

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
NEXT STEP HEALTHCARE LLC**

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Next Step Healthcare LLC (“Next Step”).

2. This matter is based upon a complaint filed with the United States Department of Justice that alleged that Next Step skilled nursing facilities discriminated against a patient on the basis of disability in violation of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. The complainant alleged that a family member was discriminated against in their application for admission to a Next Step facility based on the use of Medications for Opioid Use Disorder (“MOUD”). MOUD includes methadone, Suboxone (buprenorphine-naloxone), buprenorphine, and Vivitrol, among other FDA-approved medications. As a result of these complaints, the United States opened an investigation and initiated a compliance review of all Next Step skilled nursing facilities in Massachusetts to determine whether a violation of the ADA existed.

3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND DETERMINATIONS

4. The Attorney General of the United States is responsible for administering and enforcing the ADA, 42 U.S.C. §§ 12101-12213, and the relevant regulations implementing Title III, 28 C.F.R. Part 36.

5. At all times relevant to the investigation of this matter, Next Step operated 24 skilled nursing facilities in Massachusetts; each provides/provided skilled nursing services, post-acute medical services, and rehabilitation programs.¹ These facilities include the following:

- a. Agawam Healthcare, 1200 Suffield St, Agawam, MA 01001;
- b. Attleboro Healthcare, 27 George St, Attleboro, MA 02703;
- c. Braintree Manor Healthcare, 1102 Washington St, Braintree, MA 02184;
- d. Chetwynde Healthcare, 1650 Washington St, West Newton, MA 02465;

¹ Since the initiation of the investigation of this matter, Agawam Healthcare, Heathwood Healthcare, and Wareham Healthcare have closed.

- e. Dedham Healthcare, 1007 East St, Dedham, MA 02026;
- f. Dexter House Healthcare, 120 Main St, Malden, MA 02148;
- g. Fall River Healthcare, 1748 Highland Ave, Fall River, MA 02720;
- h. Fitchburg Healthcare, 1199 John Fitch Hwy, Fitchburg, MA 01420;
- i. Garden Place Healthcare, 193 Pleasant St, Attleboro, MA 02703;
- j. Gloucester Healthcare, 272 Washington St, Gloucester, MA 01930;
- k. Heathwood Healthcare, 188 Florence St, Chestnut Hill, MA 02467;
- l. Lee Healthcare, 620 Laurel St, Lee, MA 01238;
- m. Melrose Healthcare, 40 Martin St, Melrose, MA 02176;
- n. Norwood Healthcare, 460 Washington St, Norwood, MA 02062;
- o. Oakhill Healthcare, 76 North St, Middleborough, MA 02346;
- p. Plymouth Harborside Healthcare, 19 Obery St, Plymouth, MA 02360;
- q. South Dennis Healthcare, 1 Love Ln, South Dennis, MA 02660;
- r. The Elmhurst Healthcare, 743 Main St, Melrose, MA 02176;
- s. The Hermitage Healthcare, 383 Mill St, Worcester, MA 01602;
- t. Walpole Healthcare, 160 Main St, Walpole, MA 02081;
- u. Wareham Healthcare, 50 Indian Neck Rd, Wareham, MA 02571;
- v. Wedgemere Healthcare, 146 Dean St, Taunton, MA 02780;
- w. West Newton Healthcare, 25 Armory St, West Newton, MA 02465; and
- x. Westborough Healthcare. 8 Colonial Dr, Westborough, MA 01581.

These facilities are places of public accommodation; they were or are operated by Next Step—a private entity—and were or are facilities that were or are health care providers, hospitals, or other service establishments, as well as social service center establishments. 42 U.S.C. §§ 12181(7)(F),(K); 28 C.F.R. §§ 36.104(6),(11) (definition of place of public accommodation).

6. Next Step is a private entity that owns, operates, or leases places of public accommodation within the meaning of 42 U.S.C. § 12182(a), and thus is a public accommodation subject to the requirements of Title III of the ADA. 28 CFR § 36.104.

7. Under Title III of the ADA, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Specifically, discrimination includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary. 42 U.S.C. § 12182(b)(2)(A)(i). A public accommodation may impose legitimate safety requirements that are necessary for safe operation, but safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities. 28 C.F.R. § 36.301(b).

