

2. Pursuant to the federal Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit, the Defendant is required to provide in-home shift nursing services to Medicaid participants when such services are “necessary ... to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening process, regardless of whether or not such services are covered under the State plan.” 42 U.S.C. §1396d(r)(5).

3. As of January 1, 2015, the Defendant had issued prior authorizations for up to 84 hours per week of in-home shift nursing services for 535 children based on extensive medical need. Most of these children repeatedly received the Defendant’s prior authorization for in-home shift nursing service for years – some since their initial discharge from the hospital as infants.

4. Through a contractual arrangement with Keystone Peer Review Organization, Inc. (KEPRO), the Defendant adopted a new, unpublished eligibility standard for in-home shift nursing services, with the intention of using this new, unpublished eligibility standard to review previously approved child participants as well as to new child applicants.

5. However, the Defendant has neither published nor publicly cited this new standard, which appears to include an assessment tool and an “exception” process. The Defendant has not made public any information regarding the assessment tool or the exception process.

6. In a FOIA response dated February 10, 2015, the Defendant stated the following about its the new, unpublished eligibility standard, “...the scoring system is a record used to formulate specific actions...” In that FOIA response, the Defendant also acknowledged that,“...the record has not been publicly cited or identified by the Department's Director. Therefore, the record you requested is exempt under Section 7(1)(f) of FOIA.”

7. In a FOIA response dated February 10, 2015, the Defendant has stated the following about its new, unpublished eligibility standard, "...these documents are exempt pursuant to Section 7(1)(f) of FOIA because they are drafts and have not yet been finalized nor have they been publicly cited and identified by the Director [of Illinois HFS]."

8. The Defendant's statements that the eligibility standard was unpublished and still in "draft" form implied that the standard was incomplete and not finalized. Yet, the Defendant applied this draft, unfinalized, and unpublished eligibility standard to deny, terminate, and reduce nursing services for children with extensive medical needs.

9. The available information about the new standard is limited; however, the available information demonstrates that this new eligibility standard is unlawfully narrow, in violation of the federally mandated EPSDT benefit.

10. From January 2014 to February 2015, the Defendant applied this new, unpublished eligibility standard during annual re-authorization reviews of in-home shift nursing service for at least 178 previously-approved participants.

11. The Defendant's application of this new, unpublished eligibility standard to 178 previously approved participants resulted in drastic and dangerous reductions in services. Upon information and belief, all of these children were evaluated using the Defendant's assessment tool. Of the 178 children reviewed:

(a) 118 children (66% of reviewed cases) were found to be no longer eligible for services;

(b) 57 children (32% of reviewed cases) were found to be eligible for a reduced level of services; and

(c) only 3 children (2% of reviewed cases) were found to be eligible for their previously-approved level of services.

12. After applying this new, unpublished standard to reach these eligibility determinations, the Defendant issued written notices to the participants and applicants. All written notices followed a form template. That form template failed to meet the requirements of constitutional Due Process and federal regulations.

13. Additionally, the deficient written notices cited an “exception” process. The notices did not explain if and how the exception process differs from the original eligibility determination, or what evidence is needed to prove eligibility for an exception. Additionally, the notices did not state if or how the exception process relates to the appeal process, and whether an exception and appeal can be pursued concurrently.

14. As a result of the deficient written notices, the Defendant prevented participants from meaningfully exercising their rights to an appeal and continued assistance pending the results of an administrative hearing.

15. Additionally, as the Defendant has not articulated any rule or policy setting forth the exception process, the Plaintiffs and Class were unable to participate in the exception process in a meaningful manner.

16. Even if participants were able to overcome these deficient written notices to request an appeal, the Defendant’s deficient written notices and failure to publish its eligibility standard prevented participants from meaningfully participating in administrative hearings.

17. Contrary to the recommendations of their treating physicians and after years of prior approval by the Defendant, the named Plaintiffs all received deficient written notices dated

between December 19, 2014 and January 9, 2015 stating that they no longer qualified for in-home nursing services.

18. The Defendant continues to apply this new, unpublished standard to new applicants as well as previously-approved participants during their annual reauthorizations. The Defendant plans to apply this standard to 134 previously-approved participants between May 2015 and December 2015.

19. The Defendant failed to evaluate the Plaintiffs' and Class' eligibility for other Medicaid programs and services, including but not limited to, the state of Illinois Persons with Disabilities Waiver program or Home Services Program (HSP) prior to denying, reducing, or terminating in-home nursing services.

20. The Defendant's proposal to utilize care coordination services through the Division of Specialized Care for Children (DSCC) program as a substitute for denied, or reduced, or terminated in-home shift nursing services is both amorphous and inadequate.

21. The Defendant's policies and practices risk irreparable harm to the Plaintiffs and Class members, all of whom received Medicaid-funded in-home shift nursing services due to their medically complex conditions. Inappropriately denying, or terminating, or reducing in-home shift nursing services that were recommended by treating providers (and, often, services that the Defendant previously found to be necessary) place the health and safety of Plaintiffs and Class members at grave risk.

22. For the medically complex children whose services have been improperly denied, or terminated, or reduced, the risks are dire and the possibility of harm is irreparable. Without in-home shift nursing services, these children are at risk of unnecessary medical complications, including the risk of sudden death. A loss or denial of in-home shift nursing services shifts the

burden to provide medically skilled care from licensed professionals to the children's parents and guardians.

23. Plaintiffs and Class members have all qualified for Medicaid and therefore have established that their parents and guardians have no resources to independently finance medically skilled care. These factors place these medically complex children at a traumatic and unnecessary risk of having to be removed from their families and homes and placed into institutions.

24. The Plaintiffs receive funding from the Defendant for shift nursing services at their home, at an approximate monthly cost of \$7,522 for the Plaintiffs F.L. and H.S; and an approximate monthly cost of \$8,060 for the Plaintiff M.A. and an approximate monthly cost of \$11,284 for the Plaintiff Y.R. The costs for in-home shift nursing services are less than the costs if the Plaintiffs and Class are institutionalized or hospitalized for their entire life at a rate of approximately \$55,000 per month.

25. The Defendant's actions violate the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, the Medicaid Act and its accompanying regulations, the Americans with Disabilities Act (ADA), and the Rehabilitation Act.

26. Plaintiffs seek declaratory and permanent injunctive relief to restore and preserve in-home shift nursing services until the Defendant complies with statutory, regulatory, and constitutional Due Process requirements.

27. This class action seeks to enjoin the Defendant from denying, or terminating, or reducing these essential health services without first publishing and applying a lawful eligibility standard to the Plaintiffs and other similarly situated individuals.

