IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 92-2062 M/P**
	)	
STATE OF TENNESSEE, ET AL.,	)	
	)	
Defendants,	)	
	)	
PEOPLE FIRST OF TENNESSEE, PARENT-GUARDIAN ASSOCIATION OF ARLINGTON DEVELOPMENTAL CENTER,	)	
	)	
Intervenors.	)	

JOINT MOTION OF PLAINTIFF UNITED STATES OF AMERICA, INTERVENORS-PLAINTIFFS PEOPLE FIRST OF TENNESSEE, AND DEFENDANTS STATE OF TENNESSEE, ET AL., AND COMBINED MEMORANDUM IN SUPPORT, TO APPROVE EXIT PLAN AND ENTER AGREED ORDER

COMES NOW Plaintiff United States of America (the "United States"), Plaintiffs-Intervenors People First of Tennessee, Inc. ("People First"), and Defendants State of Tennessee, et al., (the "State") (collectively, the "United States", "People First", and the "State" shall be referred to as the "Movants"), by and through counsel of record, to file this motion seeking approval of the Exit Plan (attached as Exhibit 1) and entry of a proposed Agreed Order (attached as Exhibit A to the Exit Plan). In support of this Unopposed Joint Motion, Movants would show the following.

On August 11, 2011, the State filed an Amended Motion to Vacate All Outstanding Orders and Dismiss the Case. (Docket Entry ("D.E.") 2737). The United States and People First both filed responses in opposition to the motion to vacate. (D.E. 2741; D.E. 2742). Following a two day evidentiary hearing, the submission of closing briefs, and final arguments by counsel, on September 4, 2012, this Court entered an Order Denying Defendants' Amended Motion to Vacate and Dismiss (the "Order"). (D.E. 2901).

In the Order, the Court directed the parties to enter into "mediation with the Magistrate Judge to develop 'objective and measureable exit criteria for the dismissal of this action.'" *See* the Order, pp. 37-38. Subsequently, the Court referred the mediation to United States Magistrate Judge Diane K. Vescovo. (D.E. 2904). Beginning on September 24, 2012, and continuing through the remainder of 2012, the Movants engaged in mediation before Judge Vescovo in numerous in-person sessions conducted in September, October, November and December, as well as telephone conferences and written exchanges of proposals over this same period of time. The mediation involved very intense negotiations on behalf of the Plaintiff by counsel for the United States, on behalf of the Class by counsel for People First, and on behalf of Defendants by counsel for the State.

Ultimately, the Movants were able to negotiate an Exit Plan and a proposed Agreed Order approving the Exit Plan. Both the Exit Plan and the proposed Agreed Order are attached as Exhibit 1 to this pleading for the Court's review and consideration. As the Court will see, the Exit Plan sets forth objective and measurable exit criteria that, together with the proposed Agreed Order, provides for the dismissal of this action with prejudice upon the State's satisfaction of those criteria. The Movants respectfully submit that they have fulfilled the Court's directive to mediate exit criteria, set forth in its Order of September 4, 2012, and

negotiated at arms' length the attached Exit Plan and Agreed Order. Accordingly, the Movants urge this Court to approve the Exit Plan and enter the Agreed Order.

Finally, while PGA did not participate in the mediation process, both the Exit Plan and proposed Agreed Order have been shared with its counsel and leadership. PGA's counsel has advised counsel for the United States that PGA takes no position in regard to either document, or the Movants' proposed resolution of the case.

Conclusion

For the foregoing reasons, the U.S., People First and the State respectfully urge this Court to grant the Motion and enter the proposed Agreed Order.

January 9, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January 2013, a true and exact copy of the foregoing has been forwarded by the Court's Electronic Filing System to:

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Little Rock, AR 72205

Nancy Ray, Ed.D.
Court Monitor
NKR & Associates, Inc.
318 Delaware Avenue
Delmar, NY 12054

/s/ Jonathan P. Lakey

EXIT PLAN

The United States of America, People First of Tennessee, and the State of Tennessee (the "State") (collectively, the "Parties") hereby agree upon the objective and measurable exit criteria set forth in Sections II through VII of this Exit Plan for the vacatur of all outstanding injunctive relief and the dismissal of the lawsuit currently pending in the United States District Court for the Western District of Tennessee under the caption *United States of America v. State of Tennessee, et al.*, No. 92-2062.

Section I – General Terms

A. Agreed Order. Upon the execution of this Exit Plan, the parties will promptly file a joint motion asking the Court to enter an Agreed Order (a copy of which is attached as Exhibit A). All of the obligations that the State has agreed to undertake in Sections II through VII of this Exit Plan are contingent upon the entry of the Agreed Order. If the Court does not enter the Agreed Order attached as Exhibit A, without modification, on or before February 1, 2013, the State shall have no obligations whatever under this Exit Plan.

B. The State's Pending Appeal. Within 10 days after the Court enters the Agreed Order referenced in Section I.A., the State shall ask the Sixth Circuit Chief Mediator to administratively hold in abeyance the appeal currently pending in the United States Court of Appeals for the Sixth Circuit under the caption *United States of America v. State of Tennessee, et al.*, No. 12-6177 (the "Appeal"), pending the implementation of this Exit Plan. If, and only if, all outstanding injunctive relief is vacated and the lawsuit is dismissed with prejudice, the State shall seek a voluntary dismissal of the Appeal.

C. Time Period for Implementing Sections II through VII. Except as otherwise specifically provided in Sections II through VII of this Exit Plan, the State agrees to implement

the obligations set forth in Sections II through VII of this Exit Plan no later than December 31, 2013, *provided however*, any failure to complete an obligation required to be completed by a date prior to December 31, 2013 shall not be deemed to constitute a failure to satisfy a material provision of this Exit Plan so long as the obligation is satisfied on or before December 31, 2013. The time period for completing the obligations set forth in Sections II through VII of this Exit Plan may be extended pursuant to Paragraph 7 of the Agreed Order referenced in Section I.A.

D. **Authority.** Undersigned counsel warrant and represent that have the authority from their respective clients, the United States of America, People First of Tennessee, and the State of Tennessee, to agree to the terms of this Exit Plan.

E. **Attorneys' Fees.**

1. The State agrees that People First of Tennessee is a prevailing party for purposes of any attorneys' fee petition filed pursuant to 42 U.S.C. § 1988 seeking fees and expenses for work done after September 4, 2012 in connection with the mediation before Magistrate Judge Vescovo and the negotiation and implementation of this Exit Plan.

2. In regard to all remaining attorneys' fees incurred and/or claimed by People First of Tennessee that are not subject to Section I.E.1. above, including those attorneys' fees relating to the motions that are the subject of the Appeal, those attorneys' fees that are the subject of the appeal pending in the United States Court of Appeals for the Sixth Circuit under the caption *United States of America v. State of Tennessee, et al.*, Nos. 12-6258 and 12-6341, and any additional attorneys' fees sought for activities undertaken since November 15, 2009, and for which fees have not already been paid (collectively the "Remaining Claimed Fees"), the State and People First agree to enter into non-binding mediation on or before February 25, 2013 relative thereto. If the State and People First fail to reach resolution of the Remaining Claimed

Fees, in whole and/or in part, through mediation, People First will then be permitted to seek attorneys' fees through available legal remedies, and the State shall be permitted to assert any and all available defenses in response thereto.

Section II – Intake Process for Potential New At-Risk Class Members

A. Eligibility for class membership

1. As part of Settlement Negotiations and Mediation discussions, the parties have agreed on a list of 182 persons who will be reconsidered for membership in the at risk portion of the *Arlington* Class (the "List"). The individuals on the List are set forth in the attached Exhibit B. The persons on the List shall hereinafter be referred to as "Potential Class Members." The process by which the Potential Class Members will be considered for Class Membership is set forth in the provisions of the Intake Process for the At-Risk *Arlington* Class (the "Process").

2. As part of the Process, and in order to be eligible for Class Membership, each of the Potential Class Members will be reviewed by the State to determine whether all of the following are true for that individual:

a. Does not have a denied PAE for Intermediate Care Facilities for Individuals with Intellectual Disabilities ("ICF/IID") (i.e., ICF/MR) level of care on or after September 11, 2007, with the sole exception that PAE denials prior to January 1, 2013, will not cause the exclusion of the following three individuals for reconsideration under the Process: Virginia C.; Dorothy R.; and, Mary S.;

b. Is not enrolled, and/or does not become enrolled during the Process, in a Section 1915(c) waiver for persons with Intellectual Disabilities;

c. Has a qualifying institutional stay, as described in the 2006 Settlement Agreement;

d. Resided in West Tennessee on October 27, 2010;

e. Is a resident of Tennessee;

f. Is not deceased;

g. Is not incarcerated; and

h. Meets Medicaid medical (i.e., level of care) and financial eligibility criteria for ICF/IID services.

3. If at any time in the Process, the State determines that a Potential Class Member does not satisfy the requirements set forth in the preceding subparagraph (Section II.A.2.), the State will provide to the Parties via email transmission the name of the Potential Class Member(s), along with the Section II.A.2 criteria the Potential Class Member(s) fails to meet pursuant to the provisions set forth below (see Section II.A.4.a through II.A.4.g).

