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COMPROMISE AND SETTLEMENT AGREEMENT

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This Compromise and Settlement Agreement (hereinafter referred to as made, by and among Brittney [REDACTED] (DOB: February 16, 1994) by her- mother and next friend, Callie [REDACTED] and her father, Jackie [REDACTED] hereinafter referred to as "Plaintiff") and Preferred Health Partnership of Tennessee, Inc and PI II' Companies, Inc (hereinafter referred to as "PI IP Defendants") and Commissioner, Tennessee Department of Finance and Administration (hereinafter referred to as "State Defendant"), to settle the litigation styled *Brittney III, by her next friend Callie W. v. Preferred Health Partnership of Tennessee, Inc., PHIP Companies, Inc. and Commissioner, Tennessee Department of Health, No. 3:98-CV0759 (United States District Court, M.D. Tenn.)* (hereinafter referred to as "Litigation") as of the 29<sup>th</sup> day of October, 1999. The terms of the Agreement are as follows

1. This Agreement represents a compromise and settlement of disputed claims and, as such, does not constitute admission of any liability whatsoever on the part of PI II' Defendants or the State Defendant.

2. PI II' Defendants shall pay to Plaintiff the sums outlined in the Settlement Agreement and Release executed between the Plaintiff and PI IP Defendants and their insurer, plus assignment fees, if any. The parties agree that the sums paid to Plaintiff shall be confidential and not subject to disclosure, unless otherwise required by law. State Defendant and the State of Tennessee shall not consider payments from PI II' Defendants to Plaintiff as income or resource for purposes of eligibility for medical assistance under any public assistance program administered, funded or managed by the State of Tennessee

3. PI II' Defendants shall pay to Plaintiff's private counsel Donna Davis the sum of \$8,250 as Plaintiff's reasonable attorneys' fees. Attorneys with Rural Legal Services of Tennessee, Inc. do not make a claim for and shall not receive attorneys fees from PI II' Defendants or State Defendant.

and medically necessary treatment and care in accordance with federal law, 42 U.S.C. § 1396 *et seq.*, and under the “Terms and Conditions for Access” for general dental care (hereinafter referred to as the “Dental Care Access Standard”) established by the Health Care Financing Administration (hereinafter referred to as “HCFA”) of the U.S. Department of Health and Human Services as part of TennCare. A copy of the current HCFA “Terms and Conditions for Access” is attached as Appendix I and incorporated hereto by reference. The parties acknowledge that HCFA can and may modify, change or remove the Dental Care Access Standard as a waiver condition for TennCare. In the event HCFA modifies, changes or removes the Dental Care Access Standard, the modified or changed Dental Care Access Standard, if any, shall apply to the terms and conditions of this Agreement.

6. Plaintiff Defendants shall pay for all dental care provided by Dr. Robert L. Pryor of Oak Ridge, Tennessee until such time as he determines that it is no longer appropriate for Plaintiff to see a pediatric dentist. Payment of care by Dr. Pryor shall not be conditioned upon Plaintiff’s eligibility for TennCare, enrollment under TennCare, enrollment in a TennCare plan owned, administered or offered by Plaintiff Defendants or participation by Plaintiff Defendants as a dental care provider or as a participant in TennCare. However, so long as Plaintiff remains eligible for TennCare and enrolled under a TennCare plan of Plaintiff Defendants, payment can be made to Dr. Pryor as an out-of-network provider through TennCare.

7. Once Dr. Pryor discharges Plaintiff as his patient, Plaintiff Defendants and State Defendant shall continue to provide Plaintiff all preventive and periodic dental screenings and medically necessary treatment and care in accordance with federal law and the Dental Care Access Standard as long as she remains eligible for medical assistance under TennCare. However, should Plaintiff Defendants no longer participate in TennCare or provide dental care to TennCare enrollees, this requirement of providing dental care in accordance with federal law and the Dental Care Access Standard shall become the sole obligation of the State Defendant. Nothing in this

8. PHP Defendants shall survey by telephone or interview or cause to be surveyed by telephone or interview all providers within its dental care provider network at least twice during a 12-month period commencing January 1, 2000, in order to assure that its dental care network meets the Dental Care Access Standard. The survey shall not be done by any subcontractor of PHP Defendants which contracts with PHP Defendants for the purpose of providing or managing dental care services. These surveys shall continue for three full calendar years following approval of this settlement by the United States District Court. During the three full calendar years, at least six surveys of providers within PHP Defendants' dental care network must be completed.