II. JURISDICTION & VENUE

28. This is an action for declaratory and injunctive relief to enforce the rights of the Plaintiffs and the Class under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) provisions of Title XIX of the Social Security Act (Medicaid Act), the Medicaid Act and accompanying regulations, the Americans with Disabilities Act, 42 U.S.C. § 12132, and the Rehabilitation Act.

29. This Court has jurisdiction over Plaintiffs' federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343, which grant this Court original jurisdiction in all actions authorized by 43 U.S.C. § 1983 to redress the deprivation under color of state law any rights, privileges, or immunities guaranteed by the United States Constitution and Acts of Congress. The Plaintiffs' and Class' claims for declaratory and injunctive relief are authorized under 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 1983.

30. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred here and because Defendant Norwood may be found here.

III. PARTIES

Plaintiff M.A.

31. The Plaintiff, M.A. is 8 years old and has been receiving in-home shift nursing services for the past 6 years. Prior to the Defendant's notice dated January 7, 2015 to eliminate in-home shift nursing services, M.A. had been receiving 60 hours per week of in-home shift nursing services. Dr. Karen Lui has found it is medically necessary for M.A. to have 60 hours per week of in-home shift nursing care.

32. M.A. is diagnosed with Cornelia De Lange Syndrome, Cleft Palate Repair, and Sleep Apnea. He has respiratory issues associated with diagnoses. He requires Nebulizer breathing treatments every 4 hours and when he gets a cold or has difficulties with being congested. M.A. has snoring/sleep apnea episodes at night where he actually wakes himself up and has episodes of not breathing. His neurological development is severely delayed and he has ongoing twitching, seizure-like activity in his brain, so his safety requires that he has someone there with him at all times. M.A. has a Gastrostomy Button (“GB”), which was surgically placed into his abdomen. The nurses use this “feeding tube” to give him the formula he requires to survive. This is his only means of nutrition. M.A. has a very weak swallow reflex, which increases the chances of the liquid going into his lungs. M.A. often pulls his GB out, and sticks his finger in the GB stoma. If the GB does come out, the nurse has to replace it immediately, as the stoma will begin to close up within the hour. M.A. will have to go to the hospital to have the GB surgically replaced if it does not get replaced quickly enough at home.

33. M.A. is totally dependent on all activities of daily living. He is developmentally disabled. He cannot communicate any of his needs. He is non-ambulatory and is wheelchair dependent. He is incontinent of bowel and bladder. He does not walk or sit up on his own, so he needs to be monitored closely for skin breakdown. M.A. is hearing impaired and visually impaired.

34. Pursuant to FRCP 17(c), M.A. brings this action through his parents and next friends, Miguel Avila, Sr. and Hermina Avila.

Plaintiff F.L.

35. The Plaintiff, F.L. is 5 years old and has been receiving in-home shift nursing services for the past 3 years. Prior to the Defendant’s notice dated December 19, 2014 to

eliminate in-home shift nursing services, F.L. had been receiving 56 hours per week of in-home shift nursing services. Dr. Leah Van-Slambrouck has found that F.L. requires 56 hours per week of in-home shift nursing care.

36. F.L. is diagnosed with a complex brain malformation of unknown etiology, global developmental delay, oropharyngeal dysphagia with g-tube dependence, pulmonary congestion requiring airway clearance and vest therapy, diabetes insipidus, symptomatic seizures, static encephalopathy and static quadriparesis with continued tonic spasms on EEG. Developmentally, his age is approximately two months old. F.L. requires close observation of his subtle and sometimes prolonged seizures, which sometimes last longer than 5 minutes. F.L.'s nurse administers g-tube feedings every 3 hours. His nurse also administers a vest for manual chest physiotherapy 3 times per day. He has chronic chest congestion and needs help clearing secretions. Therefore, his nurse uses a suction machine for oral suctioning. On December 19, 2014, F.L.'s family was notified that Medicaid coverage of his nursing services would be reduced from 56 hours per week to 0 hours.

37. F.L. has seizures on a daily basis and depends on seizure medication to help control them. Seizure activity is always a safety issue, so he requires 24 hour monitoring so he doesn't hurt himself. His main mode of nutrition is given through by a Gastrostomy Button, where his feeding is given through by a tube. The G-Button was surgically placed into his abdomen. The nurses use this "Button" to give him his Ketogenic formula and all of his medications. The G-Button needs to be monitored closely, as to make sure it does not get accidentally pulled out. F.L. has to have the glucose in his blood checked daily to monitor the levels due to his diabetes. He also requires his urine to be monitored twice a day using special strips to check for Ketones. The amount of urine he voids is also monitored by the weight of his

diapers. F.L. has a potential for skin breakdown and skin ulceration if his position is not changed at least every 2 hours. He is incontinent of both bowel and bladder, so he wears diapers.

38. F.L. is totally dependent on all activities of daily living. He is developmentally and neurologically delayed. F.L. is visually and hearing impaired.

39. Pursuant to FRCP 17(c), F.L. brings this action through his mother and next friend, Jacquetta Pearson.

Plaintiff Y.R.

40. The Plaintiff, Y.R. is 6 years old and has been receiving in-home shift nursing services for the past 6 years. Prior to the Defendant's notice dated January 9, 2015 to reduce in-home shift nursing services by approximately 50%, Y.R. had been receiving 84 hours per week of in-home shift nursing services. Dr. Edith Chernoff has found it is medically necessary for Y.R. to have 84 hours per week of in-home shift nursing care.

41. Y.R. is diagnosed with Marden Walker Syndrome, Mandibular Hypoplasia and Pierre Robin Sequence. She also has Congenital Heary Anomaly, Acquired Kidney Cysts, and a Gastrostomy Button. She has frequent episodes of lung congestion and routinely has to have medication placed into her lungs with a nebulizer machine. There are 2 different medications she receives into her lungs for a total of 6 treatments a day. She has a chest vest that the nurses use on her to "shake up her lungs" to keep secretions from settling and to keep her airways opened. She receives the vest treatments 3 to 4 times a day. If her lung secretions settle in her lungs, she may become sick with pneumonia. Y.R. requires oxygen when she sleeps, as her oxygen levels drop when she is asleep. She is neurologically delayed and has continuous movements and violent tremors and needs to be closely monitored by the nurses and her mother. She takes seizure medications to help slow down these episodes.