8. Title III of the ADA further specifies that a public accommodation shall not subject an individual or a class of individuals on the basis of a disability to a denial of the opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages, or accommodations. 28 C.F.R. § 36.202(a).

9. Substance Use Disorder (“SUD”), including but not limited to Opioid Use Disorder (“OUD”), is a physical or mental impairment that substantially limits one or more major life activities, which include the operation of major bodily functions. 28 C.F.R. § 36.105(b)(2) (defining physical or mental impairment to include “drug addiction”). SUD substantially limits major life activities, including caring for oneself, learning, concentrating, thinking, and communicating. 42 U.S.C. § 12102(A). SUD also limits the operation of major bodily functions, such as neurological and brain functions. 42 U.S.C. § 12102(B). The determination whether an impairment substantially limits a major life activity is made without regard to the effect that ameliorating measures—including medication—may have on the impairment. 42 U.S.C. § 12102(4)(E)(i). Accordingly, persons with SUD are individuals with a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104, and covered by the ADA’s protections, except as described in paragraph 10, below.

10. Under the ADA, the term “individual with a disability” does not include an individual who is “currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.” 42 U.S.C. § 12210(a).² This exclusion does not apply to individuals who are no longer using illegal drugs and who (1) have successfully completed drug rehabilitation, (2) are participating in a supervised rehabilitation program, or (3) are erroneously regarded as using illegal drugs. 42 U.S.C. § 12210(b). However, a public accommodation may not deny health services to an individual on the basis of that individual’s current use of drugs, if the individual is otherwise entitled to such services. 28 C.F.R. § 36.209(b)(1). An individual who requires treatment or services outside of a health care provider’s area of specialization is not entitled to the services of that health care provider. 28 CFR § 36.302(b). Likewise, an individual is not entitled to the services of a health care provider if, without limitation: (a) providing reasonable modifications to the health care provider’s policies, practices, or procedures for the purpose of affording services to that individual would fundamentally alter the nature of the

² An individual’s use of controlled substance is not an “illegal use of drugs” if the person takes those substances “under supervision by a licensed health care professional.” 42 U.S.C. § 12210(d)(1).

goods, services, facilities, privileges, advantages, or accommodations; (b) permitting that individual to benefit from the goods, services, facilities, privileges, advantages, or accommodations of the health care provider would pose a direct threat to the health or safety of others; or (c) the individual requires a service that, if provided, would result in an undue burden to the health care provider. 28 CFR § 36.302(a); 28 CFR § 36.208(a); 28 CFR § 36.303(a).

11. Ensuring that rehabilitation centers, hospitals, and other service and social service establishments do not discriminate on the basis of disability is an issue of general public importance. Additionally, ensuring that individuals in treatment for a SUD do not face discrimination is also an issue of general public importance. The United States is authorized to investigate alleged violations of Title III of the ADA and initiate compliance reviews, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that raises issues of general public importance, as well as in cases where the United States has reasonable cause to believe that a group of persons is engaged in a pattern or practice of discrimination in violation of the ADA. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.

12. As a result of its investigation, the United States alleges:

- a. In December 2016, the Massachusetts Department of Public Health issued a Circular clarifying that Massachusetts' regulations state that when individuals on Medications for Opioid Use Disorder³ seek admission to long-term care facilities, such as skilled nursing facilities, "the facility is expected to admit the resident and provide for the administration of MOUD as directed by the prescribing or ordering physician at the resident's opioid treatment program (OTP) or Office Based Opioid Treatment with buprenorphine program (OBOT)."
- b. In November 2017, Next Step issued a company-wide policy calling for special attention ("red in the field") to be given to any applicant for residence at a Next Step facility with a methadone and/or Suboxone prescription.
- c. For the two-year period from approximately September 2017 through August 2019, Next Step admitted only one patient out of all 25 of its facilities who was on MOUD.
- d. For the two-year period from approximately September 2017 through August 2019, Next Step turned away at least 548 patients because they indicated they have a SUD.
- e. For the two-year period from approximately September 2017 through August 2019, Next Step turned away at least 56 patients because they indicated they receive MOUD, including methadone and Suboxone.

³ MOUD involves using FDA approved medications along with counseling and behavioral therapies for the treatment of OUD. The medications typically include Opioid Agonist Therapies (OAT) such as methadone or buprenorphine, or naltrexone, which is an opioid antagonist.