9. The actual survey sheets and results from the survey shall be maintained by PHP Defendants for five years following the completion of each survey. Results of the surveys shall be tabulated and summarized and reported to the Bureau of TennCare, Office of Quality Improvement Unit, within 45 days of completion of the survey. The parties understand that once reported to the State of Tennessee, the tabulation and summary of results of the surveys might become a public document under applicable state or federal law. It is the intent of the parties that the survey results will be as complete as and reported in the same manner as the results reported from the survey by the Quality Improvement Unit of the Bureau of TennCare in October 1998. The surveys conducted pursuant to this Agreement shall include criteria under the then current Dental Care Access Standard. Following each survey, PHP Defendants shall mail to each enrollee's address a complete, updated list of all dental providers, including the provider's address and phone number, office hours, ages of patients served and whether new patients are being accepted. It is parties' intent that if more than one enrollee lives at an address, only one updated dental provider list shall be sent to the address.

10. PHP Defendants will provide notice of the availability of dental care to its enrollees, including the Dental Care Access Standard, in every quarterly publication distributed to their TennCare enrollees. This notice shall be in the form attached hereto as Appendix 2 and shall

11. As part of the notice attached as Appendix 2, PIP Defendants shall publish a toll-free number in every quarterly publication to its TennCare enrollees advising them that they can call the toll-free number for assistance in getting dental care or to file a complaint concerning the inability to obtain dental care within the Dental Care Access Standard. PIP Defendants shall maintain a log of all calls concerning dental care. If PIP Defendants cannot resolve a complaint within 24 hours, PIP Defendants shall report the complaint to the agency within the Department of Health, Bureau of TennCare or other state agency which receives and processes appeals by enrollees concerning denial, delay, reduction or termination of medical assistance pursuant to federal law and federal court orders. PIP Defendants shall send all enrollees who lodge a complaint concerning the inability to obtain dental care within the Dental Care Access Standard a letter concerning their complaint and a form to file an appeal if they are not satisfied.

12. This Agreement shall not be interpreted, used, or asserted by the State of Tennessee or the State Defendant and successors in office to prevent, preclude or otherwise adversely affect Plaintiff's right to enforce rights and to seek remedies (other than individual damages or any relief that is duplicative of any relief in this Agreement) as a class member in *John B. et al. v. Nancy Menke et al.*, No. 3-98-0168 (United States District Court, MD. Tenn.) and in *Daniels et al. v. Menke et al.*, No. 79-3107 (United States District Court, MD. Tenn.)

13. Plaintiff releases PIP Defendants, their officers, directors, shareholders, employees, agents, successors, assigns, and PIP Defendants' subcontractors for dental care services from any and all claims and causes of action that Plaintiff has or could have asserted which arise out of, or are connected in any way, with her relationship to PIP Defendants, beginning with her eligibility for TennCare to the date of this Agreement.

14. Except as reserved in paragraph 12, Plaintiff releases the State of Tennessee and the State Defendant and employees and agents, whether current or former, all in their official and individual capacities, and their successors, assigns, servants, agents, attorneys, and

1 5 . Callie [REDACTED] the mother of Brittney [REDACTED] and Jackie [REDACTED] [REDACTED] the father of Brittney [REDACTED] release PIP Defendants, their officers, directors, shareholders, employees, agents, successors, assigns, and PIP Defendants subcontractors for dental care services from any and all claims and causes of action they have or could have asserted which arise out of, or are connected in any way, with Plaintiff's relationship to PIP Defendants, beginning with her eligibility for TennCare to the date of this Agreement. This release shall include but not be limited to any action they could have sought pursuant to Tenn. Code Ann. 20-1-105.

