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**UNITED STATES DISTRICT COURT
IN THE _____ DISTRICT OF MICHIGAN
_____ DIVISION**

_____ ,

Plaintiff,

vs.

_____ ,

[Defendant/Defendants].

_____/ **[Name of Attorney(s)]**

Attorney(s) for Plaintiff

[Address and phone number]

_____/

COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge.

NOW COMES Plaintiff _____, by and through **[his/her]** attorney, _____

[attorney/firm name] and for **[his/her]** Complaint against **[Defendant/Defendants]**

_____ hereby states as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action under the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* (“ADA”), Section 504 of the Rehabilitation Act of 1973, as amended,

at 29 U.S.C. §794 (the “Rehabilitation Act”), and the Persons With Disabilities Civil Rights Act, M.C.L. §37.1101, *et seq.* (“PDCRA”).

2. This Court has jurisdiction pursuant to the following statutes:

- a. 28 U.S.C. §1331, which gives district courts original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States;
- b. 28 U.S.C. §1343 (3) and (4), which gives district courts jurisdiction over actions to secure civil rights extended by the United States government;
- c. 28 U.S.C. §1367, which gives the district court supplemental jurisdiction over state law claims.

3. Venue is appropriate in this judicial district under 28 U.S.C. §1391(b) because the events that gave rise to this Complaint occurred in this district.

PARTIES

4. Plaintiff is a citizen of the United States and resides in the County of _____, State of **[Michigan]**, which is in this judicial district.

5. Defendant _____ **[Individual’s Name]** is the Director of the **[Michigan Department of Community Health (“MDCH”)]**. Defendant _____ **[director’s name]** is sued in **[his/her]** official capacity as Director of **[MDCH]**. As such, **[he/she]** has a duty to insure that the state’s federally funded Medicaid program(s) are administered in accordance with federal and state law.

6. Defendant **[MDCH]** is the single state agency responsible for the administration of the Medicaid program, Title XIX of the Social Security Act, in **[Michigan]**. **[MDCH]** has contracted with Defendant _____ **[Waiver Agency]** to provide Medicaid covered services to Medicaid eligible clients in _____ County, such as Plaintiff.

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[If applicable] **[County Organization]** in turn has contracted with _____ **[Service Provider]** to assess and arrange for Medicaid covered mental health services for **[County Organization]**'s clients.

7. **[Defendant/Defendants]** **[is/are]** a public entity for the purposes of the ADA pursuant to 42 U.S.C. §12131(1), and is located in the County of _____, State of **[Michigan]**, which is in this judicial district. **[Defendant/Defendants]** provide programs and/or activities receiving federal financial assistance acting under the color of state and federal law.

GENERAL ALLEGATIONS

8. The Federal Medicaid statute, Title XIX of the Social Security Act, is codified at 42 U.S.C. § 1396 *et seq.* It authorizes the establishment by states of medical assistance programs for low income individuals who meet certain eligibility requirements. These medical assistance programs are jointly funded by the federal and state governments, and are designed by the states within the framework of options and requirements established under the Medicaid statute.

9. Pursuant to the federal statutory scheme, when an application for Medicaid benefits is filed with the single state agency responsible for administering the Medicaid program(s), such assistance shall be furnished with reasonable promptness to all eligible individuals. 42 U.S.C. §1396a(a)(8). Once individuals have been determined eligible, the state agency must continue to furnish Medicaid services until the recipient is found to be ineligible. 42 C.F.R. §435.930(b).

10. The Federal Medicaid statute, as well as the **[Michigan State Plan]** approved by the Federal Medicaid agency, lists services that must be provided to eligible persons. Such

services include _____ **[Name of Waiver]** services (“Alternative Services”) for persons who would otherwise require institutional care. 42 U.S.C. §1396a(a)(10)(A)(ii)(VI).

11. The Federal Medicaid statute further requires that an individual eligible for Alternative Services be able to freely choose such services provided in **[his/her]** home or community setting as opposed to institutional services. 42 U.S.C. §1396n(c)(2)(C) and (d)(2)(C).

12. Title II of the ADA, found at 42 U.S.C. §§12131-12134, extends to state and local governments the non-discrimination provisions of the Rehabilitation Act. It requires that their services, programs and activities of state and local governments be administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

13. Plaintiff is a _____-year-old **[Woman/Man]** with the following need for long term care via Medicaid services: _____, _____, and _____ **[List/description of Disabilities/Long term care needs]**.

14. As a result of Plaintiff’s condition(s) _____ **[describe/list what effects Plaintiff’s age/disabilities have on her/him]**.