42. Y.R. has a congenital heart disease for which she takes heart medication. She requires close monitoring of her vital signs due to her history of instant drops and increases in body temperature and blood pressure. She requires blood pressure medication and the nurses have to take her blood pressure each time before giving her the medication. Y.R. cannot eat by mouth and has a Gastrostomy Button in her abdomen so she can receive the special formula her physician has ordered and her medications. She receives her feedings through a feeding pump. The Gastrostomy Button needs to be monitored closely as it may accidentally get pulled out. Y.R. has the potential for aspiration of secretions and formula into her lungs due to her weak shallow reflex. She needs to be continually monitored for choking, especially when her feedings are infusing. Nurses need to immediately suction Y.R.'s nose and back of her mouth before the liquid goes down into her lungs.

43. Y.R. is totally dependent for all her care. She is developmentally delayed and neurologically delayed. She cannot walk or sit independently as she has very poor muscle tone.

44. Pursuant to FRCP 17(c), Y.R. brings this action through her mother and next friend, Carolina Barranco.

Plaintiff H.S.

45. The Plaintiff, H.S. is 3 years old and has been receiving in-home shift nursing services for approximately 2 years. Prior to the Defendant's notice dated December 22, 2014 to eliminate in-home shift nursing services, H.S. had been receiving 56 hours per week of in-home shift nursing services. Dr. Oscar Linres has found it is medically necessary for H.S. to have 56 hours per week of in-home shift nursing care.

46. H.S. is diagnosed with Pallister-Killian Syndrome and Short Bowel Syndrome. H.S. has a Ventricular (VP) Shunt in his brain. This tube drains the fluid off of the brain and

down into his abdomen. His shunt needs to be consistently monitored for Intracranial Pressure. The nurses need to be aware of the signs and symptoms of the shunt malfunctioning and act quickly, as this will cause increased pressure on his brain. H.S. has continual abnormal activity in his brain. He takes medication every night to help prevent him from seizures and seizure-like activities. H.S. has very weak swallow reflex, which increases his chances of aspirating the food/liquid into his lungs. If H.S. does not tolerate taking the formula by mouth, he has to be fed through a Gastrostomy Button, which was surgically placed into his abdomen. The nurses use this feeding tube to give him the rest of the formula he cannot tolerate by mouth. The Gastrostomy Button is also used to give him his medications when needed. The nurses continually monitor this Gastrostomy Button to make sure that it doesn't accidentally get pulled out. If it does come out, the nurse has to replace it within an hour or two, or he will have to go to the hospital to have the stoma expanded again and the Gastrostomy Button replaced.

47. H.S. is 3 years old, but due to his neurological development, he is comparable to a 6 month old infant and he requires 24 hour supervised care. H.S. is visually and hearing impaired. He is incontinent of bowel and bladder. He does not walk or sit up on his own, so he needs to be monitored closely for skin breakdown.

48. Pursuant to FRCP 17(c), H.S. brings this action through his parents and next friends, Ricardo Soria and Georgina Rivera.

Defendant

49. The Defendant, Felicia F. Norwood, is the Director of the Illinois Department of Healthcare and Family Services (HFS). As such she is responsible for the supervision and oversight of HFS medical programs and contractual arrangements. Her responsibilities in this

role include the responsibility to ensure compliance with federal law. She is being sued in her official capacity.

IV. CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. This action is brought as a statewide class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) on behalf of:

All Medicaid-eligible children under the age of 21 in the State of Illinois who received in-home shift nursing services or applied for in-home shift nursing services and received notices from the Illinois Department of Healthcare and Family Services that their requests for in-home shift nursing services had been denied, or reduced, or approved at a lower level than requested, or terminated by the Illinois Department of Healthcare and Family Services on or after January 1, 2014.

51. The Class is so numerous that joinder of all persons is impracticable. As of January 1, 2015, approximately 535 children with extensive medical needs received in-home shift nursing services through the Defendant's "NPCS" program (Nursing and Personal Care Services) program, described in more detail below.

52. Upon information and belief, between January 2014 to February 2015, the Defendant applied this new, unpublished eligibility standard during annual re-authorization reviews of in-home nursing service for at least 178 previously-approved participants.

53. The Defendant's application of this new, unpublished eligibility standard to 178 previously approved participants resulted in drastic and dangerous reductions in services. Upon information and belief, all of these children were evaluated using the Defendant's assessment tool. Of the 178 children reviewed:

- (a) 118 children (66% of reviewed cases) were found to be no longer eligible for services;
- (b) 57 children (32% of reviewed cases) were found to be eligible for a reduced level of services; and
- (c) only 3 children (2% of reviewed cases) were found to be eligible for their previously-approved level of services.

54. It is also notable that Plaintiffs and Class, as participants in the Medicaid program, have limited financial resources and therefore may be less likely to institute individual actions.

55. All individuals whose prior authorization requests (initial or renewal) for in-home shift nursing were denied, or terminated, or reduced because this new, unpublished standard share a common claim with the Plaintiffs in that their services have been or will be terminated, or denied, or reduced by the Defendant, directly or through its agents or assigns, without adequate Due Process protections and in violation of federal laws and regulations.

56. The claims of the Class members raise common questions of law and fact. These include:

- (a) The permissibility of the Defendant's adoption and application of a new eligibility standard that has not been published or publicly cited.
- (b) The compliance of Defendant's new eligibility standard, including the utilization of its assessment tool, with the federally mandated EPSDT benefit to provide services "necessary...to correct or ameliorate" medical conditions of Plaintiffs and Class.

- (c) The adequacy of the written notices provided by the Defendant to the Plaintiffs and Class regarding eligibility determinations, including determinations to deny or reduce Medicaid in-home shift nursing, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, federal laws, and federal regulations.
- (d) The Defendant's infringement on Plaintiffs' and Class' entitlement right to on-going benefits from a federal entitlement program without Due Process.
- (e) The compliance of Defendant's policies and practices with the federal requirement to provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients.
42 U.S.C. § 1396a(a)(19).
- (f) The Defendant's administration of the NPCS program to ensure fairness and freedom from arbitrary decision-making as to eligibility and renewal requirements in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
- (g) The Defendant's requirement under the Medicaid Act to evaluate the Plaintiffs' and Class' eligibility for other Medicaid programs and service, including but not limited to, the State of Illinois Persons with Disabilities Waiver program or Home Services Program (HSP) and others services prior to reducing or terminating NPCS services.

- (h) The Defendant's denials, or terminations, or reductions (as well as attempted terminations and reductions) to federally-required, medically prescribed in-home shift nursing services for the Plaintiffs and Class.
- (i) The Defendant's compliance with the ADA and Rehabilitation Act by risking Plaintiffs' and Class members' institutionalization in violation of the ADA and Rehabilitation Act by the Defendant to deny, terminate, or reduce the level of in-home shift nursing services for the Plaintiffs and Class, even though there has been no evidence of a change in their medical needs.