4. At the outset of and/or throughout the Process, the following steps shall be taken by the State relative to Sections II.A.2 and II.A.3:

a. The TennCare PreAdmission Evaluation System ("TPAES") and the paper workcard history which pre-dates the implementation of the electronic workflow system are the system of record regarding PreAdmission Evaluation ("PAE") (i.e., level of care or medical) eligibility determinations. TennCare has reviewed some of and will continue to review these records for each Potential Class Member to determine whether a PAE has been previously denied for ICF/IID level of care. If it is determined that any Potential Class Member(s) has a previously denied ICF/IID PAE, the State will provide to the Parties via e-mail transmission the name of the Potential Class Member, or list of Potential Class Members, for whom there is a previous denial, including the date of such denial. The first business day following the transmission date of the notification e-mail shall be referred to as the "Prior Denied PAE Notice Date." The Parties will

have 30 calendar days from the Prior Denied PAE Notice Date to submit to the State proof that the Potential Class Member did not have a prior denied ICF/IID PAE. If, within 30 calendar days from the Prior Denied PAE Notice Date, the Parties fail to provide the State with proof that the Potential Class Member did not have a prior denied ICF/IID PAE, the Potential Class Member(s) shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process. If the Parties provide proof within the 30 day period, the State shall consider it in good faith and issue a determination relative to the same within fourteen (14) days. If the State's determination continues to be that the Potential Class Member has a prior denied ICF/IID PAE, it will notify the Parties via e-mail transmission of such determination, and the Parties shall have seven (7) days to contest that determination pursuant to Section II.A.4.i below. If the Parties do not contest the determination within seven (7) days, the Potential Class Member(s) shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

b. The State and the Parties have already removed for consideration individuals who were determined to be in a Section 1915(c) waiver for persons with Intellectual Disabilities and those persons were purposely excluded from the List. If the State determines that any other Potential Class Members are enrolled, or become enrolled during the Process, in a Section 1915(c) waiver for persons with Intellectual Disabilities, the State will provide to the Parties via e-mail transmission the name(s) of the Potential Class Member(s), including the specific waiver in which the person is enrolled and the services currently authorized as shown within the Department of Intellectual and Developmental Disability ("DIDD") Community Services Tracking system. The first business day following the transmission date of the

notification e-mail shall be referred to as the "Enrolled In Services Notice Date." The Parties will have 30 calendar days from the Enrolled In Services Notice Date to submit to the State proof that the Potential Class Member is not enrolled in waiver services. If, within 30 calendar days from the Enrolled In Services Notice Date, the Parties fail to provide the State with proof that the Potential Class Member is not enrolled in services, the Potential Class Member(s) shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process. If the Parties provide proof within the 30 day period, the State shall consider it in good faith and issue a determination relative to the same within fourteen (14) days. If the State's determination continues to be that the Potential Class Member is enrolled in waiver services, it will notify the Parties via e-mail transmission of such determination, and the Parties shall have seven (7) days to contest that determination pursuant to Section II.A.4.i below. If the Parties do not contest the determination within seven (7) days, the Potential Class Member(s) shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

c. DIDD will review all documentation obtained by the at-risk team prior to closure of the Arlington Developmental Center, or compiled and added during the Process, (the "At-risk Records") in order to confirm that each Potential Class Member had a qualifying institutional stay, as described in the 2006 Settlement Agreement. The State will provide to the Parties via email transmission a list of all Potential Class Members for whom there is no confirmation of a qualifying institutional stay. The first business day following the transmission date of the notification email shall be referred to as the "No Qualifying Institutional Stay Notice Date." The Parties will have 30 calendar days from the No Qualifying Institutional Stay Notice Date to submit to the State proof of a qualifying institutional stay for any Potential Class

Member. If, within 30 calendar days from the No Qualifying Institutional Stay Notice Date, the Parties fail to provide the State with proof of a qualifying institutional stay, such Potential Class Members shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process. If the Parties provide proof within the 30 day period, the State shall consider it in good faith and issue a determination relative to the same within fourteen (14) days. If the State's determination continues to be that the Potential Class Member does not have a qualifying institutional stay, it will notify the Parties via e-mail transmission of such determination, and the Parties shall have seven (7) days to contest that determination pursuant to Section II.A.4.i below. If the Parties do not contest the determination within seven (7) days, the Potential Class Member(s) shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

d. DIDD will review the At-risk Records in order to confirm that each Potential Class Member resided in West Tennessee on October 27, 2010. The State will provide to the Parties via email transmission a list of all Potential Class Members who did not reside in West Tennessee on October 27, 2010. The first business day following the transmission date of the notification email shall be referred to as the "Non-Resident of West Tennessee Notice Date." The Parties will have 30 calendar days from the Non-Resident of West Tennessee Notice Date to submit to the State proof of residency in West Tennessee on October 27, 2010 for any Potential Class Member on the list. If, within 30 calendar days from the Non-Resident of West Tennessee Notice Date, the Parties fail to provide the State with proof of residency in West Tennessee on October 27, 2010, such Potential Class Member(s) will be removed from the Potential List and shall be finally and forever ineligible for membership in the at-risk *Arlington* class. If the Parties

provide proof within the 30 day period, the State shall consider it in good faith and issue a determination relative to the same within fourteen (14) days. If the State's determination continues to be that the Potential Class Member was not a resident of West Tennessee on October 27, 2010, it will notify the Parties via e-mail transmission of such determination, and the Parties shall have seven (7) days to contest that determination pursuant to Section II.A.4.i below. If the Parties do not contest the determination within seven (7) days, the Potential Class Member(s) shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

e. Potential Class Members currently enrolled in TennCare or receiving Food Stamps or Families First assistance will be presumed to be current Tennessee residents. TennCare will review the MMIS and DHS Accent System to confirm enrollment in these programs. Potential Class Members not enrolled in these programs will be asked, pursuant to Section II.F.1.b.(i)(A) below, to provide proof of current Tennessee residency as part of the Process. The proof presented in this regard on behalf of the Potential Class Member must be sufficient, as determined by the State, to establish the Potential Class Member's current Tennessee residency. This may include, but is not limited to, any of the following in the Potential Class Member's name or in the name of a family member or other person with whom the Potential Class Member resides, along with a signed attestation from that person that the Potential Class Member lives at the specified address: a lease or rental agreement or payment receipt, a mortgage loan or payment receipt, property tax statement or utility receipt. If at any time during the Process, however, the State finds evidence that the Potential Class Member is not a Tennessee resident, the State will provide to the Parties via email transmission the name(s) of any such Potential Class Members. The e-mail identifying the Potential Class Member(s) will

also include the nature of the proof of current residency in another State (e.g., receiving Medicaid in another State). The first business day following the transmission date of the notification email shall be referred to as the "Non-Current Resident of Tennessee Notice Date." The Parties will have 30 calendar days from the Non-Current Resident of Tennessee Notice Date to submit to the State proof of current residency in Tennessee for any Potential Class Member on the list. If, within 30 calendar days from the Non-Current Resident of Tennessee Notice Date, the Parties fail to provide the State with proof of current residency in Tennessee, such Potential Class Members shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process. If the Parties provide proof within the 30 day period, the State shall consider it in good faith and issue a determination relative to the same within fourteen (14) days. If the State's determination continues to be that the Potential Class Member is a resident of another State, it will notify the Parties via e-mail transmission of such determination, and the Parties shall have seven (7) days to contest that determination pursuant to Section II.A.4.i below. If the Parties do not contest the determination within seven (7) days, the Potential Class Member(s) shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

f. The State will review all available information to identify Potential Class Members who are deceased. The State will provide to the Parties the name(s) of all Potential Class Members who are found to be deceased through review of that information or otherwise, including the date of death. Such Potential Class Members shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

g. The State has limited information available to confirm when a person is incarcerated. If, at any point during the Process, information is received confirming that a Potential Class Member is incarcerated, the State will use reasonable efforts to notify the Parties via e-mail transmission within five (5) business days thereof, including the facility in which the person is incarcerated ("Incarceration Notice"). Unless the Parties notify the State within thirty (30) days following the date of the Incarceration Notice that the Potential Class Member is no longer incarcerated, such Potential Class Member will be removed from the List and shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process. In the event that class counsel or any other Party provides information, within the required 30 day period, demonstrating that the Potential Class Member is no longer incarcerated, the Potential Class Member may continue in the Process but in no event will the Potential Class Member receive or be entitled to any tolling or extension of any deadline in the Process as a result of his/her incarceration and/or the Incarceration Notice.

h. The process for determining whether a person meets Medicaid medical (i.e., level of care) eligibility for ICF/IID services shall proceed in accordance with federal and state law and regulation. The process for determining whether a person would meet Medicaid financial eligibility shall be conducted in conjunction with the Department of Human Services, using the same eligibility criteria and requirements that will be applied should the person be enrolled into the at-risk *Arlington* class and apply to receive waiver services.

i. In the event that the Parties disagree with the State's determination that a Potential Class Member is ineligible for Class Membership by operation of the provisions of Sections II.A.4.a through II.A.4.e, the sole and exclusive avenue to contest the State's determination shall be by appeal to Magistrate Judge Vescovo under a standing Order of

Reference. In the event that such a dispute arises, the Parties agree that it will be submitted to Judge Vescovo in accordance with expedited procedures she establishes. The Magistrate Judge's ruling regarding this dispute will be final and the parties hereby waive their rights to file an Objection with the District Court.

B. Assignment of an Intake Case Manager

1. DIDD will assign to each Potential Class Member on the List, an Intake Case Manager.

2. The Intake Case Manager will be the primary contact for the Potential Class Member (and his or her conservator or healthcare contact, if known and applicable) during the at-risk intake process. While the Intake Case Manager will assist Potential Class Members (and their conservators or healthcare contacts, as applicable) as described above, it is the responsibility of the Potential Class Member (or his or her conservator or healthcare contact) to submit the information needed by the State to determine eligibility for enrollment in the at-risk *Arlington* class, and neither the State nor the Intake Case Manager shall be responsible for any failure by the Potential Class Member (or his or her conservator or healthcare contact, if applicable) to timely submit such information.

C. At-risk records review

1. The assigned Intake Case Manager will review the At-risk Records of each assigned Potential Class Member to identify additional information needed by the State to determine eligibility for membership in the at-risk *Arlington* class.

2. The assigned Intake Case Manager will document and track information needed by each assigned Potential Class Member, and a checklist of needed information will be

included with the notice mailed to each Potential Class Member (and his or her conservator or other healthcare contact, if known and applicable) as described in detail in Section II.F below.

D. Introductory Notice

1. DIDD will issue to each Potential Class Member and his or her conservator or healthcare contact, if known and applicable, an "Introductory Notice" in the form attached hereto as Exhibit C.

2. The address to which the Introductory Notice is sent shall be as follows:

a. For Potential Class Members who are enrolled in TennCare, the current address in the MMIS to which all TennCare mailings are sent as prescribed under State law;

b. For Potential Class Members who are not enrolled in TennCare, their last known address in the At-risk Records or, if different, to the address supplied by the Court Monitor pursuant to Section II.E.1 below.

E. Phone contacts with Potential Class Members

1. The Court Monitor shall, within 14 calendar days of the execution of the Exit Plan, provide the State with a list of all available contact information for Potential Class Members (and their Conservators or healthcare contacts, if applicable).

