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Attorneys for Petitioners

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ACCESS BEHAVIORAL HEALTH
SERVICES, INC.; TUELLER
COUNSELING INC.; RIVERSIDE
RECOVERY, LLC; and MENTAL HEALTH
SPECIALISTS LLC,

Petitioners,

v.

IDAHO DEPARTMENT OF HEALTH AND
WELFARE

Respondent.

Civil Action No. CV01-25-21335

PETITION FOR JUDICIAL REVIEW

Pursuant to the Idaho Administrative Procedures Act, Idaho Code sections 67-5201 through 67-5279 and Rule 84 of the Idaho Rules of Civil Procedure, Petitioners Access Behavioral Health Services, Inc.; Tueller Counseling Inc.; Riverside Recovery, LLC; and Mental Health Specialists LLC (collectively, Providers) file this Petition for Judicial Review. This Petition is supported by the following allegations.

INTRODUCTION

1. This Petition challenges agency action—specifically, the Idaho Department of Health and Welfare’s (Department) failure to issue a rule or order and failure to perform duties placed on it by law, *see* Idaho Code section 675201(5)—that resulted in changes to Medicaid billing procedures in a manner that threatens to terminate Assertive Community Treatment (ACT) under the Medicaid program effective December 1, 2025.

2. The Department contracted with Magellan Healthcare, Inc. or an affiliate (Magellan) to provide Medicaid services under the Idaho Behavioral Health Plan. On October 31, 2025, Magellan sent notice to the Providers that it would no longer reimburse the Providers for “bundled” Assertive Community Treatment on or after December 1, 2025.

3. Assertive Community Treatment is an evidence-based practice necessary to bring care to those with severe mental illness, including individuals who do or would pose a threat to themselves or otherwise without ACT.

4. Assertive Community Treatment is by nature a bundled treatment. “Unbundled” ACT cannot be provided in compliance with applicable definitions and professional standards.

5. So what purports to be a change in billing methods is, in substance, a prohibition on Assertive Community Treatment under the Medicaid Program.

6. The *de facto* prohibition on ACT was implemented without a written order or rule from the Department, in violation of the Idaho Administrative Procedures Act.

7. The *de facto* prohibition on ACT contradicts, among other things, the State Medicaid Plan, amendments to the State Medicaid Plan, the Idaho Behavioral Health Plan, and other relevant and binding documents.

8. The *de facto* prohibition on ACT was also carried out without public notice or comment, in contravention of the Department's legal duties under the Medicaid Act and implementing regulations.

9. For these reasons, set forth in more detail below, the Providers request that the Court 1) enter a stay of the *de facto* termination of ACT services until the Department issues a written order or rule or otherwise complies with its legal duties; and, or in the alternative, 2) set aside the agency action as inconsistent with law, as arbitrary and capricious, or on other grounds.

GENERAL ALLEGATIONS

ASSERTIVE COMMUNITY TREATMENT AND ITS ROLE IN TREATING THOSE WITH SEVERE MENTAL ILLNESS

10. Assertive Community Treatment is a federally recognized, evidence-based, community-based intervention for the highest-acuity adults with mental illness such as schizophrenia, bipolar disorder with psychosis, severe and persistent mental illness with anosognosia (basically, the inability of an individual to perceive their own mental illness), and a history of failure with traditional services.

11. Assertive Community Treatment has a record of success where other interventions fail. It is the treatment of last resort for those that, without treatment, do or may present a threat to themselves or others.

12. If Assertive Community Treatment is not provided, individuals currently receiving ACT are at high risk of ending up in—and either being treated in, or *not* being

treated in—emergency rooms, jails, mental hospitals, law-enforcement custody, homeless services, or similar services.

13. Assertive Community Treatment is a service that must be provided under the Idaho Behavioral Health Plan and amendments to the Idaho Medicaid state plan, as discussed below. ACT services must be performed with high fidelity, meaning that the services must conform to specific professional standards and practices.

