

## SETTLEMENT AGREEMENT AND RELEASE

**THIS SETTLEMENT AGREEMENT AND RELEASE** (the “Agreement”), is entered into by and between the Maryland Department of Budget and Management (“DBM”), the University System of Maryland (“USM”), the University of Maryland, Baltimore (“UMB”) (collectively “the State”) and Sailor Holobaugh (“Holobaugh”). The State and Holobaugh shall be referred to collectively as the “Parties” and each individually as a “Party”.

WHEREAS, at all times relevant to this Agreement, Holobaugh has been employed by UMB and has been a participant in the Maryland State Employee and Retiree Health and Welfare Benefits Program (the “Program”), which includes a selection of health benefit plans, administered by third-party administrators under contract with DBM, in which an employee (the “Program participant”) and his or her spouse and dependents (“Program beneficiaries”) may choose to participate; and

WHEREAS, Holobaugh filed a claim for Program benefits premised on his gender identity as a transgender man. In other words, although he was assigned the sex of female at birth, he identifies psychologically and emotionally as male on a longstanding and permanent basis; and

WHEREAS, Holobaugh presented evidence that he was diagnosed with gender dysphoria (also known as gender identity disorder), which is a diagnosis associated with transgender status; and

WHEREAS, by Executive Order 01.01.2007.16, discrimination on the basis of “gender identity and expression” is prohibited in State employment; and

WHEREAS, a dispute arose between Holobaugh and the State regarding whether health benefit plan coverage of a procedure performed on or about November 20, 2012, which was related to Holobaugh’s diagnosis of gender dysphoria, was precluded based on a then-effective exclusion under the Program excluding benefits for gender reassignment procedures (the “Benefits Dispute”); and

WHEREAS, the particular health benefit plan in which Mr. Holobaugh participated had implemented the exclusion by excluding coverage for any “procedure or treatment designed to alter an individual’s physical characteristics to those of the opposite sex” (hereinafter, for purposes of convenience only, the “Sex Reassignment Exclusion”). Other health benefit plans in the Program contained language to the same effect; and

WHEREAS, on or about November 12, 2013, based on the Benefits Dispute, Holobaugh filed a “Discrimination Complaint Form” with DBM’s Office of the Statewide Equal Employment Opportunity Coordinator and with UMB’s Equal Employment Opportunity Coordinator, alleging discrimination on the basis of “Gender Identity and Expression” (hereinafter referred to as the “EEO Complaint”). Additionally, on or about January 9, 2014, Holobaugh filed a Charge of Discrimination against DBM, USM and UMB with the Maryland Commission on Civil Rights, alleging sex, disability and gender identity discrimination, which

was docketed by the Commission as *Sailor Holobaugh v. State of Maryland*, No. 12F-2014-00260 (hereinafter referred to as the "MCCR Charge"); and

WHEREAS, the Secretary of DBM has the authority to establish health insurance benefit options and other benefit options offered in the Program; and

WHEREAS, in the exercise of that authority, the Secretary of DBM has eliminated the Sex Reassignment Exclusion underlying the Benefits Dispute from all plans in the Program and will be implementing a new gender dysphoria benefit (the "Gender Dysphoria Benefit") in all plans in the Program, effective July 1, 2014. The Gender Dysphoria Benefit to be implemented and to which Holobaugh and DBM have agreed is attached hereto as Exhibit 1; and

WHEREAS, the State has denied, and continues to deny, any and all wrongdoing, discrimination, violation of law and/or liability to Holobaugh; and

WHEREAS, Holobaugh and the State desire to compromise and settle all disputes, claims and potential claims relating in any way to the Benefits Dispute, including all issues concerning the Benefits Dispute that were raised or that could have been raised in the aforementioned EEO Complaint and MCCR Charge; and

WHEREAS, no determination has been made on the merits any of Holobaugh's allegations; and

WHEREAS, the Parties desire to document the terms of their compromise and settlement in this Agreement, with the Parties agreeing that the State does not admit any wrongdoing, fault, or liability whatsoever; and

WHEREAS, nothing in this Agreement is to be construed or interpreted as an admission or acknowledgment of any fault, liability, or wrongdoing by the State, including any admission or acknowledgment of liability or wrongdoing to Holobaugh, or any admission or acknowledgment of liability or wrongdoing concerning any of the allegations in the EEO Complaint and MCCR Charge.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

**1. Payment and Implementation of Gender Dysphoria Benefit**

(a) In consideration for the Release included in Section 3 of this Agreement and other obligations under this Agreement, and provided that Holobaugh satisfies and remains in full compliance with his obligations under this Agreement, the State of Maryland shall pay Holobaugh the total gross sum of Four Thousand Four Hundred Forty-Five Dollars and Thirty-

Three Cents (\$4,445.33) without withholding, within seven business days after the Effective Date of this Agreement. The State will include this payment in an IRS Form 1099 to be issued to Holobaugh in the normal course of the State's issuance of IRS Form 1099s.