- f. In March 2019, one patient overdosed on opioids while staying at a Next Step facility due to the patient's weaning off her MOUD in order to stay at the facility.
- g. By refusing to admit 548 patients for the two-year period from approximately September 2017 through August 2019, Next Step engaged in a pattern or practice of discrimination by:
 - Denying individuals, on the basis of their disability, the opportunity to participate in or benefit from Next Step's goods, services, facilities, privileges, advantages, or accommodations in violation of 28 C.F.R. § 36.202(a);
 - Imposing eligibility criteria that screened out individuals with disabilities without assessing actual risk (rather than using mere speculation, stereotypes, or generalizations about individuals with disabilities), specifically individuals with SUD, in violation of 42 U.S.C. § 12182(b)(2)(A)(i) and 28 C.F.R. §§ 36.301, 36.209(b)(1); and
 - Denying individuals the opportunity to equally participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations being offered, in violation of 42 U.S.C. § 12182(b)(1)(A)(i) and 28 C.F.R. § 36.201.

13. Next Step denies each of the above-described allegations. This agreement constitutes a compromise between Next Step and the United States to resolve a dispute, and no provision of this agreement, shall be construed as an admission of any liability, wrongdoing or violation of any federal, state or local law or statute, regulation, ordinance, or common law, by either of the parties. Each party agrees that this is a material inducement to its entering into this agreement. The existence of this agreement, the contents hereof, and any and all actions taken hereunder shall not be admissible as evidence for any reason in any court or administrative proceeding, except solely in an action to enforce the provisions hereof.

ACTIONS TO BE TAKEN BY NEXT STEP

14. Next Step will not discriminate against any individual with a disability on the basis of SUD, including but not limited to discrimination on the basis of receiving MOUD, by denying such individual the opportunity to participate in or benefit from Next Step's services on the basis of disability or by imposing eligibility criteria that screen out individuals with disabilities on the basis of SUD in violation of Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.

15. Within 30 days of the effective date of this Agreement, Next Step will submit a draft non-discrimination policy to the United States for its review and approval. The non-discrimination policy will state that no Next Step facility discriminates in the provision of services to persons with disabilities, including persons with disabilities on the basis of SUD and who have been prescribed medications to treat OUD. This policy will also describe how Next

Step will conduct individualized assessments as to whether granting individuals admission to Next Step facilities will result in an undue burden or pose a direct threat to the health or safety of others. The non-discrimination policy will also direct those with questions, concerns, or complaints concerning the admission or care of people with SUD on how to make contact with Next Step regarding their issues. Within 21 days of approval by the United States, Next Step will adopt and implement the non-discrimination policy, and Next Step will maintain and enforce the non-discrimination policy for the duration of this Agreement. Next Step will conspicuously post the non-discrimination policy in the reception area of Next Step and as a link on the company's main webpage or "homepage," currently located at <https://www.nextstephc.com/>, as well as on the homepage of any current or future Next Step website, for the duration of this Agreement.

16. After Next Step receives written approval by counsel for the United States under paragraph 14 of this Agreement, it will within 30 days of receiving that approval, provide training on Title III of the ADA to Next Step employees and contractors who determine admissions for all Next Step facilities, including training about SUD, medications used to treat OUD, and disability discrimination in general. Next Step shall notify the United States in writing when this training is completed.

17. Next Step will ensure that all new employees and contractors who are involved with admissions receive the training referenced in paragraph 15 as a component of new employee training and orientation through the duration of this Agreement. Next Step shall provide the training to such new employees and contractors within 30 days of their start date as a part of their standard training for new employees and contractors. Notification of Next Step's completion this training will be provided to the United States every six months following the effective date of this Agreement and shall include the names and dates of the new employees trained.

18. All training manuals or written or electronic materials that address Next Step's policies and practices used in the trainings required in paragraphs 15 and 16 or created or substantively revised after the effective date of this Agreement shall be consistent with the provisions of this Agreement and such changes in language made during the term of this Agreement shall be approved in advance by counsel for the United States.

19. Next Step shall create and maintain a log that documents the name of each individual who participates in the trainings required in paragraphs 15 and 16, his or her title, and the date he or she participated in the training(s). This log may be kept in electronic format. Copies of such log shall be provided to the United States within 21 days of any written request for it.