57. The Plaintiffs' claims are typical of the Class members' claims. Plaintiffs and other Class members all have had Medicaid-covered services denied, or reduced, or approved at a lower level than requested, or terminated by the Defendant under the same policies, practices and procedures of the Defendant.

58. The implementation of new eligibility standard (including an assessment tool with a scoring methodology and an exception process) by the Defendant to terminate, or deny, or reduce the Medicaid-covered in-home shift nursing services of each Plaintiff and Class member violates their rights to Due Process.

59. The Plaintiffs will fairly and adequately represent the class because they suffer from deprivations identical to those of the Class members and have been denied the same federal rights that they seek to enforce on behalf of the other Class members.

60. The Plaintiffs will fairly and adequately represent the interests of the other Class members, many of whom are unable to pursue claims on their own behalf as the result of their disabilities.

61. Plaintiffs' interest in obtaining injunctive relief for the violations of constitutional rights and privileges are consistent with and not antagonistic to those of any person within the Class.

62. Plaintiffs' counsel are qualified, experienced and able to conduct the proposed litigation.

63. Prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for the party opposing the Class or could be dispositive of the interests of the other members or substantially impair or impede the ability to protect their interests.

64. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that:

(a) A multiplicity of suits with consequent burden on the courts and the Defendant should be avoided.

(b) It would be virtually impossible for all Class members to intervene as parties-plaintiffs in this action.

65. The Defendant has acted or refused to act on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief with respect to the Class as a whole.

V. STATEMENT OF FACTS

A. The Defendant's Administration of Federally Mandated In-Home Shift Nursing Services

66. Pursuant to 42 U.S.C. §1396d(r)(5), the federal EPSDT benefit requires that any diagnostic and treatment services that are coverable under 42 U.S.C. § 1396d(a) of the Medicaid

Act must be provided if they are “necessary ... to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening process, regardless of whether or not such services are covered under the State plan.”

67. Federally-mandated services under the EPSDT benefit include home health services (nursing and home health aide services) that ameliorate, correct, or maintain their conditions. Therefore, as an Illinois’ state Medicaid agency, the Defendant is federally mandated to provide in-home shift nursing services to Medicaid-eligible to children and young adults under the age of 21 when necessary to correct or ameliorate their medical illnesses and conditions.

68. The Defendant has chosen to operate a state Medicaid program commonly referred to as the NPCS program to provide Medicaid-funded in-home shift nursing services to children under 21. The Defendant’s administration of in-home shift nursing services through the NPCS program must comply with federal EPSDT requirements, among other federal and state requirements.

69. The Defendant also delivers Medicaid-funded in-home shift nursing services to children under 21 through a state Medicaid Home and Community-Based Services (HCBS) waiver program, commonly referred to as the “MFTD” waiver program (standing for Medically Fragile, Technology Dependent Waiver).

70. The Defendant’s administration of in-home nursing through the MFTD program must comply with federal requirements for the EPSDT benefit, among other federal and state requirements.

71. Children receiving services through either the NPCS or the MFTD waiver program have extensive and complex medical needs.

72. Though children enrolled in the NPCCS program have extensive and complex medical needs, children enrolled in the NPCCS program do not meet the technology-dependent requirements of the MFTD program. They are therefore ineligible for the MFTD program.

B. The Defendant's Administration of the NPCCS Program to Provide EPSDT In-Home Shift Nursing Services

73. The Defendant requires prior approval for in-home shift nursing services through the NPCCS program. 89 Ill. Adm. Code § 140.473(d).

74. The Defendant describes the eligibility standard for prior approval as, “[a]pproval will be granted when, in the judgment of a consulting physician and subject to the review of the professional staff of the Department, the services are medically necessary and appropriate to meet the participant’s medical needs.” *Id.* at 140.473(e).

75. The Defendant has not defined medical necessity in the context of 89 Ill. Adm. Code § 140.473(d). However, the Defendant defines “ ‘[n]ecessary medical care’ is that care which is generally recognized as standard medical care required because of disease, disability, infirmity or impairment.” *Id.* at 140.2(b).

76. For the Defendant to consider an applicant’s eligibility for Medicaid-funded in-home nursing services through the NPCCS or MFTD program, a treating physician must find the services to be medically necessary.

77. Prior to January 1, 2014, the Defendant’s procedure for considering an applicant’s eligibility for Medicaid-funded in-home shift nursing services through the NPCCS program consisted of: (a) the submission of written statement(s) from the applicant’s treating physician(s) articulating the medical need for a certain number of weekly hours of home nursing services; and (b) a review of that written statement by Shari Bangert, an employee or agent of the Defendant.

78. The Defendant considers the treating physician to be the “consulting physician” described in 89 Ill. Adm. Code § 140.473(e).

79. When an applicant initially applies for NPCCS services or submits a service renewal request, the treating physician specifies the medical need and a specific the number of hours per week of in-home nursing services.

80. If approved, NPCCS child participants receive an initial prior authorization for 60 days with two 50-day renewal periods. After the first 180 days of service, cases are reviewed on 6-month or annual schedules depending on the medical stability of the child.

81. NPCCS services are provided by approved Home Nursing Agencies licensed by the Illinois Department of Public Health.

C. The Defendant’s Current, Unascertainable Standard for Prior Authorization of EPSDT In-Home Shift Nursing Services

82. The Defendant and KEPRO entered into a contract in January 2014, for a period of 3 ½ years to provide, “Program Support Services for Children and Young Adults Request Nursing and In-Home Services.” The contract states that KEPRO “shall assist HFS with consistency in applying the Standardized, Clinically Based Assessment Tool for children and young adults seeking nursing and in-home services.”

83. KEPRO will be paid approximately \$4 ½ million dollars over 3 ½ years with respect to providing services to the Defendant for children seeking in-home shift nursing services.

84. On or around January 2014, the Defendant began applying a new, eligibility standard, which appears to include an assessment tool (with an associated scoring methodology) and an exception process.

85. The Defendant has acknowledged there was no “tool” used prior to this standard. Prior to January 2014, this assessment tool had not been used to determine eligibility for in-home shift nursing services.

86. This new eligibility standard has not been made public; neither the assessment tool, the associated scoring methodology, nor the exception process has been made public.

87. The Defendant admits “[t]he answers to the questions on the MNNS checklist [assessment tool] lead to a baseline level of service . . . for skilled in-home nursing,” but has failed to promulgate any information about this standard (neither disclosed nor published these standards to the Plaintiffs and Class).

