

**UNITED STATES DISTRICT COURT IN AND FOR  
THE SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION**

**CASE NO. 08-60040-CIV-ZLOCH/SNOW**

**DAVID REID, DAVID MITCHELL,  
JOANN BROWN**, by and through her next  
friend, Cassandra Brown, on behalf of  
themselves and all others similarly situated,

**Plaintiffs,**

v.

**HOLLY BENSON**, in her official capacity as  
Secretary, Florida Agency for Health Care  
Administration,

**Defendant.**

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**SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is entered into by and between Plaintiffs, David Reid, David Mitchell, and Joann Brown (by and through her next friend Cassandra Brown) and their heirs, agents, assigns, executors, administrators, and present attorneys (hereinafter collectively referred to as "Plaintiffs") and Holly Benson, in her official capacity as Secretary of Florida's Agency for Health Care Administration and her and its successors, officers, employees, agents, assigns, and attorneys (hereinafter referred to as the "Agency"). The parties to this Agreement hereby stipulate and agree as follows:

**Recitals**

1. The parties enter into this Settlement Agreement ("Agreement") for the purpose of memorializing the resolution to this matter.

Reid v. Benson  
Settlement Agreement

2. Plaintiffs David Reid, David Mitchell, and Joann Brown are Medicaid recipients residing in Broward County, Florida – an area of the State that participates in a Florida Medicaid Section 1115 Waiver and Demonstration Project involving health services provided through managed care organizations (“Medicaid Reform”).

3. The Agency manages and oversees Florida’s Medicaid Program, including Medicaid Reform.

4. Plaintiffs initiated a lawsuit against the Agency arising out of alleged violations of 42 U.S.C. §1396u-2(a)(4), which requires certain notifications to be sent to Medicaid recipients who receive their Medicaid services through managed care organizations (“MCOs”). The case is now pending in the United States District Court for the Southern District of Florida, and is captioned as *Reid, et al. v. Benson*, Case No. 08-60040-CIV-ZLOCH/SNOW (the “Litigation”).

5. Plaintiffs and the Agency desire to fully and finally settle the Litigation in exchange for the benefits offered herein. The parties desire to conclusively resolve and settle all issues of fact and/or law in controversy between them.

**Terms**

6. **Obligations of the Agency.** In consideration of Plaintiffs’ agreement to the terms herein and for other good and valuable consideration as recited herein, the Agency agrees to the following:

a. Beginning on or before December 31, 2008, the Agency will send the letter in the form attached at Exhibit A to all Medicaid recipients when they first enroll in an MCO and if/when they exercise their option to change plans during their annual open enrollment period who: (1) receive their Medicaid benefits through a Medicaid Reform MCO; and (2) will be locked in to their Medicaid Reform MCO after their first 90 days as a member in the MCO.

b. Beginning on or before December 31, 2008, the Agency will send the letter in the form attached as Exhibit B to all Medicaid recipients in a Medicaid Reform MCO who are locked in to their MCO and who have an annual open enrollment period.

Reid v. Benson  
Settlement Agreement

The Agency will send the letter to recipients at least 60 days prior to the beginning of each annual enrollment opportunity.

c. The Agency is currently engaged in rule-making to create a Florida Administrative Code provision that sets forth the good cause reasons a Medicaid recipient can present that allows them to change from one Medicaid MCO to another at any time (the "Good Cause Rule"). The Agency, by and through an independent contractor, also has a script that dictates what Medicaid recipients in Medicaid Reform MCOs are told when they call to pick an MCO or to inquire about Medicaid Reform (the "Script"). Within 60 days of the Agency formally adopting the Good Cause Rule, the Agency will make the following changes to the Script: (1) the Agency will change the term "state approved reason" to the term "state approved good cause reason" at page 22, paragraph 12B, and at page 53, paragraph 3 of the Script; (2) the Agency will strike the phrase "request a plan" from page 54, paragraph 6 of the Script; (3) the Agency will include the catch-all language of 42 CFR 438.56(d)(2)(iv) in the list that appears on page 54 and 55 of the Script; (4) the Agency will change page 82, paragraph 1 of the Script to read "[t]he type of Medicaid you have requires you to pick a health plan. The only way that you can continue to receive Medicaid services is by being in a health plan. {Pause} You will be able to change health plans during your open enrollment period, which is (month/year) unless you meet a state approved good cause reason. If you are having a problem with your health plan I recommend that you discuss it with your health plan as soon as possible. The health plan may be able to fix the problem quickly. If you have already discussed it with your health plan, do you want to file a complaint?"; and (5) the Agency will add an additional paragraph after page 82, paragraph 1 that applies to persons who are mandatory to enroll in a Medicaid Reform MCO but who are not locked in to their health plan.

d. At the time it enters into and/or renews its contracts with its Medicaid Reform MCOs, the Agency will standardize the language regarding enrollment and disenrollment in every MCOs Member Handbook. The standardized language will list the good cause reasons that the Agency has listed in its Good Cause Rule, and will include the language: "Some Medicaid recipients can change health plans whenever they choose, for any reason. For example, people who are eligible for both Medicaid and Medicare benefits and children who receive SSI benefits can change plans at any time, for any reason. To find out if you can change plans, call the Choice Counselor at 1-866-454-3959."

e. The Agency reserves the right to make non-substantive changes to the letters, script, and Member Handbooks described above, and to change at any time language in the letters, script, and Member Handbooks that was not in issue in the Litigation (while still complying with 42 U.S.C. §1396u-2(a)(4)). The Agency will only make substantive changes to the letters, script, and Member Handbooks that involve language and issues raised in the Litigation after consulting with Plaintiffs' attorneys, and with the written agreement of Plaintiffs' attorneys.

