By: Kolkhorst S.C.R. No. 31 (Leach, Krause, Middleton, Schofield, Smith)

1 SENATE CONCURRENT RESOLUTION

- 2 WHEREAS, Plaintiffs Dorena Coleman, Curtis Jackson, and
- 3 Federico Perez, individually, (collectively referred to as
- 4 "Plaintiffs"), filed suit on August 13, 2020, against the Texas
- 5 Health and Human Services Commission, including employees in their
- 6 official capacities ("HHSC"), and sought relief both on Plaintiffs'
- 7 own behalf and on behalf of a class of similarly situated
- 8 individuals ("Medicaid HCV Class"), and filed a motion for class
- 9 certification on August 14, 2020; and
- 10 WHEREAS, Plaintiffs alleged HHSC's Prior Authorization
- 11 Criteria and Policy's use of fibrosis score as criterion for direct
- 12 action antiviral drug (DAA) coverage violated Title XIX of the
- 13 Social Security Act:
- 14 (a) By discriminating among similarly situated Medicaid
- 15 recipients on the basis of categorical restrictions that are not
- 16 based upon prevailing clinical standards, as prohibited by 42
- 17 U.S.C. § 1396a(a)(10)(B)(i) and (ii) and 42 C.F.R. § 440.240;
- 18 (b) By denying qualified Medicaid participants the
- 19 provision of necessary medical assistance and treatment coverage
- 20 with "reasonable promptness," as required by 42 U.S.C.
- 21 § 1396a(a)(8);
- 22 (c) By excluding qualified Medicaid recipients from
- 23 medically necessary treatment coverage as required by 42 U.S.C.
- 24 § 1396a(a)(10)(A); and

- 1 WHEREAS, Defendants denied the allegations of the Lawsuit,
- 2 denied all allegations of wrongdoing and liability, and denied any
- 3 causation of harm or damage to the Medicaid HCV Class; and
- WHEREAS, The parties mediated this matter on December 1,
- 5 2020, with the Honorable Patrick Keel as mediator, and thereafter
- 6 successfully reached an agreement in principle on December 17,
- 7 2020; and
- 8 WHEREAS, The Parties have now agreed to a full settlement on
- 9 the following terms:
- 10 (a) HHSC will modify its Medicaid prior authorization (PA)
- 11 criteria to treat chronic Hepatitis C clients who have METAVIR
- 12 fibrosis scores of F2-F4 with Direct Acting Antiviral (DAA)
- 13 treatment by March 1, 2021;
- 14 (b) Between March 1, 2021, and September 1, 2021, Medicaid
- 15 enrollees with severe extrahepatic effects of chronic Hepatitis C
- 16 who have fibrosis scores other than F2-F4 will be approved for DAA
- 17 treatment on a case-by-case basis by the HHSC Chief Medical
- 18 Director or an MCO Medical Director, if they are assigned to an MCO;
- 19 (c) As of September 1, 2021, HHSC will remove all METAVIR
- 20 fibrosis score, drug screening, and specialist prescription PA
- 21 criteria requirements for DAA treatment for chronic Hepatitis C
- 22 clients, if the legislature approves the funding for HHSC's
- 23 Exceptional Item (EI); HHSC agrees that, for the period September
- 24 1, 2021, through August 31, 2023, HHSC will not reinstate these
- 25 criteria; and
- 26 WHEREAS, This Agreement is expressly conditioned upon
- 27 approval by the Office of the Attorney General of Texas, the

- 1 Governor of Texas, and the Texas Legislature; and
- 2 WHEREAS, This Agreement is expressly conditioned upon
- 3 enactment by the Texas Legislature of the EI requested by HHSC; and
- WHEREAS, Section 111.003(b), Texas Civil Practice and
- 5 Remedies Code, requires a state agency to obtain legislative
- 6 approval of a settlement agreement that "commits this state to a
- 7 course of action that in reasonable probability will entail a
- 8 continuing increased expenditure of state funds over subsequent
- 9 state fiscal bienniums"; therefore, the Settlement Agreement is
- 10 expressly conditioned upon the legislature approving and
- 11 appropriating the agreed upon settlement amount; now, therefore, be
- 12 it
- RESOLVED, That the 87th Legislature of the State of Texas
- 14 hereby approve the proposed Settlement Agreement.