrument and the assessment protocols the state has developed. The number of individuals to train will depend on the tool selected, the pace at which the Departments wants to proceed, and the manner by which assessments will be completed. This task will require the following activities:

6.1 Determine which training models are available for the tool selected, and select the training technique that will be used. During Task 3, DHW will identify the training options available for the selected tool. Possible options include: all assessors receiving training directly from the tools developers, a train-the-trainer model, state developed training, or training provided by an outside third party. The Department will then need to select the relevant option which best meets its needs. Training must be sufficiently robust to ensure reliability and consistent administration of the tool, but not unmanageably expensive or time-consuming. Training will differ by instrument, but should at least include orientation to the tool, expectations around scoring, interview protocol, data integrity, and data storage. DHW should also consider incorporating training for assessors around the eventual use of the assessment tool to promote transparency with participants as they are assessed. Training should also be accompanied by some type of certification process to ensure all assessors meet a minimum standard of competency for administering the tool.

6.2: Decide who will conduct the interviews. Assessors could be independent contractors, a dedicated unit of state staff, case managers unaffiliated with the participant being assessed, etc. They simply must be objective third parties, to ensure no bias exists in the completion or scoring of the tool. The Department must decide upon who will conduct the assessments before associated actions to retain, train, and otherwise prepare these individuals to complete their work can be taken. Another important factor to consider is how many assessors will be necessary to meet the desired pace toward implementation.

HSRI's model requires that assessments be completed on the first cohort of individuals representing all service recipients (i.e., a "stratified representative group") before many other tasks can begin. Eventually, all service recipients will need to be assessed and the new system rolled in. Further, depending on the assessment tool chosen, there may be different recommendations regarding reassessment. For some tools, reassessment may occur annually, for others it may occur every three years. While completing the assessments on the first cohort is essential to many of the beginning tasks, all individuals must be assessed at some point before or within a well devised implementation. We presume that the state will introduce a supports budget to each service recipient with their new planning year, and so the roll out will affect approximately 1/12 of the population each month, totaling about 325 people per month (1/12 of 3,900 service recipients).

The table below shows three assessment completion scenarios necessary to assess the full population. Each carries implications regarding the pace and cost of data collection and assumes assessors do not have outside job responsibilities. The scenario chosen will affect how quickly data on the representative group will be selected and how quickly the work can

move forward. Such information will allow DHW to prepare for the number of assessors needed and detail the timeline for implementation in accordance with the pace of assessments completed.

Months to Complete 3,900 Assessments	Number per month	Number completed per week - month	Assessors needed
12 months	325	8 /week – 32 /month	10
18 months	217	8 /week – 32 /month	7
24 months	163	8 /week – 32 /month	5

Notes:
1. The number of service recipients, 3900, is estimated.
2. The number of assessments that may be completed in a week is estimated and depends on several factors (e.g., who the assessors are, where assessments take place).
3. It is preferable to have 1-2 more assessors available than the bare minimum shown to account for illnesses, people leaving for another job, and so on. Turnover will seriously affect the pace of the work.

6.3: Complete initial training for all assessors. Those individuals selected must successfully complete the training protocol and receive accompanying certification so assessments can begin.

6.4: Complete Supplemental Questions training for assessors (if necessary). HSRI typically requests that supplemental question training be provided to assessors so that they may ask additional questions, designed by HSRI, to gather specific detail about the amount of exceptional medical and/or behavioral support service users require. If these questions are necessary to supplement the assessment tool selected, HSRI will provide this training remotely via webinar.

Task 7: Complete support needs assessments.

A number of actions must be undertaken to assess the support needs of all adult HCBS waiver recipients, which we understand to total about 3,900 people. Activities include:

7.1. Select a representative group to target as the first cohort to be assessed. The purpose of this activity is to identify a representative group of service recipients to represent the whole population that will be assessed. This group is needed so that initial analyses may be undertaken to gain insight into the range of needs among those served, build support mixes per support level, conduct fiscal impact analyses, and establish support budgets.

To do so, we recommend a stratified random selection of service recipients. To create the strata, several criteria may be applied to establish mutually exclusive categories that could be randomly sampled, such as type of residence (e.g., with family, supported living, group home, host home). To establish these strata, HSRI will identify with DHD, the criteria for stratification. This will ensure that the group is representative, and that an adequate number of assessments will be completed for the development of levels of need and supports budget creation.

When determining size for each individual stratum, the population of the stratum will be considered along with a standard set of statistical assumptions. Confidence interval and

levels of at least 90 percent are advised. While each sample carries some risk of error, these statistics decrease the possibility of error to an acceptable level and allow us to infer our results to the larger population.

When possible, HSRI will seek to select individuals based on the month in which their service plan is renewed, choosing individuals that we anticipate will be among the first to participate in the new supports budgeting framework.

7.2: Establish means for scheduling and conducting assessments. Scheduling assessments will ensure that individuals are assessed in a timely manner, and that assessors target those individuals who will be assessed first. Some assessments require that the individuals participate in the interview, while most require that the assessor be knowledgeable about the individual's needs, or talk with others who are. In advance of any assessment, it must be scheduled so that participants have reasonable amounts of time to attend and that the interviewer will have ample time set aside to travel to the interview site. Scheduling may be done by interviewers themselves, though we find it preferable to retain a separate individual to schedule and track all interviews. DHW will need to decide how to manage scheduling.

7.3: Complete assessments and report findings. Trained assessors will complete assessments for each HCBS waiver recipient, starting first with those selected in the initial representative group. Inevitably, all service recipients will be assessed.

As assessments are completed, interviewers must report their findings according to the specifications of the assessment tool DHW selects. As noted above, depending on the tool, this could involve reporting the information through a tool-specific electronic platform or through a platform uniquely designed by DHW or a designated third party. Either way, the assessment findings must be transmitted to a secure hosting platform so that HSRI may access it.

Task 8: Compile a roster of service recipients

The purpose of this task is to construct a roster, which includes all of the individuals who currently receive services under the HCBS waiver, in order to align state expectations about members in service with assessment data. Specific elements which will be incorporated over time include at least the following:

- Identifying and demographic information for each individual (e.g., name, birth date, gender, ethnicity)
- Medicaid ID number,
- Social Security Number,
- Individual supports planning month,
- Name of case manager,
- Residence service type,
- Number of licensed beds in home (if community residence),
- Address,
- High school graduation status

To complete the task, two activities are planned:

8.1. Gather data and populate the roster. HSRI will provide a data specification template that includes all of the required data elements for the roster. HSRI will work with the Department to determine the precise format and source for these data elements.

8.2. Establish a web-based information Portal on HSRI servers to house roster data and link it to other data sources. HSRI currently manages such portals for several jurisdictions, and one for this project will be established. This will allow HSRI to track and compile information on the status of individuals who complete the supports needs assessment process and link this information to assessment and expenditure data. This Portal is essential for housing and maintaining the roster and expenditure information, and later, for implementing the applicable algorithm to make support level assignments and assign supports budgets.

Task 9: Receive expenditure data on service recipients from the Department

The purpose of this task is to collect and analyze available service expenditure data pertaining to each service recipient. This will require the following activities:

9.1: HSRI receives expenditure data from the Department. HSRI will work closely with the Department to gather relevant expenditure data. HSRI and Department staff will establish permission and protocols for receiving the data. HSRI will then submit a data request to specify the information that will be provided and the means of transfer.

We anticipate that these data will include:

- A numeric or other identifier for each individual in the system that is consistent with the identifier gathered to compile the roster. This may include the person's Medicaid identification number, social security number or other identifier. Note that this number must also match up with support needs assessment data.
- Birthdate of each service recipient.
- The most recent full fiscal year of expenditure data for each individual, including HCBS service utilization and costs per service (service billing codebook is also required).
- Each person's type of residence or community living setting.
- Information identifying the service provider supplying each service received by the individual.

Additional details will be provided in the data request. Once the data request has been sent, we will schedule a meeting to discuss any questions that may arise and/or adjustments that may need to be made.