ACT IS INHERENTLY A BUNDLED SERVICE

14. ACT is, by nature, a combination of services that are (and must be) provided by a team that includes medical staff, prescribers, nurses, peers, case managers, substance-abuse and vocational providers.

15. ACT is, by nature and definition, a service that is distinct from traditional outpatient programs because it has a record of success when traditional outpatient services fail.

16. This is because, among other things, ACT is necessary for people that are too mentally ill to keep appointments, to obtain transportation to and from doctors' appointments, and to reliably attend other treatments that are necessary to treat their severe mental illness.

17. Third-party materials confirm this. The Idaho Behavioral Health Plan defines Assertive Community Treatment as “a client-centered, recovery-oriented mental health delivery model that has received substantial empirical support for facilitating community living, psychosocial rehabilitation, and recovery for persons who have the most severe and persistent mental illness, have severe symptoms and impairments, and *have not*

benefited from traditional outpatient services.” Idaho Behavioral Health Plan (IBHP) at 22 (emphasis added), Attachment 1.

18. According to the IBHP, ACT is a “Bundled Program.” *Id.* at App’x E p.4.

THE PROVIDERS’ EFFORTS TO PROVIDE ASSERTIVE COMMUNITY TREATMENT

19. Providers expended great effort to assemble, train, and deploy teams that can provide Assertive Community Treatment in compliance with applicable standards.

20. Providers also started relationships with patients that desire, need, and are eligible for Assertive Community Treatment.

21. Providers cannot provide ACT as an unbundled service because doing so is not in fidelity with applicable professional standards. For example, services that are necessary for ACT cannot be billed on a traditional fee-for-service model, such as daily meetings; coordinating with jails, hospitals, and other institutions; finding and serving clients where they are located on any given day, particularly in the case of homeless populations; and similar actions.

22. Once the Providers cease providing ACT, as is likely to occur if the billing changes are implemented, Providers’ ACT teams are likely to be disbanded to find other employment, and the teams cannot be assembled again without considerable time, investment, and effort.

23. Once Providers cease providing ACT, some or many of the patients currently receiving ACT are likely to become institutionalized, become homeless, be taken into the custody of law enforcement, or simply cease communicating with Providers.

24. These individuals will be difficult or impossible to communicate with, and re-establish a relationship with, if the *de facto* prohibition on ACT is implemented.

25. Providers currently provide ACT services in six regions of the State.

CUTS TO MEDICAID, INCLUDING THE 4% DECREASE IN ACT CAPITATION RATES AFTER NOTICE AND COMMENT IN COMPLIANCE WITH MEDICAID REGULATIONS

26. As part of ongoing budgetary concerns, in August 2025 Governor Little issued an executive order that required agencies to reduce their spending by 3%.

27. To implement the spending reduction, in August 2025 the Department of Health and Welfare issued notice that it intended to reduce reimbursement rates for certain Medicaid services by 4%. *See* Aug. 22, 2025 Medicaid Information Release MA25-17, Attachment 2.¹ The Department accepted comments on that proposed reduction for thirty days. *See id.*

28. On October 16, 2025, the Department adopted the proposed 4% cut, which included a 4% cut in the capitated reimbursement rate for bundled Assertive Community Treatment. *See* Oct. 16, 2025 Medicaid Information Release MA25-19, Attachment 3.²

29. Neither the notice nor the adoption of this 4% cut affected the bundled nature of ACT services.

30. The Providers do not challenge this 4% cut to the per-day reimbursement rate for ACT. Providers disagree with the policy behind this cut but do not currently challenge its legality.

¹ Publicly available at:
<https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=34596&dbid=0&repo=PUBLIC-DOCUMENTS>

² Publicly available at:
<https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=35064&dbid=0&repo=PUBLIC-DOCUMENTS>

31. The Providers do challenge the subsequent unbundling of Assertive Community Treatment that was announced on October 31, 2025, to be effective December 1, 2025, because it was not implemented using lawful procedures, is arbitrary and capricious, and otherwise in violation of law.