88. The Defendant admits the “KEPRO physician who determines each child’s need for in-home nursing services is not bound by the MNNS [assessment tool] score...”.

89. The Defendant admits that in the NPCCS program, medical necessity determinations are subject to the subjective judgment of Dr. Keji Akin, the medical director for KEPRO. The Defendant “defers to the opinion of the KEPRO physician regardless of whether the physician agrees or disagrees with allocation suggested” by the assessment tool and associated score.

90. The Defendant has not published the circumstances when the Department is not bound by the assessment tool and the associated score.

91. The Defendant’s eligibility standard is neither finalized nor publicly available. Yet, the Defendant has applied this eligibility standard to deny, terminate, and reduce, services for medically complex children. The standard applied by the Defendant is therefore not ascertainable and is arbitrary and capricious.

92. The Defendant's written notices state that another state agency, DSCC, is charged with sharing information with the Plaintiffs and Class regarding a request for an exception.

93. The Defendant has not promulgated any rules or policy outlining a standard of review for the exception process.

94. The written notices did not explain if and how the exception process differs from the assessment tool, or what evidence is needed to prove eligibility for an exception.

Additionally, the written notices did not state if or how the exception process relates to the appeal process, and whether an exception and appeal can be pursued concurrently.

95. Additionally, as the Defendant has not articulated any rule or policy setting forth the exception process, the Plaintiffs and Class are unable to participate in the exception process in a meaningful manner.

D. The Defendant's Deficient Written Notices of Eligibility Determinations

96. The Defendant's eligibility review process includes an in-person interview.

97. No information is provided to the parents/guardians during the in-person interview about the scoring system, and no information is provided in the Defendant's written notices about how the scoring system worked, or how the individual's score was calculated.

98. No information has been provided to the Plaintiffs and Class regarding how the score would affect eligibility for nursing services; the Plaintiffs and Class simply received written notices in the mail regarding denials or reductions in services.

99. It is not known if or how Plaintiffs and Class could challenge contest the results of the assessment tool, including the associated score.

100. The Defendant addressed the written notices denying, terminating, or reducing services to minor children with extensive medical needs; the notices did not include the name of

the parent/guardian. In many instances, the Plaintiffs and Class may not have the same surname as their parent/guardian, creating an increased risk that the notices would not be received by the minor's parent/guardian.

101. The Defendant issued written notices in English only, regardless of Plaintiffs' or Class members' English language proficiency.

102. The Defendant's written notices of denial, termination, or reduction of nursing services indicate services are denied, terminated, or reduced "based on individual assessment and the medical documents provided." It is not known what, if any, medical evidence was considered as a part of this new eligibility standard.

103. For those children denied in-home shift nursing services, the Defendant's written notice was titled "Notice of Decision on Request for Medical Service/Item" and addressed to the child. The written notice stated as follows:

The request for prior approval for medical service(s) or item(s) filed by
you or your medical provider

* * *

X Has been denied for the following service(s) or items(s) or time period:

Reason(s): Based on the individual assessment and the medical documentation provided, your child does not meet the requirements for skilled in-home shift nursing. As a result, your child's nursing hours will be reduced to zero over a period of six months using the titration schedule detailed below.

* * *

104. For those children whose in-home shift nursing services have been reduced, the Defendant's written notice was titled "Notice of Decision on Request for Medical Service/Item" and addressed to the child. The written notice stated as follows:

The request for prior approval for medical service(s) or item(s) filed by
you or your medical provider

X Has been approved effective ____ until ____ for the following service(s) or items(s):

Reason(s): Based on the individual assessment and the medical documentation provided, your child met the requirements for skilled in-home shift nursing; however, the new approval results in a reduction in the amount of approved monthly nursing services. As a result, your child's new monthly budget will be implemented using the schedule below.

* * *

105. The Defendant's written notice failed to explain the eligibility standard applied when evaluating the Plaintiffs' and Class' eligibility for benefits and failed to provide the required reasons that Plaintiffs and Class failed to meet that standard.

106. The Defendant's written notice did not provide specific reasons for the stated action, nor did it inform the Plaintiffs and Class how the determinations were reached. In the notice of decision, the Defendant merely stated, "based on individual assessment and the medical documentation provided, your child does not meet the requirements for in-home shift nursing." There was no mention of what medical information was reviewed as a part of this determination, and no explanation of the individual assessment.

107. The Defendant's written notice made no mention of the Plaintiffs' or Class' right to continued services during the pendency of an appeal.

108. The Defendant's written notice also failed to provide an explanation about the circumstances under which in-home shift nursing services will continue if Plaintiffs and Class request a hearing.

109. The Defendant's written notice failed to explain how a Plaintiff or Class member could exercise this right in the context of the stated gradual reduction in services, or during the proposed "titration period."¹

110. The Defendant's written notice did not provide adequate information about how to effectively file an appeal.

111. The notices issued to the Plaintiffs and Class members contained erroneous and misleading information on the appeal process. For example, the notice stated "Such appeal must be filed with the Department in writing or by calling toll-free)" The notice failed to provide instructions regarding how to appeal in writing, and the mailing address was not included on the notice.

112. A call to that toll free number placed the caller in a phone tree with a choice of prompts to choose from, none of which was identical to any language contained in the notice. The automated message stated that fax and mail were the Defendant's preferred methods for receipt of an appeal request. Notably, the mailing address provided through the automated phone tree differs from the mailing address listed on the Defendant's letterhead, and no fax number was listed on the notice.

113. The Defendant's written notices did not provide a clear statement of what action it intended to take.

¹ Upon information and belief, it appears that the six-month titration period runs during the pendency of an appeal. For example, in the case of Jaquetta Pearson for F.L. (a named Plaintiff), the notice dated December 19, 2014 sets forth a schedule for a reduction in services beginning at 56 hours in Month 1 (01/04/15-02/03/15) and ending in Month 7 (as of 07/04/15) at zero hours. (Month 2 -56 hours; Month 3 - 42 hours; Month 4 -32 hours; Month 5 -24 hours; Month 6 -10 hours) ("titration schedule")... The titration schedule appears to run regardless of a beneficiary having filed a timely appeal. Thus, if a member of Plaintiffs or Class appeals unsuccessfully and that appeal process takes four months to conclude, the child would immediately receive a sudden reduction from 56 to 24 hours per week (i.e., services at previous level of 56 hours per week dropped immediately to the month five level of 24 hours per week). That approach, if true, does not comply with federal and state Medicaid requirements to continue services pending the outcome of an appeal.