9.2. Conduct an analysis of expenditure data. The data we receive from each jurisdiction is unique. Ideally, our analysis includes a summary view of service utilization by living situation and other relevant factors. This analysis is dependent on the type of data that we receive. As a result, our analysis of these data will be limited and guided by the nature of the information provided. Once the data have been assessed, we will be able to provide a more

detailed analysis plan. Completing this first analysis is essential to understanding the pattern of expenditures. The findings will help the Department to see what it must do to alter service delivery structures in advance of constructing a supports budget framework.

Task 10: Analyze support needs and historical expenditure data.

The purpose of this task is to provide the Department with a first view of its system, including: (a) the relative support needs of service recipients by support level, type of residence, and other variables, and (b) relationships between support needs and historical expenditures. These analyses will help Department staff and others to take stock of present service use patterns and greatly inform discussion over how to allocate resources, i.e., set supports budgets going forward.

3. Tasks to Establish Support Budgets (Tasks 11-13)

Task 11: Assign service recipients to support levels based on assessment scores

As data related to supports needs are gathered, individuals are assigned to a support level. These levels are unique to HSRI's approach, and our understanding of how to align these levels with anticipated service use has evolved over years of experience.

HSRI often utilizes a seven level framework, labeled 1 through 7, aligned with relative support needs, low to high. However, the particular supports level framework that will be used in Idaho will depend on the tool that is selected.

It is worth noting that in this work, it is often prudent to utilize supplemental questions or other means to flag individuals who may have extraordinary medical or behavioral support needs. Doing so ensures that these people are identified early in the process and are given access to supports commensurate with their unique support needs. Failing to do so can result in such individuals being assigned to a support level that inadequately addresses their level of need, thereby requiring requests for exceptional review later or filing or grievances. Overall, it is preferable to flag and identify unique support needs earlier in the process rather than later.

A flagging protocol, however, requires that HSRI has means for alerting DHW to those that have been flagged, a verification protocol to confirm qualifying support need, and a means for logging the results of the verification so that HSRI may update the database to reflect the individual's extraordinary support need designation.

To complete the task, two activities will be completed:

11.1. Individuals not requiring verification are assigned support levels. Based on the decision criteria that are decided upon, given the selected assessment tool, individuals will be assigned to a support level. Support levels will be shared with the Department through a portal described in Task 8.

11.2. Individuals flagged for verification are verified and assigned a support level. Typically, HSRI coordinates with state staff to advise and facilitate verification of responses. This ordinarily involves reaching agreement about how individual responses requiring

verification will be identified and reviewed, and how the final results will be documented. In this instance, we understand that the Department may want HSRI to take a stronger role in the process, even leading it. This will need to be discussed and settled on to assure a smooth, timely, and conflict-free verification process. Verified individuals support levels will also be housed in a portal.

Task 12: Establish and validate service mixes by support level and living setting.

The purpose of this task is to reach agreement on what total amount of service may be utilized, by support level. The leveling framework provides an opportunity for policy makers to adjust funding levels based on policy goals and anticipated service usage of any altered or new services. While developing the budget guidelines, HSRI will work with the Department to consider the balance between achieving policy goals and minimizing disruption for service recipients. These expectations are then used to establish associated budget values for each level. Four activities are planned:

12.1. Examine historical utilization patterns by support level. To inform these budget calculations, HSRI first examines historical utilization patterns by level and service type as described within Task 6. Throughout the process, proposed service amounts for each support level will be compared to existing utilization patterns to determine impacts from the end user, provider, and systems perspective.

12.2. Work with the Department to establish service mixes. Next, HSRI will work with the Department to establish preferred service use expectations per level and residence type. The resulting service mixes or "packages" will be designed to meet the needs of individuals in each level. Note, however, that:

- These mixes will include "base services" that are commonly utilized by members within each support level. Unique supports, such as clinical therapies or one-time expenses (e.g., assistive technology, episodic behavioral consultation) are not accounted for within the "base budget" and are accommodated one-person-at-a-time within the planning process or during the year as warranted.
- Community residential services (e.g., group homes) may be included in the mix simply to show the availability of support 365 days per year, but individuals living in group homes will not be permitted to freely move resources from this service category to boost hours in another. These resources are advisably locked and reserved for the community residence provider.

The service packages are composed of assumptions related to service utilization in a number of categories, which may include clinical services, day services, residential services, respite, and transportation. Utilization assumptions will be based on both historic use patterns, adjustments to rates, and the Department's policy judgments. These assumptions will vary based upon level of need and other factors affecting budget such as residential placement and geography. Throughout the process, proposed service packages will be compared to existing utilization patterns to determine impacts from various perspectives.

12.3. Conduct an impact study of the recommended system changes. In this activity, the project team will estimate the fiscal impact of the prospective service mixes. This will be accomplished by considering the cost of each service package with regard to the number of people who will be assigned each package. Doing so allows the team to project the cost of implementing the service packages. Given these findings, DHW may choose to adjust packages to ensure they fall within the available department budget.

12.4 Conduct a pre-implementation review to validate service packages and other key aspects of the framework. After establishing these budget guidelines, we propose to apply the model to a number of individuals and utilize the input of selected informants in Idaho to see if the draft service packages will be sufficient for the individuals to access needed services.

For this purpose, HSRI developed a team-based review process and has used it effectively in other jurisdictions. In this process, four to five teams of experienced professionals (usually state staff, but may also include advocate representatives and providers) are established and spend one week conducting comprehensive case reviews of individuals receiving services. The number of individuals selected depends on the framework established and typically involves 120-200 individuals The process involves a systematic template that guides teams through a series of questions related to support needed, available services, and the level framework.

The project team will work with the Department leadership to:

- Identify teams to participate in the review.
- Provide consultation on preparation for the review, including guidance regarding the contents of each case record.
- Select service recipients whose case records will be reviewed.
- Finalize the template used within the review process and training materials.
- Meet with individuals participating in the pre-implementation review to outline the approach.
- Lead the on-site review process.
- Review results, produce report summarizing results and making recommendations for changes to the levels, service packages, and/or other elements of the framework.

A successful process will require a competent and well-regarded review team, complete case records, and each individual's supports budget level assignment. We have found this qualitative analysis to be a valuable method of identifying areas for improvement prior to implementation that adds confidence to the final supports budget model. In the past, this has also provided additional information about the service system. Case reviews have in the past revealed overutilization of one-to-one as opposed to shared supports, the extent to which natural supports are or are not used, and areas requiring increased training for case

managers. Once this review is complete, will have an opportunity to make final adjustments to the support budget model.

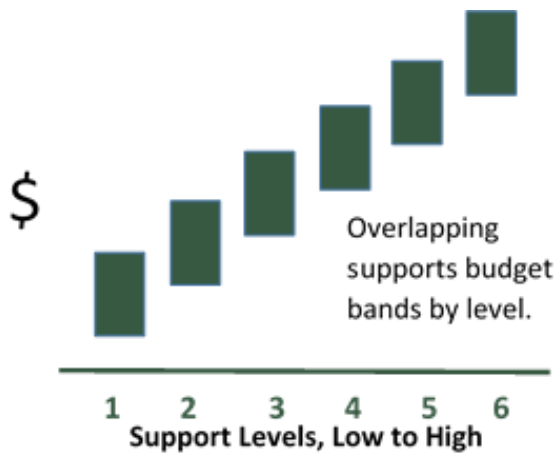
Task 13: Establish framework for assigning supports budgets by support level and residence type.

The purpose of this task is to establish a "Personal Supports Budget Table" that will illustrate an individual's personal support budget by support level and type of residence.