MEDICAID, THE STATE MEDICAID PLAN, AND THE IDAHO BEHAVIORAL HEALTH PLAN

32. Medicaid is a cooperative federal-state program that funds services to vulnerable populations, including those with low incomes and disabilities.

33. Under the Medicaid Act, “States that choose to participate in the program are responsible for developing and implementing a state Medicaid plan,” and while states have “considerable control” over the contents of their plans, “[i]n order to qualify for federal funding” the plan “must comply with the requirements of the Medicaid Act.” *Christ the King Manor v. U.S. Dep’t of Health & Human Servs.*, 730 F.3d 291, 297 (3d Cir. 2013); *see* 42 U.S.C. § 1396a (outlining contents of state plan).

34. States must submit to CMS, and receive approval of, material changes to their plan, whether through a state plan amendment or by waiver, though this legal requirement isn’t enforceable in an action under 42 U.S.C. § 1983. *See* 42 C.F.R. § 430.12(c)(1)(ii) (plan must be amended to reflect material changes); *see Develop. Servs. Network v. Douglas*, 666 F.3d 540, 545–47 (9th Cir. 2011) (“Thus, we repeat an old refrain: the State was obligated to submit and obtain approval of its SPA [State Plan Amendment] before implementation.”); *see generally* 42 C.F.R. § 430.25 (addressing waivers).

35. Under the Medicaid Act, states must designate a single state agency to implement Medicaid. 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10(b). That agency cannot

delegate, “other than to its own officials, the authority to supervise the plan or to develop or issue policies, rules, and regulations on program matters.” 42 C.F.R. § 431.10(e).

36. Idaho law designates the Department of Health and Welfare as the single state agency to implement Medicaid for purposes of the Medicaid Act. I.C. § 56-210 (“The department [of Health and Welfare] shall be the single state agency for administration of public assistance programs or plans that receive federal funding.”).

37. The State’s implementation and amendment of the State Medicaid Plan is subject to requirements of the Medicaid Act, Medicaid regulations, and state law.

38. In its Medicaid Plan and amendments, the State indicates that Assertive Community Treatment will be provided to eligible Medicaid patients. *See* August 29, 2024 CMS Letter approving State Plan Amendment 24-00003 at 1, Attachment 4 (approving State plan amendment that added Assertive Community Treatment as a service.).³

39. Idaho currently implements Medicaid behavioral-health services pursuant to a document known as the Idaho Behavioral Health Plan.

40. Under the Idaho Behavioral Health Plan, Magellan contracts with healthcare providers, including these Providers, and reimburses them for Medicaid services.

41. Assertive Community Treatment *must* be provided under the Idaho Behavioral Health Plan. Specifically, the Idaho Behavioral Health Plan requires that services identified in the Scope of Work be performed; the Scope of Work lists required services in Appendix E, and Appendix E identifies Assertive Community Treatment as a required services. *See* IBHP ¶4 (“The Contractor shall perform the Scope of Work detailed

³ Available at: <https://www.medicaid.gov/medicaid/spa/downloads/ID-24-0003.pdf>

in **Appendix B . . .**”); *id.* App’x B ¶3.1.3 (“**Appendix E – Service Matrix**, includes a list of covered services . . . the Contractor must include all services as outlined in the Contract[.]”); *id.* App’x E at p. 4 (identifying Assertive Community Treatment as a required service).

MAGELLAN’S NOTICE OF ITS INTENT TO “UNBUNDLE” ACT MEANS THE STATE IS NO LONGER OFFERING ACT IN ACCORDANCE WITH THE IBHP, MEDICAID PLAN, OR PROFESSIONAL STANDARDS

42. On October 31, 2025, Magellan sent by email a statement to healthcare providers, including these Providers, indicating that “[e]ffective Dec. 1, 2025, the daily rate for Assertive Community Treatment (ACT) will no longer be billable.” Declaration of Laura Scuri (Scuri Decl.), Exhibit 2.