(b) This payment shall not be construed or interpreted as an admission of any wrongdoing, fault, or liability by the State.

(c) Holobaugh acknowledges and agrees that he is solely and entirely responsible for the payment and discharge of all federal, state, and local taxes, if any, which may, at any time, be found to be due upon or as a result of the payments described above, and he agrees to indemnify, and hold the State harmless from any claim or liability for any such taxes and related penalties and/or interest, in the event such taxes, penalties, and/or interest are assessed by the United States Internal Revenue Service or any other taxing authority.

(d) The State is implementing the Gender Dysphoria Benefit attached to this Agreement as Exhibit 1. Holobaugh agrees and acknowledges, based on his understanding of applicable current medical standards of care as of the Effective Date of this Agreement, that the Gender Dysphoria Benefit (in the form attached to this Agreement) provides coverage for medically necessary care for gender dysphoria without discrimination on the basis of gender identity. While the State is implementing the Gender Dysphoria Benefit effective July 1, 2014, Holobaugh acknowledges and agrees that, for legal, medical, or programmatic reasons, the Gender Dysphoria Benefit is not static and may change (although Holobaugh makes no acknowledgment or representation as to the legal sufficiency, under antidiscrimination law or otherwise, of any changes to the Gender Dysphoria Benefit that the State may later implement). The State does not anticipate any changes as of the Effective Date of this Agreement.

(e) Holobaugh acknowledges and agrees that the rights flowing to him under this Agreement flow to him and his Program beneficiaries, if any, alone. No third-party rights flow to any other Program participant or beneficiary under this Agreement.

(f) Holobaugh expressly agrees and acknowledges that he is entitled to no damages, payments, benefits, compensation, remuneration, back pay, front pay, lost wages, attorneys' fees, costs or fees of any kind arising out of the Benefits Dispute, other than the payment described in Section 1(a) above and the implementation of the Gender Dysphoria Benefit described in Section 1(d) above, and the remedy a court or other adjudicative body orders in the event of a dispute to enforce this Agreement.

## **2. Dismissal/Withdraw of Claims**

Within seven business days after the Effective Date of this Agreement, Holobaugh shall dismiss or otherwise withdraw all claims currently pending against the State, specifically including the aforementioned EEO Complaint and the MCCR Charge.

### 3. Release

(a) In consideration of the payment described in Section 1(a) above and the implementation of the Gender Dysphoria Benefit described in Section 1(d) above, Holobaugh, for himself and his heirs, personal representatives, and assigns, hereby releases and forever discharges the State of Maryland, DBM, USM, UMB, and the Program (including without limitation their agencies, divisions, units, departments, employees, officers, officials, employee benefit plans, plan administrators, and plan personnel) (collectively, the "Released Parties") from and against all liability, damages, actions, and claims of any kind whatsoever, known and unknown, that he now has or may have had, or hereafter may claim to have, on behalf of himself or any other person or entity, at any time, arising out of, or relating in any way to, the Benefits Dispute, gender dysphoria benefits pre-dating the Effective Date of this Agreement, or any related acts or omissions done or occurring in whole or in part prior to and including the Effective Date of this Agreement, and including all issues concerning the Benefits Dispute that were raised or that could have been raised in the EEO Complaint or MCCR Charge. Without in any way limiting the generality of the foregoing, to the maximum extent permitted by law, Holobaugh hereby releases any claims related to the Benefits Dispute and gender dysphoria benefits pre-dating the Effective Date of this Agreement under Title VII of the Civil Rights Act of 1964 and 1991, as amended, 42 U.S.C. § 2000(e) *et seq.*, 42 U.S.C. § 1981, the Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*, the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.*, and all other federal, state and local laws pertaining to employment, employee benefits, and/or employment discrimination, including, but not limited to, Title 2 of the State Personnel and Pensions Article of the Maryland Code, Title 20 of the State Government Article of the Maryland Code and Maryland Executive Order 01.01.2007.16.