The cells within the table will be possible to populate once the service mixes developed through Task 12 are completed. It should be noted that:

Support Level	Home with Family	Supported Living	Host Home	Community Residence
1				
2				
3				
4				
5				
6				

- The supports budgets shown in the table will reflect a budget for "base" services only. These are services commonly utilized by individuals per support level. The table will not illustrate "add-on" services (e.g., clinical therapies) that may be allocated separately through the personal supports planning process or due to necessity during the year.
- The personal supports budgets may not always be shown as a fixed amount, but sometimes may illustrate a "budget band" or range. DHW will decide at a later date whether a fixed amount or "budget band" better meets the needs of their system.
- It is likely that for some services, such as group homes or community day facilities, the rates of reimbursement will be fixed. Meaning, these service providers will be paid predictable amounts so this portion of the budget will not fluctuate. Other parts of the budget, especially for those living home with family, may have more flexibility embedded, affording individual's greater leeway in how their dollars are spent. In a system where "budget bands" are utilized, it is possible to allow a wider budget range which overlaps to some degree level-to-level (see graphic on the right for a hypothetical example).



4. Tasks to Develop Complementing Infrastructure (Tasks 14-18)

Task 14. Conduct a systems impact study of the prospective changes pertaining to the HCBS waiver and IT management.

In this task, the impacts of the prospective system changes will be identified as well as the actions necessary to implement the changes. Specifically, the review will target: (a) waiver terms and conditions and (b) claims processing and other information technology requirements. The project team will carefully review each area and make recommendations regarding any changes that may be necessary.

14.1. Review the existing HCBS waiver agreement, identify potential changes that may be required to ensure compliance with CMS approved waiver. A waiver amendment will likely be necessary to accommodate level-based supports budgets, changes to provider rates, appeals policies, and other minor updates relevant to the implementation of a support budget framework. The project team will identify these areas and make specific recommendations, drawing on its experience as well as approved waivers in other jurisdictions.

Changes to policies and procedures (See Task 15) will flow from the waiver changes. Areas which will likely require updates include: policies related to exceptions from the proposed supports budget framework, the individual support planning process, and updated points of appeal. While guidance varies as to when in the process appeal rights are mandated, it is clear that issuance of fair hearing rights is necessary at multiple points. The project team will work with DHW to establish policy and practice which meets its obligations.

14.2. Review claims processing and other information technology requirements. Another operational area that will likely require updates relates to claims processing and other automated systems. The project team will help to identify any need for changes like the addition of procedure code modifiers to accommodate new rate structures, or processes to incorporate support budgets into authorizations to ensure that claims remain within the budget. The project team will review information technology processes and make recommendations, but is not proposing to provide programming support.

Task 15: Finalize individualized supports budget policies, including the exceptions review protocol, re-assessment application review, and appeals procedures.

The purpose of this task is to work with DHW to form or revise the policies or administrative rules that must be put into place in advance of implementation. For instance, policy or rule may be required pertaining to:

- Describing of the supports budget framework, how it works, and how budget determinations are made.
- When and how a reassessment may be requested, the process by which a determination will be made, and the timeline for doing so. Associated forms must also be constructed and made available.
- Timelines for service recipients, including when assessments are planned, notification of supports budgets, and how budgets affect planning.
- An exceptions review process to allow for special consideration to meet specific individual needs.

- A service user's pathway for appealing actions taken by the state regarding the type and amount of services initially made available to them.

Overall, HSRI seeks to explore with the Department various adjustments to infrastructure that may be required, and support development of needed policies, associated forms, and protocols. Necessarily, this will also require communication with, and training for, affected DHW staff.

15.1. Identify with DHW the policies and operational rules that must be formed or revised. HSRI will facilitate discussion with DHW staff regarding what policies and rules, such as those noted above, that must be formed or revised.

15.2. Work with DHW to ensure that needed policies and administrative rules are established. HSRI will coordinate with the Department to prepare the necessary policies and rules, but also the associated forms and protocols.

15.3 Prepare an Operations Guide. This guide will be developed to document the policies and rules enacted by DHW to back the personal supports budget framework.

15.4. Provide training on the new policies and rules to selected DHW staff. Training will need to be provided to selected DHW staff consistent with the Operations Guide. This will include direct instruction regarding many topics in the guide, as well as participative learning through role-play and scenarios. We anticipate that such training will involve face-to-face instruction, but also use of distance learning strategies such as webinars.

Task 16: Review and modify the supports planning protocol to include a prospective personal supports budget within the planning process.

One application associated with assessing support need involves using the information generated from the assessment to inform individual supports planning. In this regard, it should be understood that assessment results should not be used as a template to fashion support plans, but instead used to inform discussions pertaining to that plan.

This may be achieved in at least three ways. First, simply participating in an assessment will likely influence planning discussions because people may recall the questions asked and the responses that were given. Second, while people attending planning sessions often know the individual well, the assessment results establish benchmarks for support needs within the team across a great many topics. Finally, the assessment may require discussion on topics that may not be ordinarily covered during a planning session, and the results may carry over to the planning session. Examples include discussion on employment or relationships.

These potential benefits to assessing support needs may be overlooked (or assumed) by policy makers seeking to establish supports budgets based on assessment. Our experience suggests that later success in implementing the new funding models will be, in part, tied to how individuals and their families view the assessment and its utility. As a result, we advise that the Department take systematic action to assure that the assessment results are integrated into the service planning process.

The purpose of this task is to undertake actions so that this may be achieved. To succeed, these activities will be undertaken:

16.1. HSRI will work with the Department to understand the routine that is followed to develop an individual support plan. This includes understanding of the underlying intentions of the planning process, case manager responsibilities, and the mechanics of how the plan is compiled. Next, HSRI will identify and share with the Department particular points at which assessment information can be integrated into the planning process, and the Department will decide how the assessment results will be integrated. Finally, adjustments to the planning process will be decided upon and integrated into the supports planning process.

16.2. Establish an integrated supports planning calendar and budget calculator. Integrating the personal supports budget into the plan will likely involve developing a means to calculate the supports budget in real time in accordance with the services selected by the individual. Such a process will promote greater self-direction and understanding of how the supports budget is incorporated into the plan. HSRI is developing an Integrated Supports Planning Calendar tool. This web-based application provides a framework for guiding development of individual support plans that is based in person-centered LifeCourse[3] principles. It provides means for planners and participants to describe a typical week for the individual and the supports that will be needed, including both paid and unpaid supports. These supports may include:

- *Personal self-support* - when a person is on his or her own and without assistance from others.
- *Relational Supports* - for when the individual receives support from family or friends.
- *Paid eligibility specific* - IDD services that are provided to the individual through the supports budget and other services that are added on (e.g., personal assistance, day services, assistive technology).
- *Community based supports* - provided by community serving organizations, businesses, or other public services the person may use.
- *Technology based support*- for times when the individual can be supported by technology instead of staff supports.

Overall, the calendar will reveal supports budgets per person as part of the service planning process so that the impacts of planning decisions on supports budgets may be immediately viewed. This application would need to be fitted to circumstances in Idaho, including embedding the present service array, potential living options, and service packages into the calendar.

Task 17: Provide training to case managers.

Case managers play an essential role to the success of the project. For service recipients and their families, case managers will be perceived as the "face" of the initiative. Further, they will remain responsible for ensuring the health and safety of HCBS waiver recipients,

[3] http://supportstofamilies.org/resources/lifecourse-toolkit/

building support plans, and otherwise seeing to it that individuals receive the services they need. Given knowledge of prospective support budgets in advance of service planning, case managers will also have greater opportunity to help the individuals they support take greater charge of their lives.

In response to these challenges the purpose of this task is to ensure that case managers are prepared to help the project kick off smoothly, that individuals they serve are fully informed of the choices available to them, and that they can respond to changing conditions carefully and confidently.

17.1. Prepare case manager training materials. It is essential to prepare training and resource materials for case managers. One options is a case manager guide. This guide will be developed to be consistent with the "Operations Guide" and will include many of the same elements, however in simpler and more direct language. The following information will likely be included:

- Explaining the supports budgets to people with IDD and their families,
- Policies and procedures pertaining to re-assessment, exceptions review, and appeals,
- Preparedness for changes to the service planning process to account for the introduction of the supports budget,
- Strategies for managing changes in budgets,
- Promoting personal authority in using the supports budget and,
- Information pertaining to the integrated supports budget calendar.