43. Instead, “[i]ndividual behavioral health ACT services will be reimbursed” based on the fee schedule for those individual services. *Id.*

44. This innocuous-sounding statement effectuates a *de facto* termination of Assertive Community Treatment because, as alleged above, billing individual services is not ACT as defined under the Idaho Behavioral Health Plan, the State Medicaid Plan amendments, Magellan’s own handbook, and other regulatory and professional sources.

45. It’s also a *de facto* prohibition of Assertive Community Treatment because the IBHP describes ACT as “Bundled Program.” IBHP at App’x E p. 4.

46. In addition, Assertive Community Treatment is—by definition in the IBHP—a service for patients that “have not benefited from traditional outpatient services.” IBHP at 22. So reimbursement for traditional services is *not* reimbursement for ACT—it is reimbursement for services that have been shown *not to work* for this population.

47. The Department did not provide public notice or accept public comments on any proposal to unbundle ACT. Nor did it seek or obtain CMS approval before doing so.

THE STATE'S FAILURE TO ISSUE A WRITTEN ORDER OR RULE AUTHORIZING UNBUNDLING OF ACT

48. The Department provided notice, accepted comment, and issued a written decision implementing the 4% cut to Medicaid reimbursement rates, including a 4% cut to the per-day reimbursement rate for ACT.

49. Neither the notice nor the decision proposed or implemented an unbundling of ACT services.

50. But two weeks later, the State's contractor indicated that it would no longer provide any reimbursement for bundled ACT services and removed the billing code for ACT.

51. Upon information and belief, the State directed or authorized the unbundling of ACT services under the Idaho Behavioral Health Plan, and in any case, the Department is the single agency in charge of Medicaid in the State and therefore bears ultimate responsibility for administering the Medicaid program in accordance with applicable law. *See* 42 C.F.R. § 431.10(b), (e).

52. The State did not provide notice of this change; did not accept comment on this change; and did not issue a written order or promulgate a rule related to the unbundling of ACT services.

53. Upon information and belief, the State has directed or authorized the unbundling of ACT services from other State Medicaid contractors, although it is believed that unbundling from other contractors will be effective on January 1, 2026 rather than December 1, 2026. *See* Declaration of Nikki Winters (Winters Decl.), ¶15.

54. Unbundling of ACT services was not within the notice-and-comment procedure of the 4% cut, which ordered a 4% cut to the capitated rate for *bundled* ACT services.

THE ARBITRARY AND UNLAWFUL NATURE OF UNBUNDLING ACT

55. The Providers are unable to locate a document that describes the reason for the State's decision to unbundle, or the State's decision to authorize the unbundling of, ACT services. Scuri Decl., ¶8; *see also* Winters Decl., ¶16.

56. Unbundling ACT services is arbitrary because, among other things, the State did not consider the severe and drastic consequences to Providers, patients, and the public.

57. Unbundling ACT services is arbitrary because, among other things, it constitutes a *de facto* termination of ACT services and the State did not consider this fact when directing or authorizing the unbundling of ACT services.

58. Unbundling ACT services is arbitrary because, among other things, it would require Providers to act in contravention to the definition of Assertive Community Treatment within operative documents and contrary to professional standards.

59. Unbundling ACT services is unlawful because, among other things, it amounts to a *de facto* termination of ACT services in contravention to the State Medicaid Plan and operative Amendments, without obtaining CMS approval, in violation of the Medicaid Act and implementing regulations.

60. The unbundling ACT services at issue here was unlawful and made upon unlawful procedure because, among other things, unbundling of ACT services is a significant change in the methods and standards for reimbursement, yet the Department did not provide notice as it did for the 4% cut to capitation rates and as required by Medicaid

regulations. *See* 42 C.F.R. § 447.205(1) (“[T]he agency must provide public notice of *any significant proposed change in its methods and standards* for setting payment rates for services.” (emphasis added)).

61. Unbundling ACT services is unlawful because, among other things, it defeats the obligation that ACT services be provided under the Idaho Behavioral Health Plan. *See* IBHP at App’x E p. 4.