(b) Although the scope of the above release is more limited, Holobaugh expressly acknowledges and represents that, as of the date that he signs this Agreement, to the best of his knowledge, information, and belief, he (i) has suffered no injuries or occupational diseases arising out of or in connection with his employment with UMB; (ii) has received all wages to which he was entitled as an employee of UMB; and (iii) is not currently aware of any facts or circumstances constituting a violation of the Fair Labor Standards Act ("FLSA").

(c) Holobaugh expressly represents that as of the date that he signs this Agreement, he has not filed any grievances, claims, complaints, administrative charges (including, but not limited to, charges of discrimination filed with the Maryland Commission on Civil Rights or the Equal Employment Opportunity Commission) or lawsuits against the State or any Released Party, with the exception of the aforementioned EEO Complaint and the MCCR Charge.

(d) Notwithstanding anything in this Release to the contrary, nothing in this Release will waive, relinquish, diminish, or in any way affect any rights or claims that, as a matter of law, have not accrued or cannot be released or waived.

(e) Subject to Paragraph 3(d) above and 4 below, Holobaugh agrees not to participate as a party in or solicit any person to file or maintain a claim or lawsuit against the State or any of

the other Released Parties relating in any way to the Benefits Dispute. This provision shall not be construed as limiting Holobaugh's right or ability to refer potential clients to legal counsel.

**4. Governing Law and Enforcement of this Agreement**

This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Maryland.

**5. Miscellaneous**

(a) This Agreement sets forth the entire agreement between the Parties with respect to the matters addressed, and Holobaugh will not be entitled to any compensation, remuneration, benefits or other payments related to the Benefits Dispute, except as specifically provided in this Agreement. This Agreement may not be modified except by a new written agreement signed by both Parties. Holobaugh's signature below will confirm that he has not relied on any representation or statement not set forth in this Agreement.

(b) In the event that a court holds any provision of this Agreement to be invalid or unenforceable, that provision shall be severed or otherwise conformed to the degree necessary to render it valid and enforceable without affecting the rest of this Agreement. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be deemed severable from the remainder of this Agreement, and the remaining provisions contained in this Agreement shall be construed to preserve to the maximum permissible extent the intent and purposes of this Agreement. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(c) Any failure or forbearance by either Party to exercise any right or remedy with respect to enforcement of this Agreement will not be construed as a waiver of any rights or remedies. No waiver of any of the terms of this Agreement will be valid unless in writing and signed by both Parties.

(d) Holobaugh and the State mutually acknowledge that each of their obligations, as set forth herein, is deemed by the Parties to be material to this Agreement.

(e) Holobaugh represents and warrants that he has fully discussed this Agreement with his attorney, that all terms are understood, and that the execution of this document is completely voluntary.

(f) This Agreement is a compromise freely and voluntarily entered into by each of the Parties, and shall not be construed as an admission of liability, or as a violation of any applicable law, rule, regulation or order of any kind, by any Party.

(g) This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, personal representatives, legal representatives, successors and assigns.

(h) This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

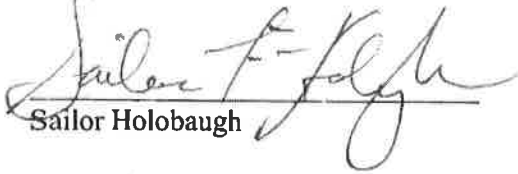
(i) The "Signatories" to this Agreement shall be Holobaugh, his legal counsel, the Secretary of DBM, the Chancellor of USM, and the President of UMB (the "Signatories"). This Agreement shall not be effective until its "Effective Date," which shall be the date on which a copy of the Agreement (including any counterparts), has been signed by each of the Signatories (the "Executed Agreement"). Whichever Party is in possession of the Executed Agreement on the Effective Date shall provide each other Party with a copy of the Executed Agreement as promptly as practicable and in any event within two business days after the Effective Date.

**HOLOBAUGH IS HEREBY ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING THIS AGREEMENT.**

WHEREFORE, having fully read and understood the terms of this Agreement, the Parties sign their names below with the intention that they shall be bound by it.