17.2. Deliver planned training to case managers. Training should be delivered to case managers consistent with the Case Manager Guide. This will include direct instruction regarding the several topics in the guide, but also participative learning through discussion, role-playing, and scenarios. We anticipate that such training will involve face-to-face training, as well as use of distance learning strategies such as webinars.

Task 18: Prepare complementing materials.

The purpose of this task is to consider the sum of the changes DHW is planning, as described to this point with the Operations and Case Managers Guides and prepare a series of summary 1-3 page handouts that succinctly describe these changes. These summaries will: (a) provide DHW staff and case managers with quick reviews of the changes planned that will inevitably be consistently be used as "talking points" across the state, and (b) provide DHW with materials that it may send to service recipient and their families or others as needed. For instance, some of these materials may be included in informational packets sent families upon implementation.

18.1. Identify with DHW the summary handouts that will be prepared. HSRI will decide with DHW staff what summary sheets will be prepared.

*18.*2. Prepare the summary sheets. Summary sheets will be prepared related to the changes DHW plans, and the supporting policies and rules that will be enacted.

5. Task to Communicate with Stakeholders (Task 19)

Task 19: Establish practices to assure stakeholder engagement.

All understand the importance of good communication with stakeholders and the necessity of framing intentions and actions in ways to inform and garner support. As a result, the purpose of this task is to help DHW describe its effort effectively by framing it in positive ways to explain to stakeholders why these system changes are needed, what the change process entails, how new protocols will be implemented, and what effects are intended. In addition, the communications effort should also afford stakeholders opportunities to provide feedback so that policy decisions may be revised accordingly.

Toward these ends the stakeholder engagement plan will require DHW to:

- Develop and positively frame their **message** behind the goals and purpose for the system change and what the change process will entail.
- **Distribute** information to stakeholders, including service recipients and their families, advocacy organizations, regional office staff, and providers, to describe and gather input about the changes DHW seeks.
- Actively **engage** stakeholders to speak directly with constituency leaders, gain insight into the impact of the changes, problem-solve perceived issues, and build common cause among stakeholders consistent with the efforts.
- Create a learning community or *community of practice* where all can **learn together** about the changes underway, how new practices can be best implemented, and provide opportunities for stakeholders to support one another.

HSRI has considered a variety of means related to the planned system changes that are designed to educate stakeholders, keep them informed of the subsequent implementation activities, and gather feedback. The following activities are planned:

19.1. Develop products that are consistent the overall intentions DHW has regarding system redesign (i.e., its goals, driving principles, operational plans and activities). Developing consistent products ensures that all stakeholders understand the project and are prepared to act in accordance with the changes to come. This requires that DHW:

- Develop a <u>standard aesthetic look</u> (format, color scheme, templates) to be used by staff for all materials produced (website design, brochures, fact sheets, articles, memos, etc.) pertaining to the changes.
- Prepare <u>culturally competent printed media</u> made available and comprehensible in the native languages of the individuals receiving services, including <u>handouts</u> that can be used at meetings or presentations, <u>briefs</u> to propose and address frequently asked questions, a <u>brochure</u> that DHW may distribute on their efforts, and <u>PowerPoint presentations</u>.
- Design (or re-design) of a series of <u>web pages</u> that can be integrated into the present DHW website. On these pages, visitors can learn about the effort, view and

download related materials, be directed to complementing resources and who to contact for more information.

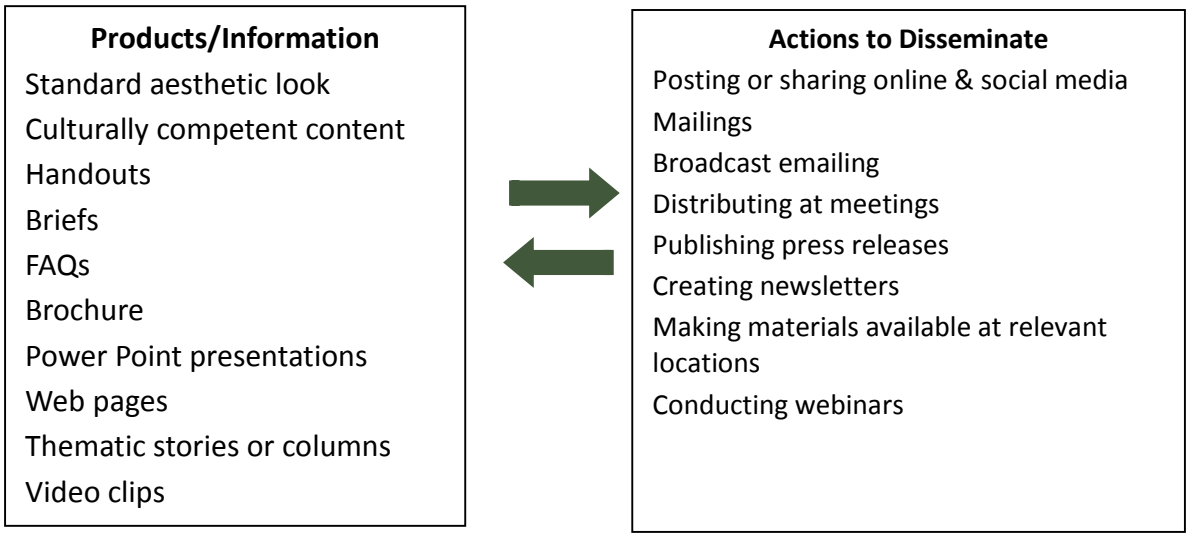
- Prepare and distribute thematic stories or columns that DHW may insert into its newsletter and/or disseminate to other organizations to include in their newsletters.
- Links from DHW websites to video clips where viewers can learn about the system redesign (e.g., interviews of DHW staff, animated explanations of the redesign) uploaded on DHS' website and on social media.

19.2. Distribute materials. Individuals must be made aware of the changes to come, and how they will impact both their lives and work. This is achieved in a variety of ways including:

- Distributing printed materials by mailings, mass email, at meetings, press releases, display of materials in newsletters, having materials made available at selected locations (e.g., regional offices, provider association locations, and local advocacy group offices).
- Posting information and resources online (including meeting notices and minutes) at DHW's website and on social media.
- Convening public forums across the state to present information on the planned system redesign, answer questions, and seek feedback
- Conducting webinars to inform stakeholders about DHW's efforts.

The accompanying graphic illustrates the products that might be developed and the multiple means that might be applied to disseminate them.

Potential Product and Distribution



19.3. Engage stakeholders directly with the systems changes. Building on the previous activities, stakeholders are engaged directly to gather their input, answer questions, and hear from those affected by the changes. In this regard, DHW may:

- Meet regularly with representatives of chief constituencies. The frequency of these meetings is negotiable depending on project pace and urgency of stakeholder participation, quarterly is advisable to start.
- Meet face-to-face with representatives of key advocacy and trade associations.
- Present at selected stakeholder meetings, such as quarterly or annual gatherings of advocacy groups or trade associations.

19.4. Establish learning communities to support and maintain mutual learning. Success in implementing a supports budget framework eventually requires new actions from all involved.

- *Individuals with IDD* will have greater control over the supports they receive, but also greater responsibility to make decisions about what is needed.
- Similarly, *families* of people with IDD will have greater opportunity and responsibility to make choices over the type and amount of services that are received, but also to build an array of unpaid supports around a loved one to promote community inclusion.
- *Case managers* will have greater opportunity to help the individuals take charge of their lives, but also responsibility to help create integrated supports plans that balance individual goals or aspirations with an assurance of health and well-being of the individual.
- *Providers* will need to reexamine their business models in light of a systems approach that emphasizes community inclusion and personal choice.