Reid v. Benson  
Settlement Agreement

7. **Obligations of Plaintiffs.** In consideration of the agreement of the Agency to the terms herein, Plaintiffs agree to voluntarily dismiss the Litigation with prejudice, and to release the Agency and waive any and all claims raised in the Litigation. This release does not affect the administrative rule-making proceedings referenced in paragraph 6.c. above.

8. **Non-Admission.** Neither this Agreement, nor anything contained herein, is to be construed as an admission by the Agency or by Plaintiffs of any liability, wrongdoing, or unlawful conduct whatsoever.

9. **Severability.** In the event that any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement shall continue unabated and in full force and effect.

10. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the parties, and shall not be modified or superseded except on the express written consent of the parties to this Agreement. Plaintiffs represent and acknowledge that in executing this Agreement, they do not rely and have not relied upon any representation or statement made by the Agency which is not set forth in this Agreement.

11. **Supersedes Past Agreements.** This Agreement supersedes and renders null and void any previous agreements or contracts between the parties whether written or oral.

12. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Florida. Any dispute to enforce this Agreement must be brought in Circuit Court. This Agreement is and shall be deemed jointly drafted and written by all parties to it and shall not be construed or interpreted against the party originating or preparing it.

13. **Attorneys' Fees.** The parties will each bear their own costs and attorneys fees incurred in the Litigation. However, an award of costs and attorneys' fees shall be entered in

Reid v. Benson  
Settlement Agreement

favor of the prevailing party and against the non-prevailing party in any action brought to enforce the terms of this Agreement in Circuit Court. This paragraph 13 cannot and does not waive the limits of liability described in section 768.28, Florida Statutes.

14. **Agreement Not to be Used as Evidence.** This Agreement shall not be admissible as evidence in any proceeding except where one of the parties to this Agreement seeks to enforce this Agreement or alleges this Agreement has been breached, or where one of the parties is ordered to produce this Agreement by a court or administrative agency of competent jurisdiction.

15. **Opportunity to Consider.** Plaintiffs and the Agency acknowledge that each has read, studied, considered, and deliberated upon this Agreement and received the advice of counsel, and both parties fully understand and are in complete agreement with all of the terms of this Agreement.

IN WITNESS HEREOF, and intending to be legally bound hereby, the Agency and Plaintiffs hereby execute this Settlement Agreement consisting of six (6) pages (including the signature pages and including fifteen (15) enumerated paragraphs), by signing below voluntarily and with full knowledge of the significance of all of its provision.

**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

**PLAINTIFFS**

\_\_\_\_\_  
DAVID REID

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
DAVID MITCHELL

Dated: \_\_\_\_\_, 2008

**PLAINTIFFS**

*David Reid*  
DAVID REID

Dated: 19<sup>th</sup> November, 2008

*David Mitchell*  
DAVID MITCHELL

Dated: 11/20/08, 2008

*Cassandra Brown*  
CASSANDRA BROWN  
(on behalf of Joann Brown)

Dated: 11-19-08, 2008

*Miriam Harmatz*  
Miriam Harmatz, Esq.  
Attorney for Plaintiffs

Dated: November 20, 2008

**AGENCY FOR HEALTH CARE  
ADMINISTRATION**

2727 Mahan Drive, Mail Stop #3  
Tallahassee, FL 32308-5403

\_\_\_\_\_  
HOLLY BENSON  
Secretary, Agency of Health Care Administration

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Justin M. Senior, Esq.  
Acting General Counsel

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Christine Osterlund  
Assistant Deputy Secretary for Medicaid Operations

Dated: \_\_\_\_\_, 2008

Reid v. Benson  
Settlement Agreement

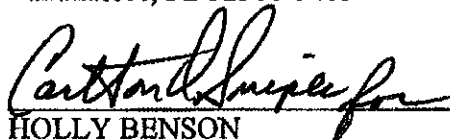
\_\_\_\_\_  
CASSANDRA BROWN  
(on behalf of Joann Brown)

Dated: \_\_\_\_\_, 2008


\_\_\_\_\_  
Miriam Harmatz, Esq.  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2008