2. Unless a call is received from the Potential Class Member (or his or her conservator or healthcare contact, if applicable) in response to the Introductory Notice, the assigned Intake Case Manager will attempt to call each Potential Class Member (and/or his or her conservator or other healthcare contact, if known and applicable) using each and every contact number that is provided by the Court Monitor, or contained in the Potential Class Member's At-risk Records or in the TennCare Medicaid Management Information System ("MMIS") until:

a. The person being sought is reached;

b. The number is determined to be a non-working or incorrect contact number for the person being sought; or

c. At least three attempted contacts have been made to any number not confirmed to be non-working or incorrect for the person being sought.

3. If a call is received from the Potential Class Member (or his or her conservator or healthcare contact, if applicable) in response to the Introductory Notice, or if the assigned Case Manager **is** able to reach the Potential Class Member (or his or her conservator or other healthcare contact, if known and applicable):

a. Using a script in the form attached hereto as Exhibit D, the assigned Intake Case Manager will:

(i) Advise that the Potential Class Member will be given another opportunity to provide the information necessary to be evaluated for membership in the Arlington class;

(ii) Describe the benefits of being a member of the *Arlington* class, including the right to enroll in a waiver program and to receive Home and Community Based Services ("HCBS");

(iii) Identify the person-specific information still needed by the State to determine eligibility for enrollment in the at-risk *Arlington* class, which may include, as applicable:

- Proof of current Tennessee residency;
- Required documentation or evidence needed by TennCare to determine whether the person would meet Medicaid

medical (or level of care) eligibility for ICF/IID services; and

- Required documentation or proof needed by DHS to determine whether the person would meet Medicaid financial eligibility criteria;

(iv) Advise that the Potential Class Member (and his or her conservator or other healthcare contact, if known and applicable) will be receiving a letter, described and defined below as the NOA, that identifies the specific information the Potential Class Member must provide to the State and the timelines within which such information must be received by the State;

(v) Advise that the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) must submit to DIDD all information required by the State to determine eligibility for membership in the at-risk *Arlington* class, i.e., 90 calendar days from the date the NOA is mailed, but may request, prior to expiration of the 90 calendar day period, a one-time 30-day extension if needed to gather the information (*see* Section II.G below).

b. The Potential Class Member's (and/or his or her conservator's or other healthcare contact's) current mailing address(es) and phone numbers will be verified and updated in the At-Risk Record.

4. If the assigned Intake Case Manager is **not** able to reach the Potential Class Member (or his or her conservator or other healthcare contact, if known and applicable), the State will provide to the Parties via email transmission the identity of each Potential Class Member the State was not able to reach, along with all available contact information for the Potential Class Member (and his or her conservator or other healthcare contact, if known and

applicable). The first business day following the transmission date of the notification email shall be referred to as the "Unable to Reach Notice Date." The Parties will have 30 calendar days from the Unable to Reach Notice Date to attempt to contact the Potential Class Member (or his or her conservator or other healthcare contact, if known and applicable) and to provide the State with a more current mailing address. If, within 30 calendar days from the Unable to Reach Notice Date, the Parties fail to provide the State with a more current mailing address, a Notice of Opportunity to Apply to Become a Member of the At-Risk *Arlington* Class ("NOA") mailed in accordance with Section II.F below shall satisfy the State's obligation regarding notice of opportunity to apply for enrollment in the at-risk *Arlington* class.

F. Notice of opportunity to apply to become a member of the at-risk *Arlington* class

1. DIDD will issue the NOA, in the form attached hereto as Exhibit E, to each Potential Class Member and his or her conservator or healthcare contact, if known and applicable.

2. The address to which the NOA is sent shall be as follows:

a. The address confirmed in the phone contact by the State;

b. For Potential Class Member the State was Unable to Reach who are enrolled in TennCare, the current address in the MMIS to which all TennCare mailings are sent as prescribed under State law;

c. For Potential Class Members the State was Unable to Reach and who are not enrolled in TennCare, their last known address in the At-risk Records or, if provided, to the address provided by the Parties.

3. The NOA will include:

a. A checklist of person-specific information still needed by the State to determine eligibility for enrollment in the at-risk *Arlington* class, which may include, as applicable:

(i) Proof of current Tennessee residency;

(ii) Required documentation or evidence needed by TennCare to determine whether the person would meet Medicaid medical (or level of care) eligibility for ICF/IID services, including a list of the types of evidence the State will consider as part of determining whether the Potential Class Member has proven MR prior to age 18; and

(iii) Required documentation or proof needed by DHS to make a preliminary determination regarding whether the person would meet Medicaid financial eligibility criteria.

b. For Potential Class Members who need a psychological evaluation, a list of qualified providers the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) may contact to obtain the psychological evaluation in a timely manner, including:

(i) TennCare MCO participating providers for Potential Class Members currently enrolled in TennCare; and,

(ii) DIDD participating providers for Potential Class Members not currently enrolled in TennCare.

c. For Potential Class Members enrolled in TennCare, the psychological will be billed to and reimbursed by the MCO if obtained from a participating provider. For Potential Class Members **not** enrolled in TennCare, the psychological will be billed to and reimbursed by DIDD if obtained from a DIDD provider.

d. For Potential Class Members who need a current history/physical, the Potential Class Member (or his or her healthcare contact, if known and applicable) will be advised to contact his or her primary care physician ("PCP") to obtain a copy of a history and physical performed within the last year, or if one has not been performed within the last year, to schedule an appointment for a history and physical. For persons who may not have a PCP, a list of Federally Qualified Health Centers will be provided. Potential Class Members on TennCare will be advised to contact their MCO if they need assistance in identifying their PCP or arranging an appointment. For Potential Class Members enrolled in TennCare who have not had a physical in the last year, the service will be covered by TennCare. For Potential Class Members not enrolled in TennCare, the Potential Class Member, his or her conservator, or the Potential Class Member's insurance, as applicable will be responsible for payment of the history/physical.

e. The deadline by which the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) must submit to DIDD all information required by the State to determine eligibility for membership in the at-risk *Arlington* class, i.e., 90 calendar days from the date the NOA is mailed, and how to request, prior to expiration of the 90 calendar day period, a one-time 30-day extension if needed to gather the information (see Section II.G below).

f. A form, in the form attached hereto as Exhibit F, that will permit the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) to indicate he or she does not want to apply for membership in the *Arlington* at-risk class.

4. A copy of each NOA in electronic format will be provided to the Parties by the State.

G. Timeline for submission of information needed to determine eligibility for enrollment in the at-risk *Arlington* class

1. The Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) will have an initial period of 90 calendar days from the date of the NOA to submit to DIDD copies of all information required to determine eligibility for enrollment in the at-risk *Arlington* class.

2. The Case Manager will be required to contact the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) at least once every forty-five day period during the period of time beginning with the transmission of the NOA and ending when (a) all required information required under this Process has been provided, or (b) the time period for providing the information has expired, or (c) the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) has signed a form indicating that he/she does not want to be apply for membership in the *Arlington* class. If, and only in the event that there has been no other verbal communication between the Case Manager and the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) during the 45 day period, the Case Manager will initiate phone contact with the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) by placing a call, and if there is no answer leaving a message (if possible) requesting a return call, to offer to answer any questions the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) has regarding the Process.

3. The Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) may, prior to the expiration of the initial 90 calendar day period, request a one-time extension of 30 calendar days to gather the information. Such request must be submitted in writing to the address specified in the NOA and received by the State prior to

expiration of the initial 90 calendar day period. If a request for a 30-day extension is received by the State within the initial 90 calendar day period, such extension will be granted. The 30 calendar days will be added to the initial 90 calendar day period for a total of 120 calendar days from the NOA to submit information needed to determine eligibility for enrollment in the at-risk *Arlington* class.

4. The State will provide to the Parties via email transmission the identity of each Potential Class Member requesting a 30-day extension, and the new 120-day deadline (inclusive of the initial 90 calendar day period and the one-time 30 calendar day extension). The Parties may assist Potential Class Member (or their conservators or other healthcare contacts, if known and applicable) in submitting the information needed to determine eligibility for membership in the at-risk *Arlington* class.

5. Except as provided in Section II.H below, if within 90 calendar days from the mail date of the NOA, or within 120 calendar days from the mail date of the NOA when a one-time 30-day extension has been granted, a Potential Class Member fails to submit to the State the information needed to determine eligibility for the at-risk *Arlington* class, such Potential Class Member shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

H. Setting a new clock when a more current mailing address is provided to the State

If, within 30 calendar days from the Unable to Reach Notice Date, the Parties submit to the State a more current mailing address for the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable):

1. The current mailing address will be updated in the at-risk record.

2. A new notice will be mailed, setting a new 90-day clock by which the Potential Class Member must submit to DIDD all information required by the State to determine eligibility for enrollment in the at-risk *Arlington* class.

I. Failure to respond to the notice of opportunity to apply to become a member of the at-risk *Arlington* class

1. If, at the conclusion of the 90 day period, a Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) has not submitted any information or requested an extension to submit information, all attempts to contact by the State will end.

2. The State will provide to the Parties via email transmission the identity of each Potential Class Member who failed to respond to the NOA within 90 days but for whom an extension was not requested. The first business day following the transmission date of the notification email shall be referred to as the "Failed to Respond Notice Date."

3. The Parties will have 30 calendar days from the Failed to Respond Notice Date to contact Potential Class Members (or their conservators or other healthcare contacts, if known and applicable) and assist them in submitting the information needed to apply for membership in the at risk Arlington class.

4. Except as provided in Section II.J below, if, within 30 calendar days from the Failed to Respond Notice Date, the State does not receive all of the information needed to determine eligibility for enrollment into the at-risk *Arlington* class, such Potential Class Member will be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

J. Opportunity to correct deficiencies in information submitted to DIDD

1. If information is received by the State from a Potential Class Member within the allotted time—either when (a) a one-time 30 calendar day extension is requested; or (b) when the

Potential Class Member has failed to respond and 30 additional calendar days have been provided for the Parties to assist the Potential Class Member in submitting information, DIDD will review the information to determine whether it is sufficient to determine eligibility for enrollment in the at-risk *Arlington* class.

2. If DIDD believes that the information is insufficient, a second notice (a "Notice of Deficiency") will be issued to the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable), identifying the deficiencies and the specific information that is still needed to determine eligibility for enrollment in the at-risk *Arlington* class.