As a result, it is clear that DHW will enhance its chances for success by establishing *learning communities* for various stakeholders so that they are better prepared to take on their new roles. Most simply, a learning community is a group of people who share common values or beliefs, and are actively engaged in learning together from each other. In this instance, the "learning" is targeted at the successful implementation of the changes DHW plans. In addition, as groups of participants come together and share their experiences, their learning may be fed back to DHW leadership so that it may adjust the supports budget approach accordingly. Overall, this approach provides for a platform of mutual learning and systems improvement all around.

In the present context, HSRI acknowledges the potential for resistance among some stakeholders to the changes DHW seeks to make. Rather from shying from the challenges such resistance may present, establishing learning communities to provide positive opportunity for stakeholders to participate in the change offers a desirable alternative.

A popular way to begin is to take the measure of participants' expectations, positive or negative, of the proposed DHW changes including the opportunities seen and the topics participants want to cover. With such information, subsequent meetings of the learning communities may be planned and carried out.

6. Tasks to Implement and Evaluate the Framework (Tasks 20- 22)

Task 20: Establish an implementation plan and execute it.

The purpose of this task is to establish precisely how the how the supports budget framework will be rolled out. Building the plan includes the following activities.

20.1. Identify with DHW the particular decisions that must be made and the steps that must be taken. At a minimum, this will include:

- Deciding on whether to implement as of a certain date, and to immediately move everyone into the new model, or to phase individuals in based upon their annual plan date. We advise phasing in by each person annual plan date.
- Ensuring that individuals are assigned supports budgets prior to their planning meeting
- Deciding how individuals and their families will be notified of their supports budgets, but also how others will be notified (e.g., case managers, providers).
- Preparing letters of notification for individuals and their families, including means for populating these letters with appropriate information per person, and sending these letters when appropriate.
- Ensuring that letters are sent on time, and that service planning meetings are held as scheduled in accordance with the requirements of the HCBS waiver.
- Preparing case managers and DHW staff for responding to inquiries once these letters are sent.
- Outlining changes in roles for states staff and other stakeholders, as well as new roles associated with the project.
- Defining infrastructure adjustments that are required to manage a support budget framework.
- Detailing long-term responsibilities for managing the supports budget model.

20.2 Completing a readiness review in advance of roll-out. In advance of implementation, DHW staff and case managers need to be ready to implement the supports budget framework. Though many previously completed activities will have helped to prepare these individuals to participate in a successful roll out, DHW should conduct a readiness review to be sure that all relevant parties are prepared to implement.

To this end, a "Readiness Checklist" can be prepared and used to determine if the state is prepared to launch the supports budget framework. When needed, corrective plans will be prepared and enacted to ensure that DHW has a successful roll out.

20.3: Implement the plan. DHW will initiate the plan and begin rolling out the supports budget framework.

20.4. Design and execute "Responsibilities Transfer Plan." As the project approaches roll out, DHW and HSRI will meet to: (a) assess what roles HSRI is playing within the context of managing or guiding the supports budget framework, (b) decide on a plan for transferring many, if not all, such responsibilities from HSRI to DHW.

HSRI acknowledges the strong role it may play in assisting DHW with this effort. But with time, DHW will advisably seek to minimize HSRI's role in favor of the role its own staff plays. DHW, for example, may seek to manage its own communications effort or training for case managers. Other functions, however, may stay with HSRI for an extended period, such as managing the information portal. This activity is meant to provide opportunity for DHW and HSRI to definitively plan on how the initiative is managed post-implementation.

Task 21: Establish and initiate evaluation plan

The purpose of this task is to evaluate the impact of the supports budget framework. . The evaluation will focus on the intention of the effort, which is to establish supports budgets in accordance with assessed support needs. Reviewing the information available, including spending patterns in the year after implementation, will help DHW to make data based decisions and sharpen its approach.

HSRI will have available a variety of information, including data per person related to the roster of service recipients, supports needs data, support level assignment, assigned support budget, and historical service use patterns. Moreover, as the supports budget framework rolls out, HSRI will be able to gather subsequent service use and spending data. This will allow the Department to view the framework across these data elements:

- Baseline usage and spending—The amount of services that individuals have used in the previous fiscal year. This information will be reflected in the individual's claims files.
- Authorized individual support budgets—This is the amount that is actually authorized after exceptions requests have been taken into account.
- Service used and actual expenditures—This is the amount of services that are actually used within an annual period and their cost.

As the data are collected, means must also be established to review these data, transforming the results into information that may inform subsequent decisions by DHW leadership. This requires a purposed analysis plan to:

- Determine differences across the data elements, past expenditures, the anticipated supports budgets, service requests, authorizations, and eventually actual spending.
- Review the variance between high and low service users by supports budget and determine whether the variance has tightened.
- Query for specific services that are frequently requested, but not accounted for within the service packages.

- Query by level for approved requests greater than the targeted amount allowable within the supports budget.
- Estimate the number of people who are likely to request an exceptional review based on exceptional needs.

For such an evaluation DHW will need to:

- Develop an operational plan for collecting and storing the data that is required across all five data elements.
- Develop an analysis plan consistent with the inquiries noted above, including report outputs desired by DHW leadership.

Cost Considerations

The preceding work plan includes a number of decision points and alternatives that DHW must choose between. Depending on the choices that the Department makes at any given point, the scope of the engagement will change, and sometimes significantly so. A key decision, for instance, pertains to what assessment too the Department selects. Similarly, as the nature of the information available for the project reveals itself, the amount of effort required to execute a task could also significantly change. As a result, we cannot propose a firm, fixed price for our services under the engagement.

To start, we recommend that HSRI be compensated for time and materials per task, albeit with agreement per task regarding the scope of work required and division of responsibility between HSRI and DHW. In this way the Department will know what resources to set aside with each group of tasks as the project moves along. As decisions are made the overall scope of work will grow clearer and improved cost estimates will be possible. At that time, it may be preferable to detail a more precise scope of work and associated budget.

Organizational Capacity and Staffing

The Human Services Research Institute will be primarily responsible for completing the above describe work. We do, however, team with staff at Burns & Associates to complete work associated with expenditure analyses. Each organization is described below along with associated staff profiles.

Human Services Research Institute

The Human Services Research Institute (www.hsri.org), a national non-profit, tax-exempt corporation, was founded in 1976 to improve the availability and quality of supports for children and adults with disabilities and other vulnerable populations. HSRI staff strongly support efforts to improve community-centered responses to human needs, leading to service approaches that are family and person-driven and most apt to result in increased independence and self-sufficiency among service recipients in the fields of developmental disabilities, mental health, physical disabilities and child welfare. HSRI has two geographic locations, one in

Cambridge, MA and the other in Tualatin, OR. The HSRI work for this project will be staffed and managed by the Tualatin office.

Much of HSRI's experience lies in providing specialty consultation services to policy makers and state agencies interested in establishing budget allocations for people with intellectual and developmental disabilities. Our work in this area across many jurisdictions in both the United States and Canada has honed our understanding of how to undertake this work. We are confident that with the support of state staff and analysts, the HSRI team can complete this review in a timely manner. HSRI assigns the following staff to the project, though it may assign others, including others serving in consulting roles from other organizations, as warranted:

- **John Agosta, Ph.D**. is a Vice President of HSRI and will serve as Project Director. John completed his doctorate in Rehabilitation Research at the University of Oregon, specializing in research methods and community supports for people with disabilities, and has worked with people with disabilities for nearly 40 years. Employed at HSRI since 1983, he has worked under contract with state and federal agencies on a variety of projects focusing on community integration for people with disabilities. He is a nationally recognized expert in topic areas such as family support, self-directed supports and community-based support systems for individuals with intellectual and developmental disabilities. Regarding resource allocation, he has been involved with nearly all efforts at HSRI surrounding this topic, including work in 10 states, including Georgia, and two Canadian provinces.
- **Jami Petner-Arrey, Ph.D.,** is a Policy Associate at HSRI. She conducts research and provides consultation services to help states develop individualized supports budgets. Prior to joining HSRI, Jami earned her doctorate in special education from the University of New Mexico with an emphasis on advocacy, social justice, and public policy.
- **Alena Vazquez, J.D., M.S.W**., is a Policy Analyst with HSRI. She works on projects that focus on strategic planning, home and community-based services, and systems redesign centered on establishing individualized supports budges for service recipients. Prior to joining HSRI, Alena worked at state protection and advocacy agencies Disability Rights Oregon and Equip for Equality, as a developmental disabilities support services personal agent in Oregon, and as an independent living specialist with a center for independent living in Iowa.
- **Yoshiko Kardell, M.S.W.**, is a Policy Associate with HSRI and will serve as Stakeholder Engagement Coordinator for this project. She has a graduate degree in Social Work from Portland State University and an undergraduate degree in Social Work from the University of Nebraska - Omaha. At HSRI, she coordinates projects related to strategic planning, self-advocacy, and supporting families with members with IDD. She has several years of experience working for people with disabilities including providing direct support and state level advocacy. Ms. Kardell enjoys working with self-advocates and families to ensure their view and input is part of the resource allocation planning.