16. The Parties acknowledge that they are executing this Agreement entirely upon their own volition, individual judgment, belief, and knowledge with consultation of counsel, that this Agreement is made without reliance upon any statement or representation of any party or any person not herein expressed, that no promise, inducement, or agreement, not herein expressed, has been made to them, and that the Agreement contains, and is, the entire Agreement and understanding between the parties herein and that the terms of this Agreement are contractual and not mere recitals

17. Plaintiff agrees that, regardless of whether she hereafter discovers facts different from, or in addition to, those now known or believed to be true with respect to any aspect of her claim or damages sustained, that this Agreement shall, nevertheless, be and remain in full force and effect in all respects

18. Should any provision of this Agreement be declared by a court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, or provisions will not be affected thereby, and said illegal or invalid part, term or provision will be deemed not to be a part of this Agreement

19. This Agreement shall not be effective or binding on the parties until the court in the litigation enters an order pursuant to Tenn Code Ann 34-11-121(b) approving and

20 The undersigned declare that all of the terms of his Agreement have been completely read and fully understood and accepted by them and that they have had the benefit of counsel with their attorneys in connection herewith. The undersigned further declare that these terms have been agreed to voluntarily, without any undue influence, coercion or improper move

2. Questions of compliance with application of, or breach of his Agreement may be heard upon the motion of any party, provided however that reasonable good faith efforts are made to informally resolve any issue arising under this section prior to any motion. Good faith efforts include but are not limited to, written notice of non-compliance, breach or misapplication and a reasonable cure period.

DATE: 10-29-99

Callie [redacted]  
CALLIE [redacted]  
MOTHER AND NEXT FRIEND OF  
BRITTNEY [redacted]

DATE: 0-28-99

Jackie [redacted]  
JACKIE [redacted]  
FATHER OF [redacted]

DATE: 10/29/99

Theresa-Vay Smith  
THERESA-VAY SMITH  
LENNY L. CROCK  
DONNA DAVIS  
ATTORNEYS FOR PLAINTIFF

DATE: 11/4/99

[Signature]  
PREFERRED HEALTH PARTNERSHIP OF  
TENNESSEE, INC.

DATE: 11/4/99

[Signature]  
PHP COMPANIES, INC.

DATE: 11/11/99

[Signature]  
COMMISSIONER  
TENNESSEE DEPARTMENT OF FINANCE  
AND ADMINISTRATION

DATE: 11/17/99

[Signature]  
MARY JO PRICE, GENERAL COUNSEL  
TENNESSEE DEPARTMENT OF FINANCE  
AND ADMINISTRATION

DATE: 1/1/00

[Signature]  
SUE SHIELDON, SENIOR COUNSEL  
RUSSELL PERKINS, DEPUTY  
ATTORNEY GENERAL

## Terms and Conditions for Access

In general, contractors shall provide available, accessible, and adequate numbers of institutional facilities, service locations, service sites, professional, allied, and paramedical personnel for the provision of covered services, including all emergency services, on a 24-hour-a-day, 7-day-a-week basis. At a minimum, this shall include:

- Primary Care Physician or Extender:

(a) Distance/Time Rural: 30 miles or 30 minutes

(b) Distance/Time Urban: 20 miles or 30 minutes

(c) Patient Load: 2,500 or less for physician; one-half this for a physician extender

(d) Appointment/Waiting Times: Usual and customary practice (see definition below), not to exceed 3 weeks from date of a patient's request for regular appointments and 48 hours for urgent care. Waiting times shall not exceed 45 minutes.

- ( e ) Documentation/Tracking requirements:

- + Documentation - Plans must have a system in place to document appointment scheduling times. The State must utilize statistically valid sampling methods for monitoring compliance with appointment/waiting time standards as part of the survey required in special term and condition 3.

- + Tracking - Plans must have a system in place to document the exchange of client information if a provider, other than the primary care provider (i.e., school-based clinic or health department clinic), provides health care.