3. The Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) will have at least 30 calendar days (pursuant to subparagraphs a. and b below) from the date the Notice of Deficiency is mailed to submit the remaining information to DIDD.

a. If such deficient information is received *prior to* expiration of the initial 90 calendar day period, the 30 calendar days to correct deficiencies shall be added to the initial 90 calendar day period, such that every Potential Class Member (or his or her conservator or healthcare contact, if know and applicable) will have at least 120 calendar days from the NOA to provide all of the information needed to determine eligibility for enrollment in the at-risk *Arlington* class.

b. If such deficient information is received *after* expiration of the initial 90 calendar day period, but prior to expiration of the one-time 30 calendar day extension or during the 30 day period following the Failed to Respond Notice Date during which the Parties may assist Potential Class Members in submitting information, the 30 calendar days will be provided

from the date of notice of deficiency.

4. A copy of the Notice of Deficiency shall be provided to the Parties via email transmission. The Parties may assist the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) in gathering the information that is still needed to determine eligibility for enrollment in the at-risk *Arlington* class.

5. If, within 30 calendar days (applied pursuant to Section II.J.3 above) the State does not receive the remaining information needed to determine eligibility for enrollment into the at-risk *Arlington* class, such Potential Class Member shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process.

K. Scheduling the PAE assessment

1. If DIDD determines that the information submitted by a Potential Class Member is sufficient to determine eligibility for enrollment in the at-risk *Arlington* class, the team will contact the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) to arrange an appointment to conduct an assessment and complete a PAE (PreAdmission Evaluation or level of care) application.

2. The Intake Case Manager will contact the Potential Class Member (and his or her conservator or other healthcare contact, if known and applicable) to schedule an appointment to complete a PAE assessment. The Intake Case Manager will advise the Potential Class Member (and his or her conservator or other healthcare contact, if known) that such appointment must be scheduled and completed within no more than 30 calendar days from the date of the contact (unless extended by the State if at-risk intake team staff are not able to accommodate during the 30 day period), absent exceptional circumstances (e.g., the Potential Class Member's

hospitalization). Any extension of the 30-day appointment time, including the reasons for such extension, must be documented in writing by DIDD. If the Intake Case Manager is unable to reach the Potential Class Member (and his or her conservator or other healthcare contact, if known) to schedule the PAE appointment, the appointment will be scheduled by the State and notice of the appointment date will be communicated by mail to the Potential Class Member at the most current address in the At-Risk record with a copy being provided to class counsel. If the Potential Class Member fails to appear for the PAE appointment, and does not contact the Intake Case Manager to arrange an alternative appointment to occur within 30 days from the date the initial appointment was mailed to the Potential Class Member such Potential Class Member shall be finally and forever ineligible for membership in the at-risk *Arlington* class and no further efforts shall be undertaken by the State under this Process

L. Submitting the PAE to TennCare

Upon completion of the PAE assessment, all of the information will be forwarded to TennCare for review, and a determination will be made within 8 working days of receipt.

M. Notice of TennCare's ICF/IID level of care eligibility determination

1. The Potential Class Member (and his or her conservator or other healthcare contact, if known and applicable) will be notified in writing of TennCare's decision regarding ICF/IID level of care eligibility.

2. A copy of the notice will be provided to the Parties by the State.

3. If the PAE is denied, the notice will include an explanation of the Potential Class Member's due process rights. These rights include the right to request a review of the decision in Tennessee Chancery Court and any appeal therefrom authorized by Tennessee law. No other appeal or review of TennCare's determination will be provided.

4. Notwithstanding a waiting list for enrollment into the State's Section 1915(c) waivers for persons with intellectual disabilities, if a PAE appeal submitted as part of this at-risk process and in accordance with the process and timeframes described herein is decided in favor of a Potential Class Member (either before or after the dismissal of this case), the Potential Class Member would be entitled to enroll in the appropriate Section 1915(c) waiver if requested within 30 days of the final order approving the PAE.

N. Notice of DHS's preliminary determination of Medicaid eligibility

1. The Potential Class Member (and his or her conservator or other healthcare contact, if known and applicable) will be notified in writing of DHS's preliminary decision regarding whether a Potential Class Member would meet Medicaid financial eligibility. This is a preliminary (and not final) eligibility determination since, pursuant to 42 CFR 435.217, unless the Potential Class Member would qualify in another Medicaid category, s/he cannot actually qualify for and be enrolled into Medicaid in the Institutional eligibility category until such time that s/he will be enrolled in a Section 1915(c) waiver and begin receiving HCBS.

2. As this is a preliminary decision made to accommodate determination of eligibility for enrollment into the at-risk Arlington class and not a final administrative action, there is no right to fair hearing if a person is found to not meet Medicaid financial eligibility requirements.

3. However, in the event a Potential Class Member is found to not meet Medicaid financial eligibility requirements, a notice will be provided to the Potential Class Member (and his or her conservator or healthcare contact, if known and applicable) including the specific reasons s/he would not qualify, with opportunity to request an informal administrative review by DHS regarding any valid factual dispute.

4. A copy of any such notice that a Potential Class Member would not meet Medicaid financial eligibility requirements shall be provided to the Parties by the State.

O. Declination to apply to become a member of the Arlington class

Upon receipt of a signed form indicating that a Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) does not want to be apply for membership in the Arlington class:

1. The Potential Class Member will be removed from the List and all attempts by the State to contact and/or facilitate application for enrollment into the *Arlington* class will end;

2. A copy of the signed form will be provided to the Parties;

3. The Parties may follow-up to confirm that the person's rights are understood, and that the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) does not want to apply for membership in the Arlington class;

4. If, within 30 calendar days of receipt of a signed form from the State, the Parties provide signed documentation to the State from the Potential Class Member (or his or her conservator or healthcare contact, if known and applicable) that he or she has changed their mind and wishes to continue applying to become a member of the Arlington class, the initial 90-day clock will resume from the point where it was stopped, allowing any remaining time during which the Potential Class Member must submit to DIDD all information required by the State to determine eligibility for enrollment in the at-risk *Arlington* class (including all applicable extensions). A Potential Class Member is only entitled to stop the running of the period of time for submission of the information required by the State to determine eligibility for enrollment in the at-risk *Arlington* class pursuant to this provision one time.

P. Future opportunity to apply for waivers but not to become a member of the Arlington class

Potential Class Members who have been removed from the List may apply for waiver services at any time. However, once a Potential Class Member is removed from the List, he shall be finally and forever ineligible for membership in the at-risk *Arlington* class. Any subsequent waiver application will be considered in accordance with applicable TennCare and DIDD policies and procedures for waiver enrollment, including those pertaining to management of waiting lists. Provided, further, however, that those persons who were eliminated from the List because of their enrollment in waiver services will be allowed to receive additional waiver services as their needs may dictate (e.g. moving from the Self Determination Waiver to the Main or ADC waiver) without being placed on a waiting list for such services and pursuant to established processes.

Section III – Class Members in Nursing Facilities

A. DIDD will complete a needs assessment for each current class member living in a nursing home. Based on the results of the needs assessment, DIDD will determine, through a three-person committee of qualified professionals appointed by DIDD and exercising their professional judgment, whether it is appropriate for the class member to be served in the community if he or she (or his or her authorized health care decision maker) so chooses. DIDD will use reasonable and ordinary efforts to report its determination to Plaintiffs' counsel within five business days of such determination. Notwithstanding a determination by DIDD that it is not appropriate for the class member to be served in the community, if Plaintiff's counsel receives a statement from the affected class member, or his/her healthcare decision maker, that the affected person desires to move from the nursing facility, the Plaintiff shall provide the State with a written statement within 30 days of the State's notice of determination to the Plaintiffs. If,

and only if, the State receives a written statement within this 30-day period from a class member, or on behalf of the class member from his or her authorized health care decision maker or Plaintiff's counsel, advising the State that the affected class member desires to move from the nursing facility, the State shall assign the affected class member an Independent Support Coordinator ("ISC") pursuant to the provisions of Section III.B. below.

B. The State will provide an ISC to any current class member living in a nursing home who DIDD has determined, in its professional judgment, may be appropriately served in the community if he or she (or his or her authorized health care decision maker) so chooses. For a period of up to but no longer than 60 days, the ISC will assist the class member (and his or her authorized health care decision maker) in making an educated choice as to whether he or she wishes to remain in the nursing home or transition to a community placement. If the class member (or his or her authorized health care decision maker) decides he or she does not wish to transition to a community placement and the ISC informs the State in writing, the ISC services will cease. If the class member (or his or her authorized health care decision maker) or the ISC informs the State in writing prior to the expiration of the 60-day decision period that he or she has decided to transition to a community placement, the ISC will continue working with the class member to assist the class member in transitioning to the community. The State shall direct ISCs to attend available plan of care meetings that occur during each ISC's work with class members in nursing facilities, provided the ISCs are aware of the date and time such meetings are scheduled, are available to attend the meetings when they are scheduled, and are not requested to desist from attending such scheduled meetings. The State shall not request that an assigned ISC desist from attending such scheduled meetings. The State shall report at monthly meetings with the Magistrate Judge the status of class member transitions.

C. The State will provide a conservator or other authorized power of attorney or health care surrogate to any current class member living in a nursing home whom DIDD has determined, in its professional judgment, may be appropriately served in the community if he or she (or his or her authorized health care decision maker) so chooses if, and only if: (1) it is determined that the class member is not competent; (2) the class member does not have a conservator, or a health care decision maker with a power of attorney or health care surrogate authorization (provided that, except for direct family members, such person is not employed by the nursing facility); and (3) does not have a family member or other person willing to serve in this role.

D. The parties understand and agree that: (1) any class member (or his or her authorized health care decision maker) who has chosen to transition to the community pursuant to the procedures set forth in Section III.B. above may, at any time, change his or her mind and decide to remain in the nursing home; and (2) the State cannot guarantee that any such transition will be completed before December 31, 2013 (or by any other deadline).

E. With respect to any persons who: (1) become class members in 2013, and (2) are living in a nursing home, the State will follow the procedures set forth in Sections III.A. through III.D. above, *provided that*, the parties understand and agree that the State cannot guarantee that any of the procedures set forth in Sections III.A. through III.D. will be completed by December 31, 2013, and thus is not required to complete said procedures by December 31, 2013, for persons who became class members in 2013.