- **Colleen Kidney, Ph.D**., is a Policy Associate at HSRI. She conducts research and evaluation related to establishing supports budgets. She earned her Ph.D. in Applied Community Psychology and Research Methodology from Portland State University. Specialty study areas included Structural Equation Modeling, Multiple Regression and Multivariate Methodology, Psychometrics, Research Design, and Survey Methodology.
- **Brittany Taylor, MSSW**, is a Policy Analyst with HSRI. Her work focuses on data collection and analysis as well as strategic planning in service systems for individuals with disabilities. Prior to joining HSRI, Brittany completed a master's of science in social work at Columbia University, where she focused her studies on social enterprise administration as a Management Fellow. She received her bachelor's degree in English from Reed College.
- **Megan Villwock, M.S.W., M.P.H.,** is a Research Analyst at HSRI. She provides data management and analysis support for a variety of projects related to establishing supports budgets, as well as an evaluation of Colorado's Title IV-E Waiver and a Regional Partnership Grant in Summit County, Ohio. Prior to joining HSRI, she completed a community health fellowship in Alaska, where she conducted an evaluation of the behavioral health system in the Matanuska-Susitna Borough. She has also designed and conducted several community-based research and evaluation projects in California and Michigan. Megan earned a Master of Public Health degree and a Master of Social Work degree from the University of Michigan. She also holds a Bachelor of Arts in psychology and anthropology from the University of Michigan.

Burns & Associates

Burns & Associates, Inc. (B&A) is a health care consulting firm that specializes in assisting state governments and private entities develop customized, innovative approaches to the financing and delivery of health care and human services (www.burnshealthpolicy.com). B&A's specialties include strategic planning, financial model development, evaluation and audit, rate setting, and support of operations of health care programs. B&A's principals have been involved in the full cycle of public programs in more than 20 states from conceptualization, financing, implementation, and subsequent evaluation. B&A assigns the following staff to the project, though it may assign others as warranted:

- **Stephen Pawlowski, M.B.A.** Stephen has more than ten years of experience in human services operations and financing, budget development, and government affairs and has been with B&A since 2009. One of his particular focuses during his time with B&A has been assisting states in restructuring their home and community based services programs for individuals with developmental disabilities, including rate-setting and the development of resource allocation systems that set individual budgets based on levels of need. Prior to joining B&A, Stephen was the Chief Financial Officer for the Arizona Department of Economic Security (DES), which, among other responsibilities, is responsible for Arizona's developmental disabilities programs.

EXHIBIT 2

H&S Criteria

C. Definitions for Health and Safety.

1. The Department shall adopt the following definitions of "health" and "safety":

a. Health is the prevention of deterioration of one's physical or mental health condition or cognitive functioning, or an increase in maladaptive behavior, and is related to the effects of one's disability.

b. Safety is the prevention of criminal activity, destruction of property, or injury or harm to self or others.

2. The Department shall apply the following to adult DD participants and applicants in order to satisfy the "health" and "safety" standard:

a. Safety risks must be documented by the following: (1) current incident reports; (2) police reports; (3) assessments from a licensed practitioner of the healing arts as defined by IDAPA 16.03.10.521.14 or a professional licensed by the State of Idaho and whose assessment is within the scope of his or her license; or (4) status reports and implementation plans that reflect the type and frequency of intervention(s) in place to prevent the risk and the participant's progress under such intervention(s). Such documentation must establish: (1) an imminent or likely safety risk; and (2) the specific supports or services that are being requested (including the type and frequency, if applicable) that are likely to prevent that risk.

b. Health risks must be established through written documentation and current treatment recommendations from a licensed practitioner of the healing arts as defined by IDAPA 16.03.10.521.14 or other professional licensed by the

State of Idaho whose recommendation is within the scope of his or her license. Such documentation must establish: (1) the current physical or mental condition or cognitive functioning that will likely deteriorate, or the current maladaptive behavior(s) that will likely increase; and (2) the specific supports or services being requested (including type and frequency, if applicable) that will address the identified need. In order to comply with the documentation requirement, the Department may require the participant to obtain additional consultation or assessment, available to the participant and covered by Medicaid, from a professional licensed by the State of Idaho acting within the scope of his or her license. If the Department requires additional consultation or assessment, the Department will specify the nature of the consultation or assessment and the necessary documentation.

c. Services and supports that are identified to address health and safety risks:

i. Must be consistent with Department rule, including the Department's prior authorization criteria defined in IDAPA 16.03.10.507, 16.03.10.508.14, and 16.03.10.508.16-19; and

ii. Cannot duplicate other services available or provided to the participant; and

iii. Cannot be primarily for the economic benefit or convenience of the participant's provider(s) or caretaker(s);

iv. Cannot be experimental or cosmetic; and

v. Must be the most cost effective treatment, remedy, support, or Medicaid coverage available to the individual to reasonably address the health or safety risk (e.g., accessible non-paid supports or other Medicaid coverages). If the Department requires specific documentation from the participant in order to determine whether the requested services or supports are the most cost effective treatment, remedy, support or Medicaid coverage available to reasonably address the health or safety risk, the Department will request and consider such documentation from the participant.

d. In addition to the documentation requirements above, the supports or services to address a health or safety risk must be identified through the participant's person centered planning team and requested and agreed to by the participant or the participant's decision making authority (as defined in the pending rule IDAPA 16.03.10.311.01-04).

e. All supports and services identified to address health and safety risks must be medically necessary, as defined in IDAPA 16.03.10.012.14.

EXHIBIT 3

SIB-R Acknowledgment

ACKNOWLEDGMENT REGARDING SIB-R RESPONSE BOOKLET

1. Participant requests the following: (check a box)

   ☐ A full copy of Participant's SIB-R Response Booklet(s);

   ☐ Only pages_____of Participant's SIB-R Response Booklet(s).

2. The Idaho Department of Health and Welfare believes that all parts of the SIB-R Response Booklet(s) that I am requesting are protected by law and cannot be used in violation of applicable law, including copyright law. The Department also believes that that disclosure of the SIB-R Booklet (or individual questions and responses) may undermine the value and usefulness of the SIB-R instrument.

WARNING ABOUT COPYRIGHT RESTRICTIONS

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, the Department is authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research" or other "fair use" under copyright law. If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

For example, the SIB-R Response Booklet(s) can be used to prepare for and assist the Participant during administrative proceedings and litigation, such as an appeal of the Participant's budget.

3. I,_____[printed name of the requesting party], am: (check a box)

☐ A participant in the Department's Medicaid Developmental Disabilities Waiver Program; or

☐ Authorized by Participant to request and receive a copy of his or her SIB-R Response Booklet(s).

By signing below, I acknowledge that I have received and read the notices and warnings above.

IF AN AUTHORIZED REPRESENTATIVE REQUESTS THE SIB-R RESPONSE BOOKLET(S), THE PARTICIPANT MUST SIGN BELOW.