THE IDAHO APA’S DEFINITION OF “AGENCY ACTION” AND REQUIREMENT TO FILE A PETITION FOR JUDICIAL REVIEW OF AN “AGENCY ACTION OTHER THAN AN ORDER IN A CONTESTED CASE”

62. Under the Idaho Administrative Procedures Act, “[a] person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter” if the person complied with sections 67-6521 through 67-5279. I.C. § 67-5270(2).

63. Sections 67-6521 through 67-5279, in relevant part, require exhaustion of available administrative processes and filing of a petition for judicial review within 28 days of the challenged agency action. No administrative exhaustion processes are available for the challenged agency action, so exhaustion is not necessary, and this petition is timely.

64. “Agency action” includes “[t]he failure to issue a rule or order” and “[a]n agency’s . . . failure to perform any duty placed on it by law.” I.C. § 67-5201(5)(b) & (c).

65. Here, the Department failed to issue a rule or order directing or authorizing the unbundling of Assertive Community Treatment.

66. The Department also “fail[ed] to perform any duty placed on it by law,” Idaho Code § 67-5201(5)(b), by failing to provide notice of the change, by failing to submit and obtain approval of a Medicaid Plan amendment or waiver, by failing to provide ACT as required by the Idaho Behavioral Health Plan, and otherwise.

67. The Department did not hold a contested case related to this matter.

68. The failure to issue an order or rule, and failure to comply with duties imposed by law, fall within the plain-language definition of “agency action” within the APA. I.C. § 67-5201(5). As such, these failures constitute “final agency action other than an order in a contested case” under section 67-5270(2) and Providers are “entitled to judicial review” of the agency action. I.C. § 67-5270(2).

69. In the alternative, the Department’s unbundling of, or decision to authorize the unbundling of, Assertive Community Treatment is an “order” under the Idaho APA because it is “an action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons,” specifically, the Providers’ legal interest in providing Assertive Community Treatment under the Medicaid Plan, the Behavioral Health Plan, and applicable regulations and professional standards. I.C. § 67-5201(16).

70. Under the Idaho APA, orders “must be in writing and shall include” a “reasoned statement supporting the decision” and a “statement of available procedures and applicable time limits for reconsideration or administrative relief.” I.C. § 67-5248(1)(a) & (b).

71. The Department’s unbundling of, or decision to authorize the unbundling of, ACT services was not in a writing identifiable by Providers and did not contain a reasoned statement supporting the decision or statement of available procedures.

72. In the alternative, the Department’s unbundling of, or decision to authorize the unbundling of, ACT services is (or purports to be) a “rule” because it is an agency statement of general applicability that implements, interprets, enforces, or prescribes a law.

Specifically, the Department's decision to unbundle, or to authorize the unbundling of, Assertive Community Treatment was a statement of general applicability designed to implement Idaho Code § 67-3512A, which allows the governor to reduce spending authority in anticipation of a budget shortfall. Yet it was not promulgated using the procedural and substantive requirements for rules.

73. Finally, the Department's unbundling of, or decision to authorize the unbundling of, ACT services without notice and without obtaining a State Plan Amendment or waiver is a "failure to perform[] any duty placed on it by law." I.C. § 67-5201(b)(c).

74. Under the Idaho APA, when agency action not required to be based exclusively on the record, the court can overturn the agency action if it violated constitutional or statutory provisions; in excess of the agency's authority; made upon unlawful procedure; or arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(2).

75. The Department's decision to unbundle, or to authorize the unbundling of, ACT services, was in violation of statutory provisions, in excess of its authority, made upon unlawful procedure, and arbitrary and capricious as set forth in more detail in these allegations and supporting materials.

76. The Idaho APA allows a court to overturn "agency action" only if "the substantial rights of the appellant have been prejudiced." I.C. § 67-5279(4). Providers' substantial rights were prejudiced by the Department's action here, as detailed in these allegations and the Providers' declarations supporting the motion to stay. These same allegations and declarations confirm that the Providers are "aggrieved persons" under section 67-5270(2).