F. The State shall arrange for the provision of specialized services to class members residing in nursing facilities that receive Medicaid funds through TennCare consistent with the requirements contained in 42 CFR 483.120 (incorporating the requirements of 42 CFR

483.440(a)(1)). This requirement shall be satisfied in full if the State's contracts with its nursing facility providers require that they comply with federal Medicaid regulations applicable to nursing facilities.

G. The failure to complete any transition of any class member who has elected to move from a nursing facility prior to December 31, 2013, or any other deadline shall not constitute a failure to comply with a material provision of this Exit Plan that would justify the continuation of this case. The State will continue with the transition of any class member that has elected community placement from a nursing facility notwithstanding the dismissal of this case, but will not prohibit class members from exercising their freedom of choice should they change their election of placement.

Section IV – Intermediate Care Facilities for Individuals with Intellectual Disabilities

By no later than July 1, 2013, the Bureau of TennCare, the Department of Health, and DIDD will enter into a written agreement (the "Interdepartmental Agreement") providing that DIDD will serve as a subcontractor to the Department of Health to undertake certain survey, certification, and enforcement functions of the State Survey Agency specified in 42 C.F.R. § 488.11, currently performed by the Department of Health, for the State's privately-operated ICF/IIDs, to meet the conditions of participation specified in federal law and regulation at 42 C.F.R. § 483 *et seq*. The Parties understand that the Interdepartmental Agreement will provide for an adequate transition period, as determined necessary by the State, to assure compliance with Centers for Medicare and Medicaid Services ("CMS") requirements. In addition, by no later than September 1, 2013, DIDD will develop a system for publicly rating the quality of the State's privately-operated ICF/IIDs and a plan for implementing that system. The State intends, by December 31, 2013, to pilot the proposed rating system, using available and existing data at

that time, *provided however*, the Parties agree that failure to conduct the pilot prior to December 31, 2013 shall not constitute a failure to complete a material provision of this Exit Plan.

Section V – Waiver Renewal and Amendment

A. The State has requested that CMS approve: (1) an amendment to the Statewide Home and Community-Based Services Waiver for the Intellectually and Developmentally Disabled that would permit the State to cover Intensive Behavioral Residential Services (the "IBRS amendment"); and (2) a renewal of the Self Determination Waiver that would permit the State to cover Semi-Independent Living Services for enrollees in the Self Determination Waiver (the "SDW renewal"). Upon approval by CMS, and only in the event such approval is obtained on or before October 1, 2013, the State shall begin implementation of both the Intensive Behavioral Residential Services model of care and the Semi-Independent Living Services model of care. If CMS does not approve the IBRS amendment on or before October 1, 2013, the failure to comply with Section V.B. below shall not constitute a failure to comply with a material provision of this Exit Plan that would justify the continuation of this case. If CMS does not approve the SDW renewal on or before October 1, 2013, the failure to comply with Section V.C. below shall not constitute a failure to comply with a material provision of this Exit Plan that would justify the continuation of this case.

B. If CMS approves the State's IBRS amendment on or before October 1, 2013, the State's implementation requirement shall be satisfied upon the State: (1) developing and publishing the criteria for selection for participation in the Intensive Behavioral Residential Services model of care; (2) appointing members to an admissions committee that shall make eligibility determinations for the Intensive Behavioral Residential Services model of care; and (3) executing or amending contracts with qualified service providers for the initial participants in

the Intensive Behavioral Residential Services model of care based on the need and demand for the Intensive Behavioral Residential Services model of care.

C. If CMS approves the State's SDW renewal or a waiver amendment for the addition of the Semi-Independent Living Services model of care to the Self-Determination Waiver on or before October 1, 2013, the State's implementation requirement shall be satisfied upon the State: (1) developing and publishing the criteria for selection for participation in the Semi-Independent Living Services model of care; and (2) executing or amending contracts with qualified service providers for the initial participants in the Semi-Independent Living Services model of care based on the need and demand for the Semi-Independent Living Services model of care.

D. The State will continue with the implementation of the Intensive Behavioral Residential Services model of care if it is approved by CMS after October 1, 2013, notwithstanding the dismissal of this case. The State will continue with the implementation of the Semi-Independent Living Services model of care if it is approved by CMS after October 1, 2013, notwithstanding the dismissal of this case.

Section VI – Class Member Employment

During the pendency of the case, DIDD will continue to develop meaningful and real opportunities for class members to obtain competitive employment, supported work, and/or volunteer jobs in the communities by taking the following steps and/or continuing the following actions:

A. The State will continue to implement the Subcontract Agreement between Economic Systems Inc. ("ESI") and the State of Tennessee, Agreement Number 12-TN-0503-P1 (the "Grant Contract"), which is a subcontract to the State of Tennessee under ESI's prime

contract with the Department of Labor relative to ESI's prime contract with the Department of Labor, Office of Disability Employment.

B. DIDD will retain expert consultants, through the Grant Contract, to provide technical assistance to DIDD about, among other things, the structure for discovering if a person receiving services from DIDD is interested in working (e.g., the Discovery Process) and, if so, the jobs they are interested in pursuing.

C. By no later than October 1, 2013, DIDD will require all state case managers and/or independent support coordinators who write individual support plans ("ISPs") to begin including in each class member's ISP, upon the next annual review or amendment thereto, a statement regarding the class member's desire to work.

D. By no later than October 1, 2013, DIDD will ensure that its Quality Assurance process includes a check to ensure that the class member ISPs reviewed through QA include a statement regarding whether a class member has expressed a desire to work and, if yes, whether the supports necessary to facilitate the employment, if any, are identified.

E. DIDD will modify its "Day Services Protocol" and "Day Services Protocol Checklist" to be titled the "Employment and Day Services Protocol" and "Employment and Day Services Protocol Checklist" respectively. DIDD will add a statement to the Employment and Day Services Protocol indicating that, where appropriate, employment is preferred over Day Services. Consistent with, and subject to, the medical necessity requirements of that protocol, the State shall provide class members supported employment services as justified in class members' ISP.

F. DIDD will continue to offer job coach training programs through DIDD approved web-based training.

G. DIDD will continue to provide the parties with, and begin providing to Magistrate Judge Vescovo, quarterly employment reports (in the same format as the State has provided since 2007), with the next report scheduled to be provided on or about February 4, 2013, with information regarding the months of October, November and December, 2012.

Section VII – Arlington Developmental Center Grounds

A. DIDD has submitted a funding request in its FY 2014 budget (for funding use beginning July 1, 2013) for the demolition of all residential cottages on the grounds of Arlington Developmental Center ("ADC") except those attached to the Baker Building, which shall not be used for residential purposes. Upon approval of such funding request, DIDD, with the assistance of the Real Estate Asset Management division of the Department of General Services ("STREAM"), will develop a plan for the demolition of these cottages, including information regarding the work to be performed, for submission to the State Building Commission for approval to proceed with the plan for demolition.

B. DIDD, with the assistance of STREAM, shall develop a plan for the proposed sale of the ADC property (excluding the Baker Administrative Building and Resource Center, the land immediately adjacent thereto that is necessary for setback, and land necessary to provide access to that portion of the property for public right of way; land set aside for the West Tennessee Community Homes; land that is the subject of any lease between the State of Tennessee and the City of Arlington; land that is subject to any existing easements; and any other land necessary for the foregoing) (the "Property") or portions thereof. By December 31, 2013, STREAM shall determine whether the Property may be categorized as surplus, pursuant to Tennessee Code Annotated § 12-2-112. If the Property is confirmed as surplus, DIDD will work with STREAM to obtain the approval of the State Building Commission for the sale of the

Property. DIDD will endeavor in good faith to obtain such approval and to obtain appraisal(s) of the Property by December 31, 2013, but its failure to obtain said approval and/or said appraisals by that date shall not be considered a material breach of this agreement. In addition, notwithstanding the foregoing, nothing herein shall be construed to require DIDD to sell the Property during 2013 or at any other date prior to: (1) DIDD's determination that any sale price for the Property maximizes the return on the sale of the Property to DIDD; and (2) the approval of the sale of the Property by the State Building Commission, the Attorney General, and the Governor, in accordance with all applicable laws, policies and procedures, including, without limitation, the State Building Commission Policy and Procedures.

AGREED TO:

On Behalf of the United States of America:

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Exit Plan Exhibit A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff, and	)	
PEOPLE FIRST OF TENNESSEE, *et al.*,	)	
Plaintiffs-Intervenors,	)	
v.	)	Civil Action: No. 92-2062 M/P
STATE OF TENNESSEE, *et al.*,	)	
Defendants, and	)	
PARENT-GUARDIAN ASSOCIATIONS OF ARLINGTON DEVELOPMENTAL CENTER,	)	
Defendant-Intervenors.	)	

[proposed] AGREED ORDER

Pursuant to the Court's Order, Dkt. No. 2901, Plaintiff, the United States, Plaintiffs-Intervenors, People First of Tennessee, *et al.*, and Defendants, the State of Tennessee, *et al.* ("State")[1] have agreed upon " 'objective and measurable exit criteria for the dismissal of this action,' " *id.* at 38 (quoting 2006 Settlement Agreement at 13), in mediation conducted with Magistrate Judge Diane K. Vescovo. These criteria are set forth in the Exit Plan attached as an exhibit to this Order, but not incorporated as an Order of the Court. Based on the resolution of the mediation and the presentation of these Parties, IT IS, ORDERED, ADJUDGED AND DECREED that:

[1] Intervenor West Tennessee Parent Guardian Association did not participate in the mediation process and takes no position on the other Parties' proposed resolution of this case.

Exit Plan

1. The State has agreed to undertake the obligations set forth in the attached, unincorporated Exit Plan in exchange for the dismissal of the case and the vacatur of all outstanding injunctive relief as provided in Paragraphs 2, 7, 8, 12, and/or 14 below. The objective of the Exit Plan is to resolve the above-captioned action by completing all material provisions of the Exit Plan by December 31, 2013.

2. If the State completes all material provisions of the Exit Plan by December 31, 2013, or earlier, the Court shall vacate all outstanding injunctive relief and dismiss this case with prejudice.

Compliance Conferences

3. During the performance of the Exit Plan, Plaintiffs shall have reasonable access to requested information and documents regarding compliance with the Exit Plan without the necessity of formal discovery.