- Specialty Care and Emergency Care: Referral appointments to specialists (e.g., specialty physician services, hospice care, home health care, substance abuse treatment, rehabilitation services, etc.) shall not exceed 30 days for routine care or 48 hours for urgent care. All emergency care is immediate, at the nearest facility available, regardless of contract. Waiting times shall not exceed 45 minutes.

x

## Hospitals

(a) Transport time will be the usual and customary, not to exceed 30 minutes, except in rural areas where access time may be greater. If greater, the standard needs to be the community standard for accessing care, and exceptions must be justified and documented to the State on the basis of community standards.

- General Dental Services:

(a) Transport time will be the usual and customary, not to exceed 30 minutes, except in rural areas where community standards and documentation will apply.

(b) Appointment/Waiting Times: Usual and customary not to exceed 3 weeks for regular appointments and 48 hours for urgent care. Waiting times shall not exceed 45 minutes.

- General Optometry Services:

(a) Transport time will be the usual and customary, not to exceed 30 minutes, except in rural areas where community standards and documentation shall apply.

(b) Appointment/Waiting Times: Usual and customary not to exceed 3 weeks for regular appointments and 48 hours for urgent care. Waiting times shall not exceed 45 minutes.

All other services not specified here shall meet the usual and customary standards for the community.

x

Definition of "Usual and Customary" - access that is equal to or greater than the currently existing practice in the fee-for-service system.

#### Guidelines for State Monitoring of Plans

- State will require, by contract, that Plans meet certain State-specified standards for Internal Quality Assurance Programs (QAPs) as required in 42 CFR 434.

State will monitor, on a periodic or continuous basis (but no less often than every 12 months), Plans adherence to these standards, through the following mechanisms: review of each plan's written QAP, review of numerical data and/or narrative reports describing clinical and related information on health services and outcomes, and on-site monitoring of the implementation of the QAP standards.

- Recipient access to care will be monitored through the following State activities: periodic comparison of the number and types of providers before and after the waiver, periodic surveys which contain questions concerning recipient access to services, measurement of waiting periods to obtain health care services, and measurement of referral rates to specialists.

#### Guidelines for Plan Monitoring of Providers

- Plans will require, by contract, that providers meet specified standards as required by the State contract.
- Plans will monitor, on a periodic or continuous basis, providers adherence to these standards, and recipient access to care.

## DENTAL CARE

Taking care of your teeth is important to your health. TennCare<sup>SM</sup> pays for dental care for people under 21. TennCare provides limited dental care to people age 21 and over.

### HOW '10 GET A DENTIST

You and your child should see a dentist regularly. When you enrolled, PHIP TennCare mailed you a Welcome Packet. Choose a dentist from the list in your Welcome Packet. PHIP TennCare must provide a dentist within 30 minutes of your home. Call the dentist and make an appointment. Tell the dentist office that you have PHIP TennCare. The dentist should see you within 21 days for routine care. If you have an urgent need, the dentist should see you within 48 hours.

**Call PHIP TennCare Consumer Service at 470-7440 or 1-800-747-0008 if:**

- **You cannot find a dentist who is within 30 minutes of your home.**
- **You cannot get an appointment within 21 days or 48 hours.**
- **You need help finding a dentist.**
- **You need to file an appeal because you cannot get dental care.**

Do not drive? Do not have a car? Your car does not run?  
Call 1-800-337-4911 for a FREE RIDE to your dentist.

### WHAT SERVICES ARE COVERED?

#### Members Under 21

PHIP TennCare will pay for:

- One dental exam every Six months.
- One cleaning every six months.
- Fluoride treatment every six months.
- Sealants.
- Extractions.
- Space maintainers.
- Fillings.
- Crowns.
- Root canal.
- Braces.
- Oral surgery.

Your dentist will decide what type of fillings and crowns you need. PHIP TennCare must look at the need for braces and surgery before you get this care.

#### Members Age 21 and Older

PHIP TennCare must approve dental care if you have reached your 21<sup>st</sup> birthday. It will pay for: