

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

N.B. by and through his mother, ANGELA )  
BUCHANAN, R.F. by and through his mother, )  
DANIELLE FRAVEL, J.J. by and through his )  
mother, PHOEBE JOHNSON, M.Wa. by and through )  
his mother, DEBORAH WALTERS, M.Wh. by and )  
through his mother, PATRICIA WHEATFILL, )  
M.B. by and through her mother, MARY BAILEY, )  
S.B. by and through his parents, WALLACE BUSCH )  
and DAWNE BUSCH, I.D. by and through his mother,)  
MAGEN DREW, S.M. by and through his parents, )  
THOMAS MARATHALER and ERIN MARATHALER, )  
individually and on behalf of class, )

No. 11 C 6866

Judge Jorge L. Alonso

Magistrate Judge Jeffrey Cole

Plaintiffs, )

vs. )

FELICIA F. NORWOOD, in her official capacity )  
as Director of the Illinois Department of )  
Healthcare and Family Services, )

Defendant. )

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**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING**

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**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY**

*A SETTLEMENT HAS BEEN PROPOSED THAT MAY AFFECT THE RIGHTS OF MEDICAID-ELIGIBLE PERSONS IN THE STATE OF ILLINOIS WHO ARE UNDER THE AGE OF 21, HAVE BEEN DIAGNOSED WITH A MENTAL HEALTH OR BEHAVIORAL DISORDER, AND HAVE BEEN RECOMMENDED TO RECEIVE HOME OR COMMUNITY SERVICES TO ADDRESS THEIR DISORDER.*

A Consent Decree has been proposed in this case, which may affect the rights of persons who are under the age of 21, Medicaid-eligible in the State of Illinois, have been diagnosed with a mental health or behavioral disorder, and for whom a licensed practitioner of the healing arts has recommended intensive home- or community-based services to correct or ameliorate their disorders.

This Notice explains the lawsuit and the key terms of the Consent Decree, tells you how to obtain more information, explains how to determine whether an individual is a Class Member in the lawsuit, and explains how Class Members (and/or their legal representatives) can tell the Court whether they disagree with the Consent Decree or some part of it.

The Consent Decree described in this Notice is subject to Court approval, and thus has not yet been made final. The Court has scheduled a hearing to determine the fairness, adequacy and reasonableness of the Consent Decree and to consider any objections Class Members may have to the Consent Decree.

### **1. WHAT IS THIS LAWSUIT ABOUT?**

The Court in charge of the lawsuit is the United States District Court for the Northern District of Illinois, and the case is known as *N.B. v. Norwood*, No. 11 C 6866. The people who sued are called the Plaintiffs, and the individual they sued is called the Defendant.

Plaintiffs filed this lawsuit on September 29, 2011, seeking to compel the State to provide services under the Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) provisions of the Medicaid Act. The named Plaintiffs are children with mental health or behavioral disorders. The named Defendant is: Felicia F. Norwood, Director of the Illinois Department of Healthcare and Family Services. The Defendant is responsible for administering the State of Illinois’ Medicaid Program. The lawsuit seeks to compel the State of Illinois (through the Defendant) to comply with federal law by offering children with mental health or behavioral disorders access to certain Medicaid EPSDT services.

### **2. WHAT IS A CONSENT DECREE AND WHY IS IT BEING PROPOSED HERE?**

The Court in this case did not decide in favor of either Plaintiffs or Defendant. There was no trial or dispositive court ruling in the case. Instead, the Plaintiffs and Defendant negotiated a settlement of this dispute that is set out in the Consent Decree. Plaintiffs and Defendant have asked the Court to approve the Consent Decree. By settling this lawsuit, the parties avoid having to face the uncertainty of the outcome of a trial as well as the substantial cost of a trial. In addition, children with mental health or behavioral disorders will get relief from Defendant much sooner than if they had to wait for the resolution of the lawsuit through a trial and expected appeals. That process could take many years. The Plaintiffs who filed the lawsuit and their attorneys think the Consent Decree is the best outcome for the people who are Class Members.