4. Beginning in February 2013, Counsel for the Parties will meet monthly, unless the Parties agree to meet telephonically or to forego a monthly meeting, with Magistrate Judge Vescovo to conduct Compliance Conferences. The Parties will seek to resolve any issues of compliance with the Exit Plan, if any, during these conferences.

5. This Order shall serve as a standing Order of Reference permitting Magistrate Judge Vescovo to address issues of compliance with the Exit Plan as provided herein. During implementation of the Exit Plan, except by operation of Paragraph 15(a) below and any motions for attorneys' fees, no Party shall seek a finding of contempt or file a motion seeking any other relief from the Court, *except that*, any Party may seek relief if the Party believes in good faith

that there exists an imminent risk of serious harm to a class member that is not being addressed appropriately.

6. During implementation of the Exit Plan, at the request of a Party or on the Court's own motion, Magistrate Judge Vescovo may issue Reports and Recommendations to the District Court pursuant to Federal Rule of Civil Procedure ("Rule") 72 finding that the State has completed any or all material provisions of the Exit Plan. Pursuant to Rule 72, if any Party objects to the Report and Recommendation, that Party must file an objection to the Report and Recommendation within 14 days of issuance of the Report and Recommendation. If no such objection is filed, the findings in the Report and Recommendation shall be final and binding on all Parties, and no Party may raise any further issues with respect to the material provision(s) with which the Report and Recommendation found the State to be in material compliance. Pursuant to Rule 72, the District Court shall review *de novo* any filed objection. The Party which filed the objection shall have the burden of proof on all factual issues implicated by the objection, and the Federal Rules of Evidence shall govern any hearing conducted on the objection.

Compliance

7. If (i) the Parties agree that the State has completed all material provisions of the Exit Plan, or (ii) Magistrate Judge Vescovo has issued Report(s) and Recommendation(s) finding that the State has complied with all material provisions of the Exit Plan, and no Party has timely objected, the Parties shall submit to the Court a proposed Order vacating all outstanding injunctive relief and dismissing the case with prejudice, which the Court shall enter.

8. If Magistrate Judge Vescovo has issued Report(s) and Recommendation(s) finding that the State has complied with all material provisions of the Exit Plan, and any timely

objection has been overruled by the District Court, the State shall submit to the Court a proposed Order vacating all outstanding injunctive relief and dismissing the case with prejudice, which the Court shall enter.

9. If the State determines that it has not completed or will not complete one or more material provisions of the Exit Plan by December 31, 2013, the State shall be entitled to extension(s) of the term of the Exit Plan of no more than six months for any single extension, not to exceed one year without the consent of the Parties, to permit the State to complete the remaining material provisions of the Exit Plan.

10. If the Parties agree that the State has not completed all remaining material provisions of the Exit Plan by December 31, 2013, the Parties may, but are not required to, agree to a proposed Order of conditional dismissal pursuant to Rule 41(a)(2).

11. If the Parties disagree on whether the State has completed all remaining material provisions of the Exit Plan by the end of the term of the Exit Plan, and that disagreement cannot be resolved by mediation with Magistrate Judge Vescovo, the State shall present to Magistrate Judge Vescovo its basis for its position that the State has completed all remaining material provisions of the Exit Plan. Magistrate Judge Vescovo may consider this information along with the record of information discussed throughout monthly Compliance Conferences. Magistrate Judge Vescovo will then issue a Report and Recommendation, subject to Rule 72, with findings as to whether the State has completed the remaining material provisions.

12. Except as provided in Paragraph 13, if any Party objects to the Report and Recommendation issued pursuant to Paragraph 11, that Party must file an objection to the Report and Recommendation with 14 days of issuance of the Report and Recommendation. If no such objection is filed, the findings in the Report and Recommendation shall be final and binding on

all Parties, no Party may raise any further issues with respect to the material provision(s) with which the Report and Recommendation found the State to be in material compliance, and the Parties shall submit to the Court a consent motion and a proposed Order vacating all outstanding injunctive relief and dismissing the case with prejudice, which the Court shall enter. Pursuant to Rule 72, the District Court shall review any filed objection *de novo*. The Party which filed the objection shall have the burden of proof on all factual issues implicated by the objection, and the Federal Rules of Evidence shall govern any hearing conducted on the objection.

13. If Magistrate Judge Vescovo issues a Report and Recommendation pursuant to Paragraph 11 finding that the State has not completed one or more material provisions of the Exit Plan, the State shall be entitled, at its option and in lieu of an objection to the Report and Recommendation, to extension(s) of the term of the Exit Plan of no more than six months for any single extension, not to exceed one year without the consent of the Parties, to permit the State to complete the material provision(s) of the Exit Plan that Magistrate Judge Vescovo has found not to be completed. If the State elects to extend the Exit Plan pursuant to this Paragraph, the procedures set forth in Paragraphs 7-11 shall govern after the State informs the Parties that it believes that it has completed the material provision(s) of the Exit Plan that Magistrate Judge Vescovo had previously found not to be completed.

14. If a Party has objected to a Report and Recommendation issued pursuant to Paragraph 11, and this Court, after its review, finds that the State has completed the material provision(s) of the Exit Plan identified in the objection, then this Court shall vacate all outstanding injunctive relief and dismiss the case with prejudice.

15. If a Party has objected to a Report and Recommendation issued pursuant to Paragraph 11, and this Court, after its review, finds that the State has not completed one or more material provisions of the Exit Plan, then the Court may:

a. make findings regarding the State's compliance or non-compliance with the material provisions of the Exit Plan identified in the objection and enter an Order granting an extensions of the term of the Exit Plan of no more than six months for any single extension, and directing the State to complete the material provision(s) of the Exit Plan the Court has found that the State has not completed; and/or

b. enter an Order of conditional dismissal pursuant to Rule 41(a)(2).

16. If the State informs the Court and the Parties that it cannot perform its obligations under the Exit Plan, the Court may vacate this Order.

Monitoring

17. In lieu of the duties and responsibilities for monitoring set forth in the Remedial Order and subsequent orders of the Court, hereinafter the Court Monitor's duties and responsibilities for monitoring are only those specifically set forth herein, which are as follows:

a. Conducting, with the assistance of reasonable and necessary consultants, annual on-site reviews of the RHA ICFs-IID, Mid-South Area Residential Services, and Behavior Services of Tennessee, and issuing Community Status Reviews for those providers based on the on-site review;

b. In regard to any communication the Court Monitor receives from a class member, class member's family, provider, advocate, or any other person regarding the litigation or services provided by DIDD, aside from communications relative to her community status reviews, the Court Monitor's sole responsibility shall be to direct the person to call DIDD (the

State shall provide the specific position and number of the person to be contacted), and to report the call to Plaintiff's counsel in those instances she believes it is appropriate to do so;

c. Be available to speak to counsel for the parties and/or the Court;

d. Undertake reviews, issue other reports, and/or engage in other activities only in the event she is directed to do so by a specific Order of this Court entered subsequent to the entry of the instant Order;

e. Transition activities associated with the winding down of active monitoring;

f. Attending any District Court hearings;

g. The Court Monitor's annual budget for providing the services set forth and described herein shall in no event exceed $55,000 plus fees associated with any District Court hearings and travel expenses in connection with the provider reviews and any Court hearings absent further, specific order of this Court. The Court Monitor shall not submit to the State, and the State shall not be required to pay, any invoice to the extent it seeks payment in excess of the annual budget.

18. In light of the recent resignation of the current Court Monitor, effective January 15, 2012, the Parties have agreed to make their best efforts to present the Court, by the date of the first Compliance Conference, with an agreed upon nominee for the Court's consideration to serve as the new Court Monitor. Notwithstanding the budgetary limitation imposed by paragraph 17(g), upon appointment of a new Court Monitor, the new Court Monitor may submit to the Court for its approval a one-time budget not to exceed $15,000 for reasonable and necessary expenses required to permit an effective transition of monitoring duties and information from the prior Court Monitor.

Other Issues

19. No costs ordered paid by the Defendants in previous Orders shall be refunded to the Defendants by operation of this Order, or an Order of final dismissal.

20. No sanctions ordered paid by the Defendants in previous Orders shall be refunded to the Defendants by operation of this Order, or an Order of final dismissal.

21. No fine monies held by the Court or due to be repaid to the Court shall be refunded to the Defendants by operation of this Order, or an Order of final dismissal. Nothing in this Order modifies the Court's orders of June 6, 2011, Doc. Nos. 2711 and 2712, and in accordance with Doc. No. 2711, any funds repaid to the Court by WTFS Association, Inc. shall be disbursed to the Housing Foundation.

22. Notice of the hearing to approve this Order was published on January 11, 2013 in the Memphis Commercial Appeal, and on or before that date on the DIDD website.

IT IS SO ORDERED THIS ___ DAY OF _____ 2013.

_____
HON. JON P. McCALLA
CHIEF U.S. DISTRICT JUDGE

APPROVED FOR ENTRY:

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Exit Plan Exhibit A

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Attorneys for Defendants State of Tennessee, et al.