114. The Defendant's written notices did not provide sufficient reasons for its intended actions.

115. The Defendant's written notices did not cite specific regulations that support its action.

116. The Defendant's written notices did not include (a) an adequate explanation of the right to request a hearing, or (b) an explanation of the circumstances under which Medicaid benefits would be continued if a hearing was requested.

E. The Defendant's Proposed Transition to DSCC Care Coordination for Plaintiffs and Class with Reduced or Terminated In-Home Nursing Services

117. The Defendant's written notice did not clearly articulate a transition plan of care for the Plaintiffs and Class members. The notice stated that the DSCC will work with the Defendant to provide a medical case management plan for the Plaintiffs and Class, and that DSCC would also assist in identifying additional resources, both medical and non-medical services, during and after the titration period. The notice did not provide contact information for a beneficiary to initiate services with DSCC, nor was there any guarantee that Plaintiffs and Class would qualify for DSCC services (other than care coordination).

118. The Defendant's notice indicated that DSCC was charged with contacting Plaintiffs and Class members. Upon information and belief, DSCC would refer the Plaintiffs and Class to the Division of Rehabilitation Services (DRS) Home Services Program (HSP).

119. However, the Defendant provided no assurance that Plaintiffs or Class will be eligible to receive services from DRS. Rather, DRS would evaluate the eligibility of Plaintiffs or Class for services using a Determination of Need (DON). A DON evaluates one's ability to conduct activities of daily living, as opposed to the need for medically skilled care; it is not designed to elicit information regarding a child's nursing needs.

120. Upon information and belief, if found eligible for a referral to DRS, screening for eligibility for services would not begin until after a decision is made in a participant's appeal. If Plaintiffs appeal and lose the appeal late in the titration schedule, there would likely be a gap in DRS services (should they qualify), thereby placing the Plaintiffs who exercise their right to challenge the case on appeal at risk of harm to the health and stability of these medically complex children.

F. PLAINTIFFS

1. Plaintiff M.A.

121. The Plaintiff, M.A. is 8 years old and has been receiving in-home shift nursing services for the past 6 years. Prior to the Defendant's notice dated January 7, 2015 to eliminate in-home shift nursing services, M.A. had been receiving 60 hours per week of in-home shift nursing services. M.A. is diagnosed with Cornelia De Lange Syndrome, Cleft Palate Repair, and Sleep Apnea. His neurological development is severely delayed and he has ongoing seizure-like activity in his brain. He cannot communicate any of his needs, so his safety requires that he has someone with him at all times. Dr. Karen Lui has found that M.A. requires 60 hours per week of in-home shift nursing care.

122. If M.A. were to have an administrative hearing on appeal, he would not know how to challenge the Defendant's decision to terminate services because the notice did not explain the standard that was applied to his individual case, how the elimination of services was calculated, or the basis for the elimination.

123. The Defendant has not provided M.A. with any information about eligibility standard for the exception, or eligibility for any other services under Medicaid.

124. M.A.'s health, safety and development are threatened with irreparable harm if his services are not reinstated. It is medically necessary that M.A. maintain 60 hours of week of in-home shift nursing services which has been prescribed by Dr. Lui.

125. If M.A.'s in-home shift nursing services are eliminated by the Defendant, then M.A. will be forced to either be institutionalized in a hospital or a skilled nursing facility to receive the necessary services. If he remains living at home with reduced services, then he faces a strong possibility of a life threatening episode.

126. M.A. is requesting injunctive relief to require the Defendant to provide funding to maintain the current level of shift nursing care in order that he may remain in the community and not be institutionalized or hospitalized for his entire life.

127. The actions of the Defendant constitute unlawful discrimination under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794(a). M.A. is entitled to medically necessary in-home shift nursing services under the Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) provisions of Title XIX of the Social Security Act ("Medicaid Act") 42 U.S.C. Sec. 1396 *et. seq.* Further, the actions of the Defendant violate the Due Process rights of M.A. under the Fourteenth Amendment of the Constitution.

128. M.A. is an individual with a disability.

129. M.A. is a recipient of Medical Assistance, commonly known as Medicaid.

2. Plaintiff F.L.

130. The Plaintiff, F.L. is 5 years old and has been receiving in-home shift nursing services for the past 3 years. Prior to the Defendant's notice dated December 19, 2014 to eliminate in-home shift nursing services, F.L. had been receiving 56 hours per week of in-home

shift nursing services. F.L. is diagnosed with Diabetes Insipidus, Epilepsy, Atrial Septal Defect and Brain Injury. F.L. has seizures on a daily basis which require 24 hour monitoring for safety. Dr. Leah Van-Slambrouck has found that F.L. requires 56 hours per week of in-home shift nursing care.

131. If F.L. were to have an administrative hearing on appeal, he would not know how to challenge the defendant's decision to terminate services because the notice did not explain the standard that was applied to his individual case, how the elimination of services was calculated, or the basis for the elimination of services.

132. The Defendant has not provided F.L. with any information about eligibility standard for the exception, or eligibility for any other services under Medicaid.

133. F.L.'s health, safety and development are threatened with irreparable harm if his services are not reinstated. It is medically necessary that M.A. maintain 56 hours of week of shift nursing services which has been prescribed by Dr. Leah Van-Slambrouck.

134. If F.L.'s in-home shift nursing services are eliminated by the Defendant, then F.L. will be forced to either be institutionalized in a hospital or a skilled nursing facility to receive the necessary services. If he remains living at home with reduced services then he faces a strong possibility of a life threatening episode.

135. F.L. is requesting injunctive relief to require the Defendant to provide funding to maintain the current level of shift nursing care which he receives in order that he may remain in the community and not be institutionalized or hospitalized for his entire life.

136. The actions of the Defendant constitute unlawful discrimination under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794(a). F.L. is entitled to medically necessary in-home shift

nursing services under the Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) provisions of Title XIX of the Social Security Act (“Medicaid Act”) 42 U.S.C. Sec. 1396 *et. seq.* F.L. is a recipient of Medical Assistance, commonly known as Medicaid. Further, the actions of the Defendant violate the Due Process rights of F.L. under the Fourteenth Amendment of the Constitution.

137. F.L. is an individual with a disability.

138. F.L. is a recipient of Medical Assistance, commonly known as Medicaid.

3. Plaintiff Y.R.

139. The Plaintiff, Y.R. is 6 years old and has been receiving in-home shift nursing services for the past 6 years. Prior to the Defendant’s notice dated January 9, 2015 to reduce in-home shift nursing services by approximately 50%, Y.R. had been receiving 84 hours per week of in-home shift nursing services. Y.R. is diagnosed with Marden Walker Syndrome, Mandiular Hypoplasia and Pierre Robin Sequence. She has Congenital Heart Anamoly, Acquired Kidney Cysts, and a Gastronomy Button. Dr. Edith Chernoff has found that Y.R. requires 84 hours per week of in-home shift nursing care.