\*\*\*\*\* THIS SPACE INTENTIONALLY LEFT BLANK \*\*\*\*\*  
\*\*\*\*\* SIGNATURES APPEAR ON FOLLOWING PAGE \*\*\*\*\*

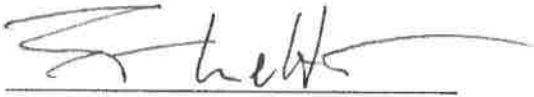
**SAILOR HOLOBAUGH**

  
Sailor Holobaugh

9 July 2014  
Date

**APPROVED BY:**

**FREESTATE LEGAL  
PROJECT, INC.**

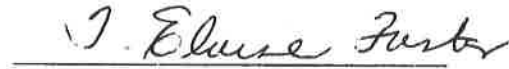
  
By: Jer Welter

Managing Attorney  
as Counsel for Holobaugh

7/9/2014  
Date

**STATE OF MARYLAND**

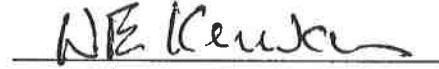
**MARYLAND DEPARTMENT OF  
BUDGET AND MANAGEMENT**

  
By: T. Eloise Foster

Secretary

7/10/14  
Date

**UNIVERSITY SYSTEM OF  
MARYLAND**

  
By: William E. Kirwan

Chancellor

7/14/14  
Date

**UNIVERSITY OF MARYLAND,  
BALTIMORE**

  
By: Jay A. Perman

President

7/11/14  
Date

# Exhibit 1



**GENDER DYSPHORIA COVERAGE UNDER  
THE STATE EMPLOYEE AND RETIREE HEALTH AND WELFARE BENEFITS PROGRAM**

**Covered Services:**

- 1) **Outpatient psychotherapy/mental health services for gender dysphoria and associated co-morbid psychiatric diagnoses.** The benefits are the same as any other outpatient mental health service in the Program.
- 2) **Continuous hormone replacement therapy.** The benefits are the same as any other eligible drug in the Program. Note the following clarifications:
  - Hormones injected by a medical provider (for example during an office visit) are covered by the medical plan. Benefits for these injections vary depending on the plan design.
  - Oral and self-injected hormones from a pharmacy are not covered under the medical plan. Refer to the Benefit Guide for specific prescription drug product coverage and exclusion terms. They are covered under the separately provided prescription drug plan, if enrolled.
- 3) **Outpatient laboratory testing to monitor continuous hormone therapy.** The benefits are the same as any other outpatient diagnostic service in the Program.
- 4) **Gender reassignment surgery.** Medically necessary gender reassignment procedures are covered, as follows. The procedures identified in this paragraph and any combination of procedures within each type of transition – *male-to-female transition*: orchiectomy, penectomy, clitoroplasty, labiaplasty, vaginoplasty, thyroid chondroplasty; *female-to-male transition*: vaginectomy, hysterectomy, mastectomy, salpingo-oophorectomy, ovariectomy, metoidioplasty, phalloplasty, scrotoplasty, placement of testicular prostheses; *either*: urethroplasty – are considered medically necessary for treatment of gender dysphoria when *all* of the following criteria are met:
  - a. The individual is at least 18 years of age; and
  - b. The individual has capacity to make fully informed decisions and consent for treatment; and
  - c. The individual has been diagnosed with gender dysphoria and exhibits all of the following:
    1. The desire to live and be accepted as a member of the opposite sex, usually accompanied by the wish to make his or her body as congruent as possible with the preferred sex through surgery and hormone treatment; and

2. The gender dysphoria (pre and post diagnosis) has been present persistently for at least two years; and
  3. The gender dysphoria is not a symptom of another mental disorder; and
  4. The gender dysphoria causes clinically significant distress or impairment in social, occupational, or other important areas of functioning; and
- d. For individuals without a medical contraindication or not otherwise unable to take hormones, the individual has undergone a minimum of 12 months of continuous hormonal therapy when recommended by a mental health professional and provided under the supervision of a physician. (Hormonal therapy is not required as a prerequisite to a mastectomy.); and
  - e. Documentation that the individual has completed a minimum of 12 months of successful continuous, substantially full time real-life experience in their new gender, across a wide range of life experiences and events that may occur throughout the year. (The real-life experience is not required as a prerequisite to a mastectomy, augmentation mammoplasty, thyroid chondroplasty, hysterectomy, salpingo-oophorectomy, or orchiectomy.); and
  - f. Regular participation in psychotherapy and/or ongoing clinical treatment throughout the real-life experience may be required when recommended by a treating medical or behavioral health practitioner or when medically necessary; and
  - g. If the individual has significant medical or mental health issues present, they must be reasonably well controlled. If the individual is diagnosed with severe psychiatric disorders and impaired reality testing (e.g., psychotic episodes, bipolar disorder, dissociative identity disorder, borderline personality disorder), an effort must be made to improve these conditions with psychotropic medications and/or psychotherapy before surgery is contemplated; and
  - h. Two referrals from qualified mental health professionals who have independently assessed the individual. If the first referral is from the individual's psychotherapist, the second referral should be from a person who has only had an evaluative role with the individual. Two separate letters, or one letter signed by both (e.g., if practicing within the same clinic) are required.