REQUEST FOR A STAY

77. Under the Idaho APA, “[t]he filing of the petition for review does not itself stay the effectiveness” of the agency action. I.C. § 67-5274. However, “the reviewing court may order[] a stay upon appropriate terms.” *Id.*

78. Providers request a stay of the unbundling of ACT services, for the reasons set forth in this Petition and in a separate motion to stay.

REQUEST TO PRESENT ADDITIONAL EVIDENCE

79. The Idaho APA allows courts to accept additional evidence if “it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the agency action,” and “there were good reasons for failure to present it in the proceeding before the agency” or “there were alleged irregularities in the procedure before the agency.” I.C. § 67-5276.

80. Providers request that the Court accept additional evidence because all these conditions are met. Providers will present evidence that is material to the unbundling of ACT services. Providers could not present evidence because, unlike the 4% cut to the capitation rate, the unbundling of ACT services was implemented without notice or opportunity to comment. And the failure to provide notice and comment is a procedural irregularity, as established by the procedures followed for the 4% cut to the capitation rate and by federal regulations, including 42 C.F.R. § 447.205.

81. To the extent necessary, Providers will make the showing required to present additional evidence in a separate motion/application to the Court “before the date set for hearing” in this matter. I.C. § 67-5276(1).

RULE 84 ALLEGATIONS

In accordance with Rule 84(c) of the Idaho Rules of Civil Procedure, Providers allege:

82. The name of the agency for which judicial review is sought: The Idaho Department of Health & Welfare.

83. The title of the District Court to which the petition is taken: The District Court for the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

84. The date and the heading, case caption or other designation of the agency and the action for which judicial review is sought: not applicable; the agency did not provide a heading, case caption, or other designation of the agency action challenged here. The agency action is identified in the preceding allegations.

85. To Providers' knowledge, there was not a hearing or oral presentation before the agency that was recorded or reported.

86. The issues identified for judicial review, including the bases on which the agency action should be set aside, are identified in the preceding allegations.

87. To Providers' knowledge, no transcript or recording was kept, but Providers stand ready to pay an estimated fee if made available.

CERTIFICATION

Pursuant to Idaho Rule of Civil Procedure 84(c)(7), undersigned counsel for Petitioners certify that:

Service of this Petition has been made upon the Department pursuant to Idaho Rules of Civil Procedure 84(d) and 5(e).

REQUEST FOR RELIEF

For these reasons, Providers request an order from the Court:

1. Staying the challenged agency action, including issuing an order staying the requirement that Assertive Community Treatment be reimbursed as an unbundled service under the Idaho Behavioral Health Plan, until this Petition is fully adjudicated;
2. Setting aside the challenged agency action, including issuing an order setting aside the Department's unbundling of, or authorization of the unbundling of, ACT services through the requirement that Assertive Community Treatment be reimbursed as an unbundled service under the Idaho Behavioral Health Plan;
3. Awarding Petitioners their attorney fees in accordance with provisions of Idaho law, including, without limitation, Idaho Code sections 12-117 and 12-121;
4. Awarding Petitioners costs under Idaho Law;
5. Such other relief as the Court may deem just and equitable

Dated: November 21, 2025.

GIVENS PURSLEY LLP

By /s/ Preston N. Carter
Preston N. Carter
Jeffrey S. Beelaert
Megann E. Meier
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 21, 2025, I caused a true and correct copy of the foregoing by the method indicated below and addressed to each of the following:

Idaho Department of Health and Welfare
Juliet Charron, Director
450 W. State Street
Boise, Idaho 83702

☐ U.S. Mail
☐ Facsimile:
☒ Hand Delivery
☐ Overnight Delivery
☐ Email

Idaho Department of Health and Welfare
c/o Office of the Attorney General for the
State of Idaho
700 W. Jefferson St. #210
Boise, Idaho 83720

☐ U.S. Mail
☐ Facsimile:
☒ Hand Delivery
☐ Overnight Delivery
☐ Email

/s/ Preston N. Carter
Preston N. Carter