EXIT PLAN EXHIBIT B

Last Name, First Name
A., Debra
A., Zachary
A., Andrew
A., Regina
A., Antonio
B.-W., Charles
B.-H., Derael
B., Bradley
B., Anthony
B., Robert
B., David
B., Wanda
B., James
B., Joyce
B., Kristen
B., Travon
B., Louis Jr.
B., Noah
B., Stevie
C., Michael
C., Tommy
C., Tray
C., Brian
C., Robert
C., Thomas
C., Kay
C., Tommy
C., Markita
C., Tracy
C., Eddie
C., Phyllis
C., Virginia
C., Debra Ann
C., Cleaophus
C., Jacqueline
D., Karen
D., Eric
D., Adrian
D., Brenda
D., Jeremiah
D., Wayne

EXIT PLAN EXHIBIT B

D., Judy
D., Terry
E., Eddie
E., Patricia
E., Sherry Jean
F., DeAngelo
F., Billy Ray
F., Ronald
F., Perry
F., Angela
G., Kendrick
G., Oxzaveon
G., Sheila
G., Brandon
G., James
H. (W.), Angel
H., Linda
H., Jason
H., Lana
H., Jonathan
H., Kenneth Ray
H., Kristy
H., Roy
H., Zakia
H., Freemon
H., Keedry
H., Anthony
H., Patty
H., Dwayne
H., Brenda Gail
J., Justin, aka Q., Justin
J., Sapecus
J., Arlisa
J., Bryant
J., Daisy Edna
J., Richayne
J., Catreisa
J., Connie
J., James Sharptner
J., Maurice
J., Irving
J., John

EXIT PLAN EXHIBIT B

J., Linda K.
J., Lonnie
J., Ronnie
K., Jeremy
K.-K., Vanessa
K., Sheranda
L., Courtney
L., Charles
L., Kevin
L., Shannon
L., Rosalyn
L., Latara
L., Geronimo
L., Jeremy
M.-P., Latrea
M., Remount
M., Christopher
M., James Louis
M., Kathryn R.
M., Dale
M., Ricky
M., Gina
M., Braxton
M., Antrell
N. (F.), Angela Sue
O., Jaqavius
O., Jericho
O., Jerry W.
P., Teresa Lee
P., Antonio
P., Carolyn
P., David
P., Wilbert
P., Tony
P., Zedrick
P., Jeremy
P., Toneicio
P., Brandon
P., Rochelle
P., Michael
R., Johnny
R., Kendrick

EXIT PLAN EXHIBIT B

R., Dorothy
R., Donna
R., Martez
R., Eric
R., Glenda
R., Travis
S., Christopher
S., Tamara
S., Markeil
S., Willie
S., Jessica
S., Crystal
S., Jimmy
S., Jr., Herbert
S., Susan
S., Mary
S., Carol
S., Christine Marie
S., James
S., Tarrence
T., Derrick
T., David
T., Timothy
T., Lee Edward
T., Lavonne
T., Matthew
T., Verlanda
T., Pamelar Kay
T., Nkosi
T., Oscar
V., Sunshine
W., Bradley
W., Brandon
W., Frank
W., Kiki
W., Ida
W., Marquis
W., Kevin
W., Rocky Tim
W., Megan
W., Andree
W., Maurice

EXIT PLAN EXHIBIT B

W., Nell
W., Ronald
W., Katherine
W., Nicholas
W. (H.), Dawntrae aka H., Dawntrae
W., Alisa (aka H., maiden name)
W., Daniel
W., Travis
W., James
W., Marlon
W., Thomas
Y., Joseph
Y., Robert
Y., Jr., Tommy
Z., Joe Manuel

Exit Plan Exhibit C

[ON DIDD LETTERHEAD]

[Date]

[LAST KNOWN ADDRESS
C/O GUARDIAN OR CONSERVATOR
IF KNOWN]

Re: Obtaining services as a class member in Case 92-2062

Dear [Personally addressed]

We are pleased to inform you that based on an Agreement entered into by the parties in the case of U.S. v State of Tennessee, No. 92-2062 presently pending in the United States District Court for the Western District of TN., you may be eligible to receive services as a member of the Class that has been certified in that case.

Among the benefits to which you may be entitled if you need them are:

a. Waiver funded day services
b. Waiver funded residential services
c. Preventative dental care
d. Vision services
e. Therapy services; or
f. Waiver funded home based services.

It is very important that you or someone authorized to act on your behalf contact your assigned case manager as soon as you can to begin the process of determining your eligibility to participate in this program. Your case manager is:

NAME
TELEPHONE NUMBER(S)

If we do not hear from you by [date] you may lose this opportunity.

Sincerely,

DEPARTMENT OF INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES

James W. Henry, Commissioner

Exit Plan Exhibit D

Script for At-Risk Process

Hello, my name is [insert name of assigned Intake Case Manager].

If speaking with Potential Class Member:

I work for the Tennessee Department of Intellectual and Developmental Disabilities. I've been assigned as your Intake Case Manager. I'm calling to tell you about an opportunity to see if you qualify to receive certain kinds of services in your home or community (called Home and Community Based Services or HCBS).

[NOTE: Comparable language for Conservator or other healthcare decision maker is later in letter, due to HIPAA.]

Do you have a Conservator or other person we should talk with that makes healthcare decisions for you?

If yes:

Can you give us the name of that person?

What is their relationship to you—mother, father, brother, sister, something else?

Is this your Conservator?

If no:

Is this the person that you want to make healthcare decisions for you?

If no:

Do you make your own healthcare decisions?

If speaking with Conservator/healthcare decision maker:

Are you the Conservator for [insert name of Potential Class Member]?

If yes, skip to next section.

If no:

Are you an authorized healthcare decision maker for [insert name of Potential Class Member]?

If yes:

What is your relationship to [insert name of Potential Class Member]—mother, father, brother, sister, something else?

If no:

Does [insert name of Potential Class Member] have a Conservator or healthcare decision maker?

If yes:

Can you tell us how to reach that person?

If yes, document contact information.

If no:

So, [insert name of Potential Class Member] makes [his/her] own healthcare decisions?

Can you tell me the best phone number to reach him/her?

If speaking with Conservator/healthcare decision maker:

I work for the Tennessee Department of Intellectual and Developmental Disabilities. I've been assigned as an Intake Case Manager for [insert name of Potential **Class Member**]. I'm calling to tell you about an opportunity to see if [insert name of Potential Class Member] qualifies to receive certain kinds of services in [his/her] home or community (called Home and Community Based Services or HCBS).

Are you familiar with a lawsuit called the United States versus Arlington?

It's a case about people who lived at the Arlington Developmental Center as well as some people who have Intellectual Disabilities that *could have* been placed in the Arlington Developmental Center.

As a result of that case, people who qualify to enroll in the Arlington class are entitled to enroll in a Home and Community Based Services waiver program and receive certain kinds of services in their home or community.

If speaking with PA:

Some time before the Arlington Developmental Center closed, your name was given to the State as someone who might qualify as an Arlington class member. If you qualify to enroll in the Arlington class, you'll be entitled to enroll in a home and community based services waiver program and receive services like [list some of the services that can be covered.]

To see if you qualify to enroll in the Arlington class and receive waiver services, we need certain information from you. I'm going to review the list of information we still need from you. But, we'll also send you a letter that will tell you all of things we're talking about, including this list.

If speaking with Conservator or healthcare decision maker:

Some time before the Arlington Developmental Center closed, [insert name of Potential Class Member]'s name was given to the State as someone who might qualify as an Arlington class member. If [insert name of Potential Class Member] qualifies to enroll in the Arlington class, [he/she] will be entitled to enroll in a home and community based services waiver program and receive services like [list some of the services that can be covered.]

To see if [insert name of Potential Class Member] qualifies to enroll in the Arlington class and receive waiver services, we need certain information. I'm going to review the list of information we still need. But, we'll also send a letter to [insert name of Potential Class Member] and to you that will tell you all of things we're talking about, including this list.

[Review list of person-specific information needed to determine eligibility for enrollment in the at-risk class]

Do you have any questions about any of the things on the list?

Soon, we will send you a letter. It will include all of the things we've discussed today. You will have 90 days from the date the letter is mailed to get all of the information on the list we've reviewed to me. I must receive it by the 90th day, so if you mail it, be sure you mail it in time to get here by that day.

What if you try to get the information but need more time? You can request one 30-day extension to give you more time to gather this information. The letter will tell you how to make that request, which must be in writing.

If speaking with Potential Class Member:

We need to be sure we have the right address for you [and your Conservator/healthcare decision maker] so we can send the letter we talked about.

Can you tell me your current mailing address?

Do you know [insert Conservator/healthcare decision maker name]'s mailing address?

We also need to be sure we have the right phone number in case we need to reach you.

What is the best phone number to reach you? Is there another phone number where we can reach you? What is the best time to call?

Do you know [insert Conservator/healthcare decision maker name]'s phone number?

Do you know if there is another phone number where we can reach [insert Conservator/healthcare decision maker]?

Do you know the best time to call [insert Conservator/healthcare decision maker]?

If speaking with Conservator or other healthcare decision maker:

We need to be sure we have the right address for you and for [insert name of Potential Class Member] so we can send the letter we talked about.

Can you tell me your current mailing address?

Can you tell me [insert name of Potential Class Member]'s mailing address?

We also need to be sure we have the right phone number in case we need to reach you.

What is the best phone number to reach you? Is there another phone number where we can reach you? What is the best time to call?

Do you know [insert name of Potential Class Member]'s phone number?

Do you know if there is another phone number where we can reach [insert name of Potential Class Member]?

Do you know the best time to call [insert name of Potential Class Member]?

Do you have any questions about any of the things we've talked about?

Be sure to watch for the letter.

If you have questions—either before or after you get the letter, you can call me at _____.

Exit Plan Exhibit E

Dear [insert name of Potential Applicant]:

This is to let you know that you might qualify as a member of the Arlington Class.

If you are in the Arlington Class, you could be entitled to receive certain kinds of services in your home or in the community (called Home and Community Based Services or HCBS). A list of those services is on page __.

We want to see if you can be included in the Class and entitled to the benefits of Class membership.

You may be in the Class if you:

- Live in West Tennessee
- AND qualify for Medicaid
- AND qualify to receive care in an Intermediate Care Facility for Individuals with Intellectual Disabilities or ICF/IID (You don't have to actually get care in an ICF/IID, but you must qualify for that level of care.)
- AND got care in a state run or a private ICF/IID, nursing home, or mental health facility on or after September 1, 2005. Or, if you left a hospital after September 1, 2005, and couldn't go back to where you lived before because your needs had changed.

To see if you qualify to be in the Arlington class, we need to get certain things from you. A list of the things we need is on page __. We ONLY need the things that have a check beside them.

You have until <90th day> to get these facts and papers to the Department of Intellectual and Developmental Disabilities (DIDD).

You can **mail** the facts and papers to:

Please make a copy before you mail them. Write down the date you mailed them to DIDD.

If you prefer, you can **fax** them to:

Keep a copy of the page that shows your fax went through.

Do you have a scanner? If you prefer, you can scan and **email** them to:

Keep a copy of the sent email.

What if you try to get the information but need more time? You can ask for 30 more days. You must ask in writing. You can send your request for more time in 3 ways.

You can **mail** it to:

Please make a copy before you mail it. Write down the date you mailed it to DIDD.

You can **fax** it to:

Keep a copy of the page that shows your fax went through.

You can **email** it to:

Keep a copy of the sent email.

If you ask for more time, we will add the 30 days to the 90 days we already gave you. We'll tell you the new date you have to get your facts and papers to DIDD.

You can ONLY ask for one 30-day extension.