Participant, by signing below, states that he or she is the person requesting a copy of his or her SIB-R Response Booklet(s), or that the person below is authorized to request and receive a copy of Participant's SIB-R Response Booklet(s):

Date:_____
Signature of Participant: _____

Signature of Participant's Authorized Representative Who is Requesting Participant's SIB-R Response Booklet(s):

Date:_____
Signature of Authorized Representative:_____

EXHIBIT 4

Budget Notice

REGULAR ANNUAL KW BUDGET NOTICE – WAIVER AND NON WAIVER – PREVIOUS KW BUDGET IS THE HIGHEST THE PARTICIPANT HAS EVER RECEIVED

DATE THAT THE NOTICE WILL BE MAILED

(Participant Name)
(Mailing Address)
(City, State, Zip)

Dear (Participant's Name):

You have qualified for developmental disability (state plan) (waiver) services for this year.

Effective _____ (insert plan year start date), your budget is $_____ for the plan year period _____ ("Calculated Budget"). Your budget is $_____ higher/lower than the budget calculated for you last year. You may ask for an appeal to review (or change) your Calculated Budget. However, because this Calculated Budget is lower than the highest budget amount that you have had since June 30, 2011, your Calculated Budget will be increased to that amount: $_____. The increase is required by a court order in *K.W. v. Armstrong*, No. 1:12-cv-00022-BLW (D. Idaho).] You may ask for an appeal to review (or change) your Calculated Budget.

At this point, you need to either submit a service plan or mail a completed Appeal Request Form.

If you <u>agree</u> with the Calculated Budget:

Submit a service plan to the Idaho Department of Health and Welfare (the "Department") by _____(insert deadline date). Your services must be no more than $_____ (insert budget dollars).

If you <u>disagree</u> with the Calculated Budget:

You may appeal and request a hearing. To appeal and request a hearing at this time, fill-out and send the **Appeal Request Form** (the next page) **within 28 days of this Notice, by** _____ (insert due date). Send the Appeal Request Form to the Department at the address listed. **If you fill out and send the form by _____(insert due date) your current services will stay the same until a decision is made about your Appeal.**

You may argue your case yourself, or have an attorney or another person of your choice to represent or help you. If you are not sure about how well you can argue your case, you should have an attorney or another person help you.

If the decision is that the calculation was correct the Department may try to recover the cost of any extra services provided. 42 CFR § 431.230(b).

Instead of appealing your Calculated Budget within 28 days, you may also submit a service plan to the Department by _____(insert deadline date). If the cost of your requested services in your proposed plan exceeds the Calculated Budget, you may appeal and

request a hearing asking to change the amount of your Calculated Budget when you submit your plan to the Department.

If you have any questions regarding this Notice, please contact the Department at (208) 334-5747 or the Independent Assessment Provider at the number listed below.

Sincerely,

Independent Assessment Provider (insert telephone number)
cc: Guardian
Plan Developer or Support Broker

Appeal Request Form

Fill-out this form completely and send it within **28 days** if you want to appeal your Budget.

I wish to appeal by requesting a hearing for (insert participant name) because (fill out extra pages if necessary):

_____

_____

_____

Participant Signature Date

1. Check one box below if you want help with this appeal.

___ I will handle the appeal on my own.

___ I want someone to help with my appeal. I want _____ ("Appeal Assistant") to help me through the appeal [include name and relationship to you]. His/her address and phone number is:

_____

___ **I want help with my appeal but do not have anyone to help me. Immediately contact:**

Idaho Department of Health and Welfare: (208) _____

ACLU of Idaho: (208) 344-9750 extension 1202

The ACLU of Idaho cannot directly help with you with your appeal. But they monitor to make sure everyone who wants help can get help.

2. If you have listed someone who will help you in this appeal, they must sign below to show that they agree to help you:

Appeal Assistant Signature: _____ Date: _____

3. *Get training to help with the appeal.* Below is information about free training for you or your Appeal Assistant. The training is about how to handle an appeal. If you or your Appeal Assistant have questions about handling an appeal, call (208) _____. [training hotline number]

4. *Submit documents to show a health or safety need.* In order to get a higher budget, you must show that you have a health or safety need. The health and safety criteria for requesting a higher budget are on a separate sheet in this envelope. If you meet the criteria, submit your documentation to the Department at the address below within 20 days. Your Appeal Assistant can help you with this.

5*. Get more information. Check the boxes below for the information you want:*

___ I want copies of the Individualized *Budget Calculation* tool used to calculate my budget for the following budget years _____ (fill in budget years). *The Department may not have copies of the budget calculation tools prior to 2008.*

___ I want the Adult Developmental Disabilities Individualized Budget Model Analysis related to the Department's budget calculating methodology.

___ I want a copy of my Scales of Independent Behavior-Revised ("SIB-"R") materials.

___ I want copies of other documents related to this case or in my file, including but not limited to:

Mail or fax the completed Appeal Request Form to:

Administrative Procedures Section
Department of Health and Welfare
450 West State Street
PO Box 83720-0036
Boise, ID 93720-0036
Phone: (208) 334-5564 FAX: (208) 334-6558

Training to help with your appeal:

[INFORMATION ABOUT WHERE AND HOW TO ACCESS THE TRAINING WOULD GO HERE]

Why Your Budget Has Changed From Last Year

Your budget has changed because of a combination of the following:

1. If the chart below is filled out, then there were changes in your *Scales of Independent Behavior* ("SIB-R") score and/or changes in the responses to your *Inventory of Needs* ("IIN") that changed your Calculated Budget. Your "Respondent" gave the answers for your SIB-R and IIN. Your Respondent this year was: _____.
2. For more information about these changes, see the Cover Sheet and other documents attached to this Notice. Or contact the Department at (208) 334-5747. The changes that affected your Calculated Budget were:

Question	Summary of Question	Last year's response	This year's response	How this change affected your Calculated Budget	The reason for this change is because:
					□ Your answers to the IIN or SIB-R changed from last year to this year and (check one): □ The assessor observed this change □ Your assessor verified this change (if this box is checked, the assessor must provide an explanation) □ Explanation of verification: _____ _____ □ Other reasons (i.e., other than changes to the IIN and SIB-R) (if this box is checked, the assessor must provide an explanation at the bottom of this page)
					□ Your answers to the IIN or SIB-R changed from last year to this year and (check one): □ The assessor observed this change □ Your assessor verified this change (if this box is checked, the assessor must provide an explanation) □ Explanation of verification: _____ _____ □ Other reasons (i.e., other than changes to the IIN and SIB-R) (if this box is checked, the assessor must provide an explanation at the bottom of this page)

3. This year, you received the _____ (upper, mid, or lower) level of your budget. But, last year you received the _____ (upper, mid, or lower) level of your budget. For a more in-depth explanation regarding how level changes happen, please see the attached Cover Sheet. (*Delete this part if no level change*)

4. Other reasons: (*assessor must explain if applicable*)

Attached Documents:

1. *Cover Sheet* - explanation of your budget calculation (1 page)

2. *Health and Safety criteria* - criteria for requesting a higher budget (3 pages)

3. Attachment 1 - This year's *Inventory of Needs* responses (2 pages) and *Individualized Budget Calculation* (3 pages)

4. Attachment 2- Last year's *Inventory of Needs* responses (2 pages) and *Individualized Budget Calculation* (3 pages)

5. Attachment 3 - *Report of Adaptive Behavior Testing* from your most recent SIB-R test (4 pages)

For More Information:

The documents in this envelope include all the information that was used to calculate your Budget. More information, including citations to the laws and regulations affecting your Budget include:

1. Federal regulations about appeals, prompt and accurate responses: Code of Federal Regulations, Title 42, sections 431.200 through 431.246
2. Idaho laws related to disabilities:
   a. Idaho Code sections 66-402(5) and 56-255(3)(e)(ii)
   b. Intermediate Care Facilities for People with Intellectual Disabilities—Medicaid Enhanced Plan rules (Idaho Administrative Code 16.03.10.584)
3. Medicaid Enhanced Plan rules (Idaho Administrative Code 16.03.10)
4. Consumer-Directed Services HCBS Waiver rules (Idaho Administrative Code 16.03.13)
5. Annual Assessment and Calculated Budget Notification Regulations: Code of Federal Regulations, Title 42, section 441.302(c), and Idaho Administrative Code 16.03.10.514 and 16.03.13.190
6. Federal regulations about repayment of benefits: Code of Federal Regulations, Title 42, section 431.230(b)
7. A blank *Inventory of Needs* showing all of the possible responses or explanations in the Inventory is available for your review as well as the *Inventory of Needs* worksheet that was filled out by the assessor during this year's assessment.