At least one of the professionals submitting a letter must have a doctoral degree (Ph.D., M.D., Ed.D., D.Sc., D.S.W., or Psy.D) and be capable of adequately evaluating co-morbid psychiatric conditions. One letter is sufficient if signed by two providers, one of whom has met the doctoral degree specifications, in addition to the specifications set forth above. One letter signed by an appropriate provider is sufficient to support benefits for a mastectomy.

The medical documentation should include the start date of living full time in the new gender, when applicable.

5) **Augmentation mammoplasty.** Provided the criteria above for gender reassignment surgery have been satisfied, augmentation mammoplasty (including breast prosthesis if necessary) may be covered for male-to-female transgender individuals if the Physician prescribing hormones and the treating surgeon have documented that, after undergoing hormone treatment for 12 months, breast size continues to cause clinically significant distress in social, occupational, or other areas of functioning.

***Note on gender specific services for post-transition transgender persons:***

Gender-specific services may be medically necessary for transgender persons appropriate to their anatomy. Examples include:

- Breast cancer screening may be medically necessary for female to male transgender persons who have not undergone a mastectomy;
- Prostate cancer screening may be medically necessary for male to female transgender individuals who have retained their prostate.

***Notes:***

- For individuals considering hysterectomy/salpingo-oophorectomy, orchiectomy, vaginectomy or vaginoplasty procedures a total of 12 months of continuous hormonal sex reassignment is required.
- Cryopreservation, storage, and thawing of reproductive tissue (i.e., oocytes, ovaries, testicular tissue) and the charges associated therewith (e.g., office, hospital, ultrasounds, laboratory tests, etc.) are not covered.

**Coverage Limitations and Exclusions**

The surgeries and procedures identified below are excluded from coverage. (This list may not be all-inclusive):

- 1) Nipple/areola reconstruction, except in connection with a covered augmentation mammoplasty or mastectomy
- 2) Breast enlargement procedures, except in connection with a covered augmentation mammoplasty
- 3) Brow lift

- 4) Cheek implants
- 5) Chin/nose implants
- 6) Collagen injections
- 7) Electrolysis
- 8) Facial bone reconstruction
- 9) Face/forehead lift
- 10) Hair removal/hairplasty/hair transplantation
- 11) Jaw shortening/sculpturing/facial bone reduction
- 12) Lip reduction/enhancement
- 13) Liposuction
- 14) Neck tightening
- 15) Reversal of genital or breast surgery or reversal of surgery to revise secondary sex characteristics.
- 16) Voice modification surgery
- 17) Voice therapy/voice lessons
- 18) Rhinoplasty
- 19) Removal of redundant skin, except in connection with a covered surgery
- 20) Replacement of tissue expander with permanent prosthesis testicular insertion, except as a component of a covered placement of a testicular prosthesis
- 21) Second stage phalloplasty
- 22) Surgical correction of hydraulic abnormality of inflatable (multi-component) prosthesis including pump and/or cylinders and/or reservoir
- 23) Testicular prostheses, except as a component of a covered placement of a testicular prosthesis (subsequent replacement or correction of such prosthesis subject to rules and limitations applicable to all prosthetic devices)
- 24) Blepharoplasty
- 25) Penile prosthesis (non-inflatable/inflatable), except in connection with a covered phalloplasty (implantation of the prosthesis shall not be considered a second stage phalloplasty) in a female-to-male transition (subsequent replacement or correction of such prosthesis subject to rules and limitations applicable to all prosthetic devices)
- 27) Testicular expanders, except as a component of a covered placement of a testicular prosthesis
- 26) Laryngoplasty
- 27) Mastopexy
- 28) Abdominoplasty