What if you <u>don't</u> get everything to DIDD on time? Then, you will not qualify to be a member of the Arlington Class. You can still apply at any time to get services. But, unless you enroll in the Arlington Class, you will probably be on a waiting list before you can get services.

What if you have questions or need help with this letter?

You should call your Intake Case Manager. We already sent you the name of your Intake Case Manager. Do you need us to tell you again? You can call us at _____.

What if you <u>don't</u> want to become a member of the Arlington class?

You can fill out the page with this letter that says, "I don't want to apply for the Arlington Class." You must sign and date the paper. OR, someone who has the right to make health care decisions for you can sign and date it. Send the paper back to DIDD. A lawyer who represents the Arlington Class may call you to make sure you understand your rights and to make sure you don't want to apply.

Here is a list of things we need from you to see if you qualify to enroll in the Arlington class. **The things we need have a check beside them.** If something is not checked, we don't need that information from you. You don't need to send it to DIDD.

☐ **Proof that you live in Tennessee.** This could be things like a lease or rental agreement, a mortgage loan or payment receipt that shows the address of the home, a property tax statement, homeowner's or renter's insurance receipt, or utility receipt. What if you live with a family member or someone else? Then, you can provide one of the kinds of proof listed above and have the person you live with sign a paper, verifying that you live with him or her and are a resident of TN.

☐ **A psychological evaluation.** It must be performed by 1) a Licensed Psychologist; or 2) a Licensed Senior Psychological Examiner supervised by a Licensed Psychologist. It doesn't matter how old the psychological evaluation is as long as it accurately reflects your medical, social, developmental and psycho-social history and your current function.

What if any of those things have changed since your psychological evaluation was completed? Then you will need a new psychological evaluation completed no more than 90 days ago.

How to get a new psychological evaluation if you need one:

Do you have TennCare? Then, you should get your psychological evaluation from a provider that's enrolled with your MCO. A list of providers enrolled with each MCO who are qualified to provide a psychological evaluation is included with this letter. Call one of those providers to set an appointment. If you need help setting an appointment, call your MCO. Their number is listed on your TennCare ID card. If you have TennCare and get your psychological evaluation from a provider enrolled with your health plan, your MCO will pay for your psychological evaluation.

What if you **don't** have TennCare? Then, DIDD has a contract with the TEAM Centers to do psychological evaluations. Call the TEAM Centers at XXX-XXX-XXXX to set an appointment. If you don't have TennCare and get your psychological evaluation from the TEAM Centers, DIDD will pay for it.

☐ **Proof that your intellectual disability started before you were 18 years old.** There are many kinds of evidence TennCare will consider. But, some kinds of evidence are better than others and have more weight when TennCare makes the decision. The best kinds of proof are listed first.

- A Psychological Examination performed prior to the age of 18 by 1) a Licensed Psychologist; or 2) a Licensed Senior Psychological Examiner supervised by a Licensed Psychologist
- A Level II PASRR (PreAdmission Screen and Resident Review) evaluation performed prior to age 18 that includes testing and a Full Scale IQ score
- A school psychological performed and signed by a licensed professional
- School records documenting a diagnosis of intellectual disabilities (or mental retardation) or evidence of placement in special education combined with evidence of substantial impairments in adaptive functioning during the developmental period

- Medical records with a diagnosis of mental retardation or another condition with a high probability of resulting in mental retardation combined with evidence of substantial impairments in adaptive functioning during the developmental period

What if you are older and no testing was ever done? Then, we will consider these kinds of information:

- Information in your school records about your educational placement and performance
- Statements from family members, friends, or others who had direct knowledge of your development and adaptive functioning prior to age 18 about:
  - Specific substantial impairments in adaptive functioning during the developmental period,
  - Mental incapacity evidenced by dependence on others for personal needs (grossly in excess of age-appropriate dependence)
  - Inability to successfully participate in regular education and/or employment
    This could include family members, friends, and others.

It is your responsibility to provide proof that your intellectual disability started prior to age 18.

TennCare will look at all available evidence to decide if there is proof that your intellectual disability started before you were 18 years old. Better kinds of proof will have more weight than other kinds of proof.

☐ **A current history and physical** performed within the last year and signed by the health care provider that performed it. The health care provider must be a licensed:

- Medical doctor
- Doctor of osteopathy
- Nurse practitioner or
- Physician's assistant.

TennCare will take a history and physical performed anytime in the last 12 months, as long as your physical and mental health and your ability to perform activities of daily living have not changed.

Your history and physical should include the kinds of health problems you have, including any problems with your vision. It should also include information about your ability to perform activities of daily living. These are things like bathing, expressing your wants and needs, eating, walking or using a wheelchair, knowing who you are and where you live, toileting, taking medicine, transferring yourself from one place to another (like from a bed to a chair). It should also include information about any severe behaviors that place you and others at risk of serious harm or death.

Additional medical records (progress notes, office records, discharge summaries, etc.) may be added to a history and physical to support the specific impairments in adaptive functioning and to provide current medical information if changes have occurred since the history and physical was performed.

How to get a history and physical:

Have you had a physical exam in the last year? Then you should contact your doctor to get a copy. Be sure to tell your doctor you need a history and physical. Be sure to tell him the kinds of information it must include.

What if you **haven't** had a physical exam in the last year? Then, you should contact your doctor to set an appointment.

If you have **TennCare**: Your Primary Care Provider should be listed on your TennCare card unless you have Medicare. If you have TennCare but don't have Medicare, set an appointment with your PCP. If you haven't had a physical in the last year, it will be covered by TennCare. If you need help finding out who your PCP is or setting an appointment, call your MCO. Their number is listed on your TennCare ID card.

If you have **Medicare**: Set an appointment with a doctor that takes Medicare.

If you have **other insurance**: Set an appointment with a doctor that takes your insurance.

What if you **don't** have TennCare, Medicare or other insurance? Then, you can go to a Federally Qualified Health Center (or FQHC). There is a list of FQHCs with this letter. They will see you even if you don't have insurance. How much you will pay depends on your income.

If you don't have TennCare, you (or any other insurance you have) will be responsible for paying for your doctor visit to get a history and physical.

☐ **Do you have any behavior that's so severe that you or others are at risk of serious harm or death unless you get behavior therapy?** Then, we need:

- A written description of the specific behaviors, how often they occur, how they place you or others at serious risk of harm or death, and how likely those things are to occur.

What if you don't have those kinds of behaviors? Then, you don't need to send us any information about behaviors.

☐ **Proof of your current income and resources.**

Income includes money or payments you receive from **all** sources, including:

- salary or wages from work (send the last two months' pay stubs)
- self-employment income (send a copy of your last federal income tax return Schedule SE)
- Social Security payments (tell us the amount of your monthly check and we will verify)
- retirement and pension plans (send the last two months' pay stubs)
- VA benefits (tell us how much you get)
- rental income (send a copy of the rent or lease agreement)
- interest or dividends (send a copy of last year's Form 1099 or your income tax return)
- alimony and child support (send a copy of the legal document describing these payments)

Resources are things you own, like:

- cash you have on hand (tell us how much)
- checking and savings accounts (send a copy of the last statement)
- savings bonds (tell us the series, face value, and when they were purchased)
- items you keep in a safety deposit box (tell us what and the value of each item)
- Christmas fund accounts (send a copy of the last statement)
- money market accounts, annuities, Certificates of Deposit (send a copy of the last statement)
- stocks and bonds (send a copy of the last statement)
- IRAs and 401ks (send a copy of the last statement)
- trust funds and life estates (send the legal document describing these resources)
- houses, land, or businesses you own (besides the home where you currently live—send the address of the property, the estimated fair market value, and how much you owe on it)
- automobiles, boats, motorcycles, and recreational vehicles (tell us the make, model and year, the estimated fair market value, and how much you owe on it)
- life insurance (tell us the cash value)
- burial insurance or prepaid burial plans and cemetery lots (tell us what kind of insurance or plan, the value, and the location and value of cemetery lots)

Exit Plan Exhibit F

I, _____, DON'T want to apply to become a member of the Arlington class.

I understand this means that:

- I won't be entitled to enroll in a Home and Community Based Services waiver program and receive waiver services;
- AND, if I apply later for these services, I will probably be on a waiting list before I can enroll in a waiver program and receive waiver services.

<u>BEFORE</u> YOU SIGN THIS FORM:

Do you want to talk with lawyers who represent the Arlington Class? If so, you can contact any of them. Here are their names and contact information:

XXX-XXX-XXXX (name, phone number and email address for each of the attorneys).

Any of these lawyers can help you understand why you may want to change your mind and apply to join the Arlington class. They can also talk more about the kinds of services you may be giving up by signing this form. Or they can answer other questions you might have about this matter.

What if you sign this form now and then change your mind? You must call one of the lawyers listed above <u>within 30 days after signing this form.</u>

I DON'T want to apply to become a member of the Arlington class.

_____	_____
Name of Person Invited to Apply	**Social Security Number**
_____	____/____/____
Signature of Person Invited to Apply or Authorized Representative	**Date**

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff, and	)	
PEOPLE FIRST OF TENNESSEE, *et al.*,	)	
Plaintiffs-Intervenors,	)	
v.	)	Civil Action: No. 92-2062 M/P
STATE OF TENNESSEE, *et al.*,	)	
Defendants, and	)	
PARENT-GUARDIAN ASSOCIATIONS OF ARLINGTON DEVELOPMENTAL CENTER,	)	
Defendants-Intervenors.	)	

CERTIFICATE OF CONSULTATION

Counsel for Defendants State of Tennessee, *et al.*, certify that they have consulted with all other parties to this action regarding the Joint Motion of Plaintiff United States of America, Intervenors-Plaintiffs People First of Tennessee, and Defendants State of Tennessee, *et al.* and Combined Memorandum in Support, to Approve Exit Plan and Enter Agreed Order. As indicated in the motion, the United States of America and People First of Tennessee are joint movants. As set forth in the motion, Counsel for Parent-Guardian Associations of Arlington Developmental Center ("PGA"), William Sherman, has advised counsel for the United States that PGA takes no position in regard to the Exit Plan or the Agreed Order, the subjects of the Joint Motion.

January 9, 2013

Respectfully submitted,

ROBERT E. COOPER, JR.
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th of January, 2013, a true and exact copy of the foregoing has been forwarded by the Court's Electronic Filing System to:

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