**AGENCY FOR HEALTH CARE  
ADMINISTRATION**  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, FL 32308-5403

  
\_\_\_\_\_  
HOLLY BENSON  
Secretary, Agency of Health Care Administration

Dated: 11/20/08, 2008

  
\_\_\_\_\_  
Justin M. Senior, Esq.  
Acting General Counsel

Dated: 11/20, 2008

  
\_\_\_\_\_  
Christine Osterlund  
Assistant Deputy Secretary for Medicaid Operations

Dated: 11/20, 2008



FLCC LTR 413R Sample Plan Confirmation – Mandatory/Voluntary in 90 Day Change Period



<Payee Name>  
<Address>  
<City, state, zip>

<Date>

This confirms that you have asked to enroll the following family member(s) in a health plan:

<Beneficiary Name> <Plan> <Plan Phone#>  
<Beneficiary Name> <Plan> <Plan Phone#>  
<Beneficiary Name> <Plan> <Plan Phone#>  
<Beneficiary Name> <Plan> <Plan Phone#>

Your enrollment(s) will start on <Eff Date>. Until that date you can receive Medicaid services from your current provider.

**What happens next?**

1. Your plan(s) will send ID card(s), a member handbook, and a list of doctors who work with the plan.
2. If you have not picked a Primary Care Physician (PCP), your plan will choose one for you.
3. You should make an appointment with your doctor for a check-up. If you have questions about services your health plan offers, call the health plan – the phone number is listed above.
4. If you want to pick a different plan, you must pick that plan by <90 Day End Date>. After this date, you can change your plan once a year during your Open Enrollment period, if you want. Before your Open Enrollment period you will receive a reminder letter and information on your plan choices.
5. Before your Open Enrollment period, if the Agency determines you have a good cause reason to change plans (for example, if your provider is no longer with your plan), the Agency will allow you to change plans. For more information or to find out if you have a good cause reason, call 1-866-454-3959 or go to [www.flmedicaidreform.com](http://www.flmedicaidreform.com).

<Alternate text: You asked for one or more of the children listed above to be enrolled in <CMS Plan Name>. To enroll in this plan, the child must be screened by *Children's Medical Services*. If the child is approved by the plan to enroll by <Cutoff Date>, the plan choice(s) above will be canceled and the child will be enrolled in <CMS Plan Name> for <Effective Date>. If the child is approved after this date, we will change the child's plan and send you a new letter.>

Please note: If you lose Medicaid eligibility or are no longer eligible to enroll in a health plan, you will not be enrolled on <Eff date>.

**If you enrolled in this plan because someone offered you money, a gift certificate or another item, please call the Helpline immediately, 1-866-454-3959.**

**Remember ... it's easy to get help. Call the toll-free Helpline: 1-866-454-3959**

3 am - 7 pm Monday-Friday 9 am - 1 pm Saturday

TTY users ONLY call 1-866-467-4970

if you need Choice Counseling materials in large print, audiotape or Braille, call the Helpline.



FLCC LTR 206R Sample Open Enrollment Mandatory



<Name>  
<Address 1>  
<Address 2>  
<City, State, Zip>

<Date>

Once a year you have an Open Enrollment period where you can choose to stay with your current health plan or pick a new one. Each person listed below can now make a choice. **You do not have to make a change if you are happy with your plan.** Whether you stay with your current plan or enroll in a new one, you will use that plan for the next year. If you do pick a new plan you will have 90 days to change plans if you are not happy with your new plan.

<Beneficiary Names>            <Current Plan>  
<Beneficiary Names>            <Current Plan>  
<Beneficiary Names>            <Current Plan>  
<Beneficiary Names>            <Current Plan>

If you want to pick a new plan, you must do so between <OE Begin Date> and <OE End Date>. After this, if the Agency determines that you have a good cause reason to change plans (for example, if your provider is no longer with your plan), the Agency will allow you to change plans before your next Open Enrollment Period. For more information or to find out if you have a good cause reason, call 1-866-454-3959 or go to [www.flmedicaidreform.com](http://www.flmedicaidreform.com).

Health plans available in your county are listed in the enclosed flyer. If you want more details about benefits each plan offers, you can call the Choice Counseling Helpline, meet with a Choice Counselor in person or look at the plan information on the web at [www.flmedicaidreform.com](http://www.flmedicaidreform.com).

If you want to pick a new plan or meet with a Choice Counselor, call 1-866-454-3959 and a Choice Counselor will help you. When you call, you must have the Medicaid ID or Gold Card Number and birth date for each person listed in this letter.

**Please note:** If you lose Medicaid eligibility or are no longer able to join a health plan, you will not be enrolled. Be sure to keep all appointments or return information required by the Department of Children and Families or the Social Security Administration that relate to your eligibility.

**Remember, if you are happy with your plan, you do not have to make a change.**

Letter #/ Area#/ Page #

ID #

Remember ... it's easy to get help. Call the toll-free Helpline: 1-866-454-3959

8 am - 7 pm Monday-Friday 9 am - 1 pm Saturday

TTY users ONLY call 1-866-467-4970

If you need Choice Counseling materials in large print, audiotape or Braille, call the Helpline.