140. If Y.R. were to have an administrative hearing on appeal, she would not know how to challenge the Defendant’s decision to reduce services because the notice did not explain the standard that was applied to her individual case, how the reduction of services was calculated, or the basis for the reduction.

141. The Defendant has not provided Y.R. with any information about eligibility standard for the exception, or eligibility for any other services under Medicaid.

142. Y.R.'s health, safety and development are threatened with irreparable harm if her services are not reinstated. It is medically necessary that Y.R. maintain 84 hours per week of shift nursing services which has been prescribed by Dr. Edith Chernoff.

143. If Y.R.'s in-home shift nursing services are reduced by the Defendant, then Y.R. will be forced to either be institutionalized in a hospital or a skilled nursing facility to receive the necessary services. If she remains living at home with reduced services then she faces a strong possibility of a life threatening episode.

144. Y.R. is requesting injunctive relief to require the Defendant to provide funding to maintain the current level of shift nursing care in order that she may remain in the community and not be institutionalized or hospitalized for her entire life.

145. The actions of the Defendant constitute unlawful discrimination under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794(a). Y.R. is entitled to medically necessary in-home shift nursing services under the Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) provisions of Title XIX of the Social Security Act ("Medicaid Act") 42 U.S.C. Sec. 1396 *et. seq.* Further, the actions of the Defendant violate the Due Process rights of Y.R. under the Fourteenth Amendment of the Constitution.

146. Y.R. is an individual with a disability.

147. Y.R. is a recipient of Medical Assistance, commonly known as Medicaid.

4. Plaintiff H.S.

148. The Plaintiff, H.S. is 3 years old and has been receiving in-home shift nursing services for approximately 2 years. Prior to the Defendant's notice dated December 22, 2014 to eliminate in-home shift nursing services, H.S. had been receiving 56 hours per week of in-home

shift nursing services. H.S. is diagnosed with Pallister –Killian Syndrome and Short Bowel Syndrome. H.S. has a Ventricular Shunt in his brain which requires constant monitoring for Intracranial Pressure. Dr. Oscar Linres has found that H.S. requires 56 hours per week of in-home shift nursing care.

149. If H.S. were to have an administrative hearing on appeal, he would not know how to challenge the defendant's decision to terminate services because the notice did not explain the standard that was applied to his individual case, how the elimination of services was calculated, or the basis for the elimination.

150. The Defendant has not provided H.S. with any information about eligibility standard for the exception, or eligibility for any other services under Medicaid.

151. H.S.' health, safety and development are threatened with irreparable harm if his services are terminated. It is medically necessary that H.S. maintain 56 hours of week of shift nursing services which has been prescribed by Dr. Oscar Linres.

152. If H.S. in-home shift nursing services are eliminated by the Defendant, then H.S. will be forced to either be institutionalized in a hospital or a skilled nursing facility to receive the necessary services. If he remains living at home with reduced services then he faces a strong possibility of a life threatening episode.

153. H.S. is requesting injunctive relief to require the Defendant to provide funding to maintain the current level of shift nursing care in order that he may remain in the community and not be institutionalized or hospitalized for his entire life.

154. The actions of the Defendant constitute unlawful discrimination under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794(a). H.S. is entitled to medically necessary in-home shift

nursing services under the Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) provisions of Title XIX of the Social Security Act (“Medicaid Act”) 42 U.S.C. Sec. 1396 *et. seq.* Further, the actions of the Defendant violate the Due Process rights of H.S. under the Fourteenth Amendment of the Constitution.

155. H.S. is an individual with a disability.

156. H.S. is a recipient of Medical Assistance, commonly known as Medicaid.

VI. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(Due Process: Lack of Ascertainable Non-Arbitrary Standards)

157. Plaintiffs incorporate and re-allege paragraphs 1 through 156 as if fully set forth herein.

158. In order to comply with Due Process, a State Medicaid program must use reasonable, ascertainable, non-arbitrary, written standards and procedures for determining eligibility for and the extent of medical assistance provided.

159. In 2014, the Defendant began applying an unreasonable, unascertainable, arbitrary and unwritten standard and procedures for determining eligibility for and the extent of in-home shift nursing services.

160. Defendant has not published or publically cited any rule, policy or regulation articulating this policy.

161. In 2014, the Defendant began applying this new eligibility standard, which includes an assessment tool and an associated score.

162. Limited information is available about the new eligibility standard. However, the assessment tool appears to be a system for allocating points. Plaintiffs and Class can earn points

towards eligibility for in-home nursing. However, the Defendant has not published any information about how points are allocated, even in response to FOIA requests.

163. Additionally, the Defendant has not published the minimum qualifying score(s) required for in-home nursing care. Plaintiffs' counsel was able to obtain some information about the scoring scale through a FOIA request; however, the Defendant's methodology for point allocation is still unknown.

164. The Defendant's new eligibility standard appears to include an exception process. The exception process appears to be either (1) a part of the Defendant's new standard of eligibility review, or (2) a new form of relief available to the Plaintiffs and Class.

165. As the Defendant has not articulated any rule or policy setting forth the exception process, the Plaintiffs and Class are unable to participate in the exception process in a meaningful manner, in violation of their Due Process rights.

166. The Defendant's current eligibility standard is unreasonable, unascertainable, arbitrary and unwritten standard, and is therefore inconsistent with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

SECOND CLAIM FOR RELIEF
(Due Process and Medicaid Regulations: Inadequate Notice)

167. Plaintiffs incorporate and re-allege paragraphs 1 through 166 as if fully set forth herein.

168. To comply with the Due Process guarantees under the Fourteenth Amendment of the United States Constitution and relevant federal Medicaid regulations (42 C.F.R. § 431.210(b)), the Defendant must provide the Plaintiffs and Class with a meaningful notice that appraises participants of the reasons for an elimination or reduction in assistance and the authority for the elimination or reduction.

169. The Defendant's written notices to the Plaintiffs and Class of their elimination or reduction of in-home shift nursing services did not adequately apprise them of the action against them, or of the reasons for the reduction, or of the authority for the reduction. The written notices did not cite a specific regulation supporting the Defendant's actions.

170. The Defendant's written notices to the Plaintiffs and Class failed to describe how the exception process differs from the eligibility review process, or what evidence was needed to prove eligibility for an exception.