15. Plaintiff is eligible to be a Medicaid beneficiary of the _____ waiver program **[Name of Waiver Program]** (“Program”). Under the Program, Plaintiff is entitled to receive _____ **[Scope, amount and duration of Services Plaintiff Receives or should Receive]**.

16. Plaintiff meets the essential eligibility requirements for the receipt of services or the participation in **[Defendant’s/Defendants’]** Program.

17. On or about _____ **[Date]**, Plaintiff applied to be a participant in **[Defendant’s/Defendants’]** Program.

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18. On or about _____ **[Date]**, **[Defendant/Defendants]**, acting under the color of state and federal law, denied Plaintiff's request to be a participant in **[Defendant's/Defendants']** Program, *[If Applicable]* placing Plaintiff on a "waiting list."

19. **[Defendant's/Defendants']** administration of the Program limits the availability of the Alternative Services.

20. Without the Alternative Services, Plaintiff will have no choice but to move into an institution and/or nursing home.

COUNT I
VIOLATION OF 42 U.S.C. §1983

21. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

22. **[Defendant/Defendants]** **[has/have]** deprived Plaintiff of **[his/her]** federal constitutional and/or statutory rights by failing and refusing to provide Plaintiff with the home care services prescribed in **[his/her]** _____ care plans.

23. **[Defendant/Defendants]** **[has/have]** acted under the color of state law when **[Defendant/Defendants]** deprived Plaintiff of **[his/her]** federal rights, property interests and otherwise discriminated against Plaintiff based upon Plaintiff's disability.

24. As a direct and proximate result of **[Defendant's/Defendants']** violation of 42 U.S.C. §1983, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*.

COUNT II
VIOLATION OF THE MEDICAID STATUTE AND REGULATIONS

25. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

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26. The failure of **[Defendant/Defendants]** to provide Plaintiff with the Alternative Services violates provisions of the Federal Medicaid statute and regulations including, without limitation, the following:

- (a) The requirement of 42 U.S.C. §1396a(a)(8) that Medicaid assistance be furnished with reasonable promptness to eligible individuals.
- (b) The requirement of 42 C.F.R. §435.930(b) that once an individual has been found eligible for Medicaid services, the state agency must continue to provide such services until the recipient is found ineligible.
- (c) The requirement of 42 U.S.C. §1396a(a)(10)(A)(ii)(VI) that the Alternative Services be made available to persons who would otherwise be eligible for institutional care.
- (d) The requirement in 42 U.S.C. §1396n(c)(2)(C) and (d)(2)(C) that an Alternative Services eligible beneficiary be able to freely choose to receive medical assistance at home or in a community setting as opposed to receiving institutional care.

27. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*

COUNT III
VIOLATION OF THE [MICHIGAN] _____ STATE PLAN,
THE _____ STATUTE AND REGULATIONS

28. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

29. The failure of Defendant **[MDCH]** to provide Plaintiff with the Alternative Services prescribed in **[his/her]** _____ **[Name of Plan]** care plan(s) violates provisions of **[Michigan]** state law including, without limitation, the following:

- (a) The requirement of _____ **[Statute Cite]** that long term care services at home or in a community setting be made available to persons at risk of institutionalization who choose them as an alternative to nursing facility services.

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- (b) The agreement in the **[Michigan]** State Plan that Alternative Services be provided to eligible persons.

30. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*

COUNT IV
DISCRIMINATION BASED ON DISABILITY
(Title II of ADA)

31. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

32. Plaintiff is a “qualified individual with a disability” as defined in 42 U.S.C. §12131(2).

33. The ADA and its implementing regulations require that the Alternative Services be made available in the community rather than in institutions where to do so will meet the needs of qualified individuals with disabilities, such as Plaintiff.

34. Plaintiff has been denied and excluded from the benefits of **[Defendant's/Defendants']** Program, which would provide Plaintiff a less confining program that satisfies Plaintiff's needs.

35. As a result of **[Defendant's/Defendants']** denial and exclusion of Plaintiff from the Program, **[Defendant/Defendants]** violated the ADA by discriminating against Plaintiff in a number of ways, including without limitation, the following:

- (a) By reason of Plaintiff's disabilities, age and need for long-term care services;
- (b) The under-funding of the Program compelling institutionalization or placement in a nursing home, thus negating a meaningful choice for Plaintiff; by denying a waiver to Plaintiff, the Defendant is failing to reasonably accommodate the Plaintiff. Denial of long-term care for medically needy Medicaid beneficiaries in community based settings violates the ADA as the

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[Defendant's/Defendants'] can not show that providing these services is a fundamental alternation of Michigan's Medicaid program. *Townsend v. Quasim* 328 F3d 511 (9th Cir. 2003)

- (c) Providing services Plaintiff requires only in a segregated setting, as opposed to the "most integrated setting" appropriate to the needs of Plaintiff;
- (d) **[Defendant's/Defendants']** administration of the Program limits the availability of Alternative Services based on the severity of need or disability; and
- (e) Denying Plaintiff the equal/same opportunity to receive the benefit(s) of **[Defendant's/Defendants']** programs/activities that are available to other qualified individuals. It is not a fundamental alteration of the long term care system to accommodate the Plaintiff's request to receive services in the least restrictive setting.