### **3. WHO IS A CLASS MEMBER?**

The Court has certified the lawsuit as a class action and decided that everyone who fits this description is a Class Member: “All Medicaid-eligible children under the age of 21 in the State of Illinois: (1) who have been diagnosed with a mental health or behavioral disorder; and (2) for whom a licensed practitioner of the healing arts has recommended intensive home- and community-based services to correct or ameliorate their disorders.”

**4. WHAT DOES THE CONSENT DECREE IN THIS CASE PROVIDE?**

The Consent Decree in this case, if approved by the Court, would provide certain rights and benefits to eligible Class Members as defined above. If the Consent Decree is not approved, it will be withdrawn and the lawsuit will continue. A copy of the entire Consent Decree is available on the following websites:

<https://www.illinois.gov/hfs/info/legal/Pages/N.B.vNorwood.aspx> ; [www.farley1.com](http://www.farley1.com); and [www.nbclassaction.com](http://www.nbclassaction.com).

Plaintiffs and Defendant in this case believe that the Consent Decree is fair, reasonable and provides adequate and appropriate relief to all eligible Class Members. The parties believe the Consent Decree provides eligible Class Members the opportunity to access a continuum of medically-necessary mental and behavioral health services authorized and required by the Medicaid EPSDT requirement.

The following is a brief summary of key terms in the Consent Decree:

**A. Development and Delivery of Services and Certification of Benchmarks**

The Consent Decree requires Defendant to ensure the availability of services, supports and other resources of sufficient quality, scope and variety to meet her obligations under the Consent Decree. More specifically, the Consent Decree requires Defendant to develop a Medicaid behavioral health delivery model that will provide a continuum of medically necessary mental and behavioral health services authorized and required by the EPSDT requirement of the Medicaid Act (sometimes referred to as a “continuum of care”).

The continuum of care will include all medically necessary home- and community-based services and supports, as well as inpatient psychiatric services in a Psychiatric Residential Treatment Facility (“PRTF”), including the following:

- a structure to link Class Members to medically necessary services on the continuum of care;
- statewide medically necessary mental and behavioral health services and supports required and authorized under the EPSDT requirement of the Medicaid Act that are sufficient in intensity and scope and appropriate to each Class Member’s needs consistent with applicable law;
- notice to HFS-enrolled Primary Care Physicians (“PCPs”) who perform periodic and medically necessary inter-periodic screenings to offer Class Members and families the opportunity to receive a mental and behavioral health screening during all periodic and inter-periodic screenings;
- a standardized assessment process, including an assessment tool that shall be utilized statewide, for the purpose of determining Class Members’ strengths and

needs and informing treatment planning, medical necessity, intensity of service, and, as applicable, appropriate services for Class Members;

- a stratification methodology of identifying which Class Members qualify for particular services (including sub-acute care), the intensity of service delivery, and the intensity of care coordination, based upon the standardized assessment process and consistent with the requirements of the Consent Decree;
- tiers of care coordination, with caseloads and service intensity consistent with the stratification and assessment process, including, where appropriate, intensive care coordination, such as High Fidelity Wraparound services, as defined by the National Wraparound Initiative (<http://nwi.pdx.edu/>);
- individual plans of care to serve the Class Member in the least restrictive setting appropriate to meet the Class Member's treatment goals;
- child and family teams including the group of people chosen by the Class Member and family with the aid of the care coordinator to assist with the treatment planning process;
- a Mobile Crisis Response ("MCR") model, including the development of crisis stabilizers, to provide behavioral health crisis response on a twenty-four hour a day, seven day a week basis;
- a plan to coordinate among providers the delivery of services and supports to Class Members in order to improve the effectiveness of services and improve outcomes;
- a process to communicate with Class Members, families, and stakeholders about service delivery and service eligibility; and
- procedures to minimize unnecessary hospitalizations and out-of-home placements.