   Code of Federal Regulations: http://www.ecfr.gov
   Idaho Code: https://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm
   Idaho Administrative Code ("IDAPA"): https://adminrules.idaho.gov/rules/current/

Help in understanding your budget calculation or these statutes or rules is always available through the Department of Health and Welfare, 3232 Elder Street, Boise, Idaho (208) 334-5564.

COVER SHEET
Understanding Your Individualized Budget Calculation

Attached are documents that explain how we calculated your *Calculated Budget* for the upcoming plan year. An assessor met with you or your representative (called your "Respondent") earlier this year. The assessor used the information from this meeting to complete the *Inventory of Needs*. The assessor used the *Inventory* to complete the *Budget Calculation.* This *Budget Calculation* uses a mathematical formula to create your *Calculated Budget* for the upcoming plan year. The Budget Tool Methodology uses a mathematical model including multiple variables. You can request more detailed information about the Department's current Budget Tool Methodology.

Steps Completed to Calculate Your Budget for the Upcoming Plan Year:

1. Assessor met with you and your representative [family member(s), caregiver(s), provider(s), or other representative(s)]. Questions to your Respondent, observations and a review of your file were used to complete *Inventory of Needs.*
2. Assessor puts two results from *Scales of Independent Behavior-Revised* interview into *the budget tool*.
3. Assessor puts results of *Inventory of Needs* into the *Budget Calculation* formula that calculates your annual budget.
4. A formula calculated your budget level (Upper, Mid, or Lower)

Budget levels (Upper, Mid, or Lower) keep your budget from suddenly jumping too far up or down. If your budget jumps down a lot in one year, you will get the Upper level budget to lessen the decrease. If your budget jumps up a lot in one year, you get the Lower level budget to lessen the increase.

If you are on the Traditional Path, you will get an Upper level budget if your budget would have gone down by more than 25%, or the Lower level budget if your budget would have gone up by more than 25%. If you are on Self-Direction, you will get an Upper level budget if your budget would have gone down by more than 50% or the Lower level budget if your budget would have gone up by more than 50%.

To see how much your budget would have gone down, look for the Mid level budget amount on Attachment 1, your budget spreadsheet from this year. Subtract your Previous Year's Budget ("PYB" on the spreadsheet) from your Mid level budget amount to calculate how much your budget would have gone down. Then divide that number by your Previous Year's Budget ("PYB") and multiply by 100 to see the percent increase or decrease.

Traditional Path Participants	Self-Direction Participants
Upper Level = Any percentage lower than -25% (negative 25%) **Mid Level** = -25% (negative 25%) up to 25% (positive 25%) **Lower Level** = Any percentage higher than 25% (positive 25%)	**Upper Level** = Any percentage lower than -50% (negative 50%) **Mid Level** = -50% (negative 50%) up to 50% (positive 50%) **Lower Level** = Any percentage higher than 50% (positive 50%)

If you have questions or concerns about your Budget Calculation or any other attached document you may contact the Department at (208) 334-5747.

EXHIBIT 5

Order to Terminate

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

K.W., by his next friend D.W., *et al.*, Plaintiffs, vs. RICHARD ARMSTRONG, in his official capacity as Director of the Idaho Department of Health and Welfare, *et al.*, Defendants.	)	Case No. 1:12-cv-00022-BLW (lead case) **ORDER ADMINISTRATIVELY TERMINATING CLASS ACTION CLAIMS**
TOBY SCHULTZ, *et al.*, Plaintiffs, vs. RICHARD ARMSTRONG, in his official capacity as Director of the Idaho Department of Health and Welfare, *et al.*, Defendants.	)	Case No. 3:12-cv-00058-BLW

The parties have negotiated a stipulated settlement agreement which this Court has approved. That settlement agreement, attached, is hereby incorporated in full (including all of the settlement agreement's attachments) into this Order.

Pursuant to the terms of the parties' settlement agreement, the parties shall resolve any and all claims, disputes, or other matters in controversy arising out of the settlement agreement, or the breach, implementation, or performance of it, according to the procedures set forth in the settlement agreement. If, after negotiating in good faith and following those procedures, the parties are unable to reach a resolution, any party may file an appropriate motion with the Court in this matter.

The parties' settlement agreement is contingent upon the Idaho Department of Health and

Welfare receiving adequate funding, appropriations approvals, and authority from the Idaho Legislature and necessary approvals from the Centers for Medicare & Medicaid Services. Pursuant to the terms of the parties' settlement agreement, if any of those conditions fail to be met, the Plaintiffs retain all rights to enforce the terms of the settlement agreement, to enter into enforcement proceedings, or to withdraw their consent to the settlement agreement and revive any claims otherwise barred by operation of the settlement agreement. If any of the conditions fail to be met and the Plaintiffs elect to revive their claims, this case shall be returned to active status and the Defendants shall retain all rights, and all defenses shall be revived.

The parties' settlement agreement requires the Defendants to submit to this Court for approval a final plan to regularly test the Idaho Department of Health and Welfare's new resource allocation model and a final plan outlining processes and/or procedures regarding suitable representatives. The Defendants may file a motion for approval of either or both of those plans at any time. The settlement agreement further attaches a Budget Notice to be used during the Bridge Period, which the Court hereby approves as complying with due process.

The parties' settlement agreement does not affect or limit Plaintiffs' ability to move for leave to file amended or supplemental pleadings in this case outside the scope of the settlement agreement or not subject to the dispute resolution procedures in the agreement; or to file any other lawsuit, or to move for consolidation of any other lawsuit with this one, outside the scope of the settlement agreement or not subject to the dispute resolution procedures in the agreement; or to raise any claims for relief regarding future acts or omissions of Defendants outside the scope of the settlement agreement or not subject to the dispute resolution procedures in the agreement.

The parties' settlement agreement sets forth how and when the agreement shall terminate.

Upon termination of the settlement agreement pursuant to the settlement agreement's terms, the Plaintiffs' existing class action claims (claims for relief 1 through 6 in the Plaintiffs' amended complaint (Dkt. 148)) shall be dismissed with prejudice.

IT IS HEREBY ORDERED that based upon the stipulated settlement agreement, the Clerk of Court shall administratively terminate the class action claims (claims for relief 1 through 6 in the Plaintiffs' amended complaint (Dkt. 148)) in the above-entitled action in the Court records, without prejudice to the right of the parties to reopen the proceedings pursuant to the terms of the settlement agreement or this Order, for good cause shown for the entry of any stipulation or order, or for any other purpose required regarding implementation. Therefore, the class action claims are hereby terminated administratively, and this Court hereby retains jurisdiction over the class action claims to supervise and enforce the terms of the stipulated settlement agreement. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

IT IS HEREBY FURTHER ORDERED that the Budget Notice attached as Exhibit 4 to the parties' settlement agreement filed in this case is hereby approved, and the terms of the preliminary injunction entered in this case on March 25, 2014 in the Court's Memorandum Decision and Order (Dkt. 130) is vacated.

IT IS HEREBY FURTHER ORDERED that upon termination of the settlement agreement, the class-wide claims contained in counts 1 through 6 of Plaintiffs' Amended Consolidated Class Action Complaint (Dkt. 148) shall be dismissed with prejudice.

The individual claims, contained in counts 7 through 10 in Plaintiffs' amended complaint (Dkt. 148), remain unresolved and are set to proceed to trial in this matter.

//end of text//