36. **[Defendant's/Defendants']** actions violate the *Olmstead* ruling by the undue institutionalization of Plaintiff where a less confining service can satisfy Plaintiff's needs, and failure of **[Defendant/Defendants]** to administer the services, programs and activities in the most integrated setting appropriate to the needs of Plaintiff.

37. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered, including but not limited to needless isolation/segregation.]*

COUNT V

VIOLATION OF THE REHABILITATION ACT

38. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

39. Plaintiff is a "disabled/handicapped" individual as defined in 29 U.S.C. 705.

40. The Rehabilitation Act and its implementing regulations require that **[Defendant's/Defendants']** administer programs/activities in the most integrated setting

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appropriate to the needs of qualified handicapped/disabled persons. 28 C.F.R. §41.51 and 45 C.F.R §84.4.

41. Plaintiff has been denied and excluded from the benefits of **[Defendant's/Defendants']** Program, which would provide Plaintiff a less confining program that satisfies Plaintiff's needs.

42. As a result of **[Defendant's/Defendants']** denial and exclusion of Plaintiff from the Program, **[Defendant/Defendants]** violated the Rehabilitation Act by discriminating against Plaintiff in a number of ways, including without limitation, the following:

- (a) By reason of Plaintiff's disabilities, age and need for long-term care services;
- (b) The underfunding of the Program compelling institutionalization or placement in a nursing home, thus negating a meaningful choice;
- (c) Providing services Plaintiff requires only in a segregated setting, as opposed to the "most integrated setting" appropriate to the needs of Plaintiff;
- (d) Defendant's administration of the Program limits the availability of Alternative Services based on the severity of need or disability; and
- (e) Denying Plaintiff the equal/same opportunity to receive the benefit(s) of **[Defendant's/Defendants']** programs/activities that are available to other qualified individuals with disabilities.

43. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*

COUNT VI

DISCRIMINATION BASED ON DISABILITY (PDCRA)

44. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

45. Plaintiff's developmental disabilities that substantially limits one or more major life activities unrelated to **[his/her]** ability to utilize and benefit from a place of public accommodation or public service, constitute a *disability* by and within the meaning of the PDCRA, M.C.L. §37.1103(d).

46. **[Defendant/Defendants]** violated the PDCRA, M.C.L. §37.1302, by discriminating against Plaintiff upon **[his/her]** application to be a participant in the Program in a number of ways including, without limitation, the denying Plaintiff the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a public service because of a disability that is unrelated to Plaintiff's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by Plaintiff of adaptive devices or aids (M.C.L. §37.1302(a)).

47. Plaintiff's *disability* was a determining factor in **[Defendant's/Defendants']** decision to deny and preclude Plaintiff from being a participant in the Program.

48. As a direct and proximate result of **[Defendant's/Defendants']** unlawful discrimination, Plaintiff has sustained injuries and damages. *[If applicable list injuries and damages suffered]*

WHEREFORE, Plaintiff requests that this Court enter judgment against **[Defendant/Defendants]** providing the following relief:

- (a) Compensatory damages in whatever amount in excess of \$ _____, exclusive of costs and interest, that Plaintiff is found to be entitled;
- (b) Punitive/exemplary damages against **[Defendant/Defendants]** in whatever amount, exclusive of costs and interest, that Plaintiff is found to be entitled;
- (c) An order placing Plaintiff in the position that **[he/she]** would have been in had there been no violation of **[his/her]** rights;

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- (d) An order enjoining/restraining **[Defendant/Defendants]** from further acts of discrimination or retaliation;
- (e) An award of interest, costs, and reasonable attorney's fees;
- (f) Any and all other remedies provided pursuant to 42 U.S.C. §1983, the Federal Medicaid statute and regulations, the ADA, the Rehabilitation Act and the PDCRA;
- (g) Take other appropriate nondiscriminatory measures to overcome the above described discrimination; and
- (h) such other and further relief as the Court deems appropriate.

[Firm Name]

By: _____
[Attorney name(s)]
Attorney(s) for Plaintiff
[Address and phone number]

Sample Complaint drafted by Patricia E. Kefalas Dudek and Victor A. Veprauskas IV
victor/misc/ada sample complaint

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