Defendant shall provide certification to the Court, Class Counsel and the Expert upon substantially meeting the following Benchmarks:

A. Benchmark No. 1: Within five (5) years after approval of the Implementation Plan, Defendant shall accurately certify to Class Counsel, the Expert and the Court that substantially all systems and processes that Defendant intends to utilize to implement the Model in accordance with the Implementation Plan are at least operations as outlined in the Implementation Plan.

B. Benchmark No. 2: Within two (2) years after the successful certification of Benchmark No. 1, Defendant shall accurately certify to Class Counsel, the Expert and the Court that the Model is at a capacity to substantially serve the Class's needs for intensive

home- and community-based services on a systemic level statewide. After successful certification of Benchmark No. 1, the Implementation Plan shall be amended (in accordance with the process set forth in Paragraph 22) to establish the standard for sufficient capacity that is necessary to substantially serve the Class's needs for intensive home- and community-based services on a systemic level statewide. Nothing in this Consent Decree shall be interpreted to require that the standard for benchmark No. 2 guarantees that each Class Member will receive care or services precisely tailored to his or her particular needs.

#### **B. Monitoring and Compliance**

Under the Consent Decree, an Expert will be appointed to evaluate and report to the Court and the Parties about Defendant's progress on implementing the requirements of the Consent Decree on an annual basis. The Consent Decree also provides a dispute resolution mechanism to allow the court to resolve any issues of alleged non-compliance with the Consent Decree.

#### **C. Attorneys' Fees and Costs**

The Consent Decree requires the State of Illinois to pay class counsel the total amount of \$1.275 million for their fees and costs associated with all litigation related to this Consent Decree and for compliance with the Consent Decree; provided, however, if this Consent Decree is not terminated before the end of nine years following the Approval Date, then Class Counsel may file a fee petition for fees and costs incurred after the end of the eighth year following the Approval Date.

#### **D. Termination of Consent Decree**

The Consent Decree shall be terminated at any time after eight years following the Approval Date, if the Court finds that the Defendant has achieved compliance with both Benchmarks described in paragraph 35 in the Consent Decree, unless the basis for termination is an intervening change in circumstances, including but not limited to a change in law or legal precedent, relating to the underlying legal bases of the preceding litigation or Consent Decree.

### **5. WHAT ARE "EPSDT SERVICES"?**

In the Consent Decree, "EPSDT Services" means those services provided to children with mental health and behavioral disorders under the Early and Periodic Screening, Diagnostic, and Treatment services requirement of Title XIX of the Social Security Act, which provides that, for Medicaid-eligible children under the age of 21, a State must provide "screening services ... [and] necessary health care, diagnostic services, treatment, and other measures described in subsection [1396d(a)] to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening services, whether or not such services are covered under the State plan." 42 U.S.C. § 1396d(r)(1),(5). In subsection 1396d(a), medical assistance is defined to include "other diagnostic, screening, preventive, and rehabilitative services (provided

in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.”

**6. WILL CLASS MEMBERS RECEIVE MONEY FROM THE CONSENT DECREE?**

No. There is no money awarded to any Class Member as part of the Consent Decree.

**7. HOW DO YOU TELL THE COURT THAT YOU AGREE OR DISAGREE WITH ALL OR PART OF THE CONSENT DECREE?**

All Class Members have the right to state any objection they may have to the Consent Decree and to give reasons why they believe the Court should not approve it. All Class Members have the right to state their approval of the Consent Decree, although they are under no obligation to do so.

The Court and the Parties will consider those opinions submitted by Class Members in the following manner:

- The statement must include the name and number of the case (*N.B. v. Norwood*, Case No. 11-6866);
- The statement must include a statement of the reasons why the Court should or should not approve the Consent Decree;
- The statement must be no longer than 15 pages in length;
- The statement must include the name, address, telephone number, and signature of the individual submitting it; and
- The statement must be submitted by U.S. Mail and postmarked no later than Friday, December 1, 2017, to

Robert H. Farley, Jr.  
Robert H. Farley, Jr. Ltd.  
1155 S. Washington St., Suite 201  
Naperville, IL 60540

Attorney Robert Farley, co-counsel for the Class, will provide the Court and other counsel for the Plaintiffs and Defendant with the statements that he receives and that Class Members want presented to the Court. Please note that it is not sufficient to simply state that you object. Objections must state the reasons why the Consent Decree should not be approved.