20. Next Step shall create and maintain an admissions intake log that documents each prospective resident who has SUD. The log shall include whether the prospective resident was prescribed medication to treat OUD, and if so, the name of the medication, the names of the entity and individual making the request for admission on behalf of the patient, whether the prospective resident was denied admission, and if so a description of the reason for denial, including details on all individualized assessments. This log should not include the name of the

prospective resident and should be maintained in accordance with privacy requirements afforded to individuals in treatment for SUD. 42 C.F.R. Part 2. This log may be kept in electronic format. Copies of this log shall be provided to the United States every six months during the term of this Agreement.

21. For the duration of this Agreement, Next Step will send a copy to the United States of any complaint received that relates to admission or care of a person with SUD, including but not limited to complaints related to MOUD, within 21 days of receiving the complaint. For oral complaints, Next Step will send a written description. Next Step will also submit to the United States a copy of its response to each complainant.

22. Next Step shall pay a civil penalty to the United States in the amount of \$92,383.00 as authorized by 42 U.S.C. § 12188(b)(2)(C), 28 C.F.R. § 36.504(a)(3), and 28 C.F.R. § 85.5 as amended. The payment shall be made as follows:

- a. Next Step shall pay \$10,000.00 to the United States within 30 days of the effective date of this agreement;
- b. Payment of \$82,393.00 (the “Suspended Payment”) shall be suspended and forgiven if Next Step materially complies with the terms of this Agreement for the duration of this Agreement;
- c. If, at any time, the United States determines that Next Step has failed to materially comply with the terms of this Agreement, it shall provide written notice reasonably describing the noncompliance and demanding payment of the Suspended Payment, or of some portion of the Suspended Payment. Next Step will then have 30 days to make the payment or cure the non-compliance if it is possible to do so. Alternatively, within the 30-day time period, Next Step may contest or explain the alleged non-compliance or by asserting that the non-compliance has already been cured or does not need to be cured. If, after the 30-day period, and after fully considering Next Step’s explanations, proposals, and attempts to cure, as applicable, the United States determines there has been material non-compliance that has not or cannot be cured and notifies Next Step of such determination, and Next Step fails to make the Suspended Payment within five (5) business days of being so notified, the United States may file a civil action in federal court to enforce the payment obligation and take any other action it determines is necessary and appropriate.

23. If any issues arise that affect the anticipated completion dates set forth in paragraphs 14-22, Next Step will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

OTHER PROVISIONS

24. In consideration for this Agreement, the United States will close this investigation and will not institute a civil action at this time alleging discrimination based on the determinations set forth in paragraph 12. The United States, however, may review Next Step's compliance with this Agreement and/or Title III of the ADA at any time. If the United States believes that Title III of the ADA, this Agreement, or any portion of it has been violated, it may institute a civil action in the appropriate U.S. District Court to enforce this Agreement and/or Title III of the ADA consistent with the provisions of Section 22 (c).

25. Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce any provision of this Agreement.

26. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Next Step shall engage in good faith negotiations to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

27. This Agreement is binding on Next Step, including all principals, agents, executors, administrators, representatives, employees, and beneficiaries. In the event that Next Step seeks to sell, transfer, or assign substantially all of its assets or a controlling membership position in Next Step during the term of this Agreement, then, as a condition of such sale, transfer, or assignment, Next Step will obtain the written Agreement of the successor, buyer, transferee, or assignee to all obligations remaining under this Agreement for the remaining term of this Agreement.

28. The signatory for Next Step represents that he or she is authorized to bind Next Step to this Agreement.

29. This Agreement constitutes the entire agreement between the United States and Next Step on the matters raised herein, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.

30. This Agreement does not constitute a finding by the United States that Next Step is in full compliance with the ADA. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of disability. Nothing in this Agreement relieves Next Step of its obligation to fully comply with the requirements of the ADA.

31. Next Step shall not discriminate or retaliate against any person because of his or her participation in this matter.

EFFECTIVE DATE/TERMINATION DATE

32. The effective date of this Agreement is the date of the last signature below.
33. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

RACHAEL S. ROLLINS
United States Attorney
District of Massachusetts

/s/ Michelle Leung

Michelle Leung
Gregory Dorchak
Assistant U.S. Attorneys
Civil Rights Unit
U.S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
[REDACTED]

Date Signed: 4/28/2022

/s/ William H. Stephan
Name: William H. Stephan
Title: Chief Financial Officer
Next Step Healthcare

Date Signed: 7/21/22