**8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE CONSENT DECREE?**

The Fairness Hearing will be held before the Honorable Jorge L. Alonso, United States District Judge, in the Dirksen Federal Building, 219 S. Dearborn Street, Room 1219, Chicago, Illinois 60604, on Tuesday, December 19, 2017, at 11:00 a.m. At this hearing, the Court will consider whether the Consent Decree is fair, reasonable, and adequate. The Court will consider any objections made according to the procedures described above.

**9. DO YOU HAVE TO COME TO THE HEARING?**

All Class Members are welcome to attend the Fairness Hearing if they choose to do so, but no one is required to attend the Fairness Hearing. Plaintiffs' and Defendant's lawyers will be available to answer questions Judge Alonso may have. If you submit a statement or objection in accordance with the procedures described in paragraph 7 above, you are not required to come to Court to talk about it. As long as you mailed your written statement or objection in accordance with the procedures described in paragraph 7 above, the Court will consider it.

**10. WHO CAN SPEAK AT THE FAIRNESS HEARING?**

You may ask the Court for permission to speak at the Fairness Hearing. The Judge will decide whether you are permitted to do so. To request permission to speak at the Fairness Hearing, you must send a request to Class Counsel as directed below. Class Counsel will provide the necessary documents to the Court.

- The request must be entitled: "Notice of Intention to Appear in *N.B. v. Norwood*, Case No. 11-6866"
- You must send one copy of your "Notice of Intention to Appear" to the attorney listed below via U.S. mail, postmarked no later than Friday, December 1, 2017:

Robert H. Farley, Jr.  
Robert H. Farley, Jr. Ltd.  
1155 S. Washington St., Suite 201  
Naperville, IL 60540.

- Be sure to include your name, address, telephone number, and your signature on your "Notice of Intention to Appear."
- If you file a statement or objection and also want to ask for permission to speak at the Fairness Hearing, you can include the "Notice of Intention to Appear" in the same document as the statement/objection that is sent to Mr. Farley. Mr. Farley will provide copies of these "Notices of Intention to Appear" to the Court and to other counsel for the parties.

**11. WHO ARE THE CLASS MEMBERS' LAWYERS IN THE CASE?**

The Court ordered that the following attorneys represent the Class Members. These lawyers are called "Class Counsel."

Robert H. Farley, Jr.  
Robert H. Farley, Jr. Ltd.  
1155 S. Washington St., Suite 201  
Naperville, IL 60540  
Tel: 630-369-0103  
email: faleylaw@aol.com

Michelle N. Schneiderheinze  
706 Ogelsby Ave., Suite 105  
Normal, IL 61761

Mary Denise Cahill  
Cahill & Associates  
1155 S. Washington St., Suite 106  
Naperville, IL 60540

Class Members will not be charged for these lawyers' fees or expenses.

**12. HOW DO YOU GET MORE INFORMATION ABOUT THE CONSENT DECREE?**

A copy of the entire Consent Decree is available on the following websites:  
<https://www.illinois.gov/hfs/info/legal/Pages/N.B.vNorwood.aspx> ; [www.farley1.com](http://www.farley1.com); and  
[www.nbclassaction.com](http://www.nbclassaction.com).

If you have any questions for Plaintiffs' lawyers or want to request that a copy of the Consent Decree be mailed to you, you may contact Attorney Robert H. Farley, Jr. at [farleylaw@aol.com](mailto:farleylaw@aol.com) or 630-369-0103.

Dated: October 27, 2017



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The Honorable Jorge L. Alonso  
United States District Court Judge