171. Additionally, the Defendant's written notices did not clearly state how the exception process relates to the appeal process, and whether an exception and appeal can be pursued concurrently.

172. The Defendant's inadequate notice is therefore inconsistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, federal law, and relevant federal Medicaid regulations (42 C.F.R. § 431.210(b)).

THIRD CLAIM FOR RELIEF
(Due Process and Medicaid Act: Fair Hearing)

173. Plaintiffs incorporate and re-allege paragraphs 1 through 172 as if fully set forth herein.

174. States must provide an opportunity for a hearing to individuals whose claim for medical assistance is denied, reduced, terminated, or not acted upon with reasonable promptness. 42 U.S.C. § 1396a(a)(3).

175. The Defendant's deficient written notices failed to adequately notify Plaintiffs and Class of their right to a fair hearing, their right to continued benefits pending the outcome of such an administrative hearing, and the procedure for requesting a hearing.

176. As a result of the deficient notices, the Defendant prevented participants from meaningfully exercising their rights to an appeal and continued assistance pending the results of an administrative hearing.

177. Even if participants were able to overcome this deficient notice to request a hearing, the Defendant's deficient notices and failure to publish its eligibility standard prevented participants from meaningfully participating in administrative hearings.

178. Without a published standard and adequate reasons for the Defendant's decision, Plaintiffs and Class are prevented from adequately preparing relevant evidence or gathering appropriate witnesses to refute the Defendant's decision, as they do not know the criteria for their eligibility. The absence of any published standard renders it impossible for the Plaintiffs and Class to present a meaningful case at administrative hearings, risking grave harm to the Plaintiffs and Class.

179. Therefore, the Defendant's failure to publish its eligibility standard as well as its deficient notices violation the rights of Plaintiffs and Class under the Medicaid Act and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

FOURTH CLAIM FOR RELIEF
(Medicaid Act: EPSDT Benefit)

180. The Plaintiffs repeat and incorporates by reference as though fully set forth here the facts contained in paragraphs 1 through 179 above.

181. In violation of the EPSDT provisions of the Medicaid Act, the Defendant, while acting under the color of law, has failed to provide the Plaintiffs and Class with medically necessary in-home shift nursing services when such services are necessary to correct or ameliorate their conditions. 42 U.S.C. § 1396a(a)(43), § 1396d(r).

182. The Defendant's failure to provide statutorily-mandated health services violates 42 U.S.C. § 1983 by depriving the Plaintiffs and the Class of their statutory rights under the Medicaid Act to receive medically necessary services.

183. Pursuant to 42 U.S.C. §1396d(r)(5), the federal EPSDT benefit requires that any diagnostic and treatment services that are coverable under 42 U.S.C. § 1396d(a) of the Medicaid Act must be provided if they are "necessary ... to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening process, regardless of whether or not such services are covered under the State plan."

184. Federally-mandated EPSDT services include home health services (nursing and home health aide services) that ameliorate, correct, or maintain their conditions. Therefore, as a Illinois' state Medicaid agency, the Defendant is federally mandated to provide in-home shift nursing services to Medicaid-eligible to children and young adults under the age of 21 when necessary to correct or ameliorate their medical illnesses and conditions.

185. The Defendant has chosen to operate a state Medicaid program commonly referred to as NPCS program to Medicaid-funded in-home shift nursing services to children under 21. The Defendant's administration of in-home nursing through the NPCS program must comply with federal EPSDT requirements, among other federal and state requirements.

186. Although the Defendant may require prior authorization for certain required EPSDT benefits, the Defendant's eligibility standard can be no more restrictive than the federal standard to provide services "necessary...to correct or ameliorate" the health conditions of Plaintiffs and Class.

187. Beginning in 2012, the Defendant piloted its assessment tool to determine eligibility for in-home nursing care within the MFTD waiver population.

188. As noted above, NPCCS participants are categorically ineligible for the MFTD waiver program, as they are medically fragile, but not necessary heavily dependent on technology.

189. Upon information and belief, the assessment tool elicits information regarding a child's dependency on technology.

190. Applying a standard from the MFTD waiver program for the NPCCS population is impermissibly restrictive.

191. Therefore, the Defendant's eligibility standard is inconsistent with the federally-mandated EPSDT benefit.

FIFTH CLAIM FOR RELIEF

(Due Process and Medicaid Act: Eligibility Determinations for Other Medicaid Services)

192. Plaintiffs incorporate and re-allege paragraphs 1 through 191 as if fully set forth herein.

193. The Defendant's pattern and practice of terminating in-home shift nursing to the Plaintiffs and Class without first determining their eligibility under all other Medicaid programs, violates Plaintiffs' and Class' rights under 42 U.S.C. § 1396a(a)(8) and the Fourteenth Amendment of the United States Constitution.

194. The Defendant's proposal to utilize care coordination services through the Division of Specialized Care for Children (DSCC) program as a substitute for denied, reduced, or terminated in-home nursing services is both amorphous and inadequate. The Defendant's inadequate proposal places Plaintiffs and Class at a risk of grave harm.

195. Plaintiffs and Class' rights under 42 U.S.C. § 1396a(a)(8) are enforceable under 42 U.S.C. § 1983.

SIXTH CLAIM FOR RELIEF

(Most Integrated Setting: Americans with Disabilities Act (ADA))

196. Plaintiffs incorporate and re-allege paragraphs 1 through 195 as if fully set forth herein.

197. Title II of the American with Disabilities Act (ADA) provides that no qualified person with a disability shall be subjected to discrimination by a public entity. 42 U.S.C. § 42 U.S.C. § 12132. A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d) (1998). Policies and practices that have the effects of unjustifiably segregating persons with disabilities in institutions constitute prohibited discrimination under the ADA.

198. The Plaintiffs are qualified individuals with disabilities within the meaning of Title II of the ADA.

199. The Illinois Department of Healthcare and Family Services of which Defendant Norwood is Director is a “public entity” within the meaning of Title II of the ADA.

200. The actions by HFS constitute unlawful discrimination under 42 U.S.C. § 12132 and violate the integration mandate of the regulations implementing this statutory prohibitions. 28 C.F.R. § 35.130(d).

201. The Defendant’s actual elimination of funding or reduction of funding of the in-home shift nursing services which the Plaintiffs need in order to avoid institutionalization, violates Title II of the ADA, 42 U.S.C. § 12132 and its implementing regulation. 28 C.F.R. § 35.130(d).

202. The Plaintiffs and putative class have no adequate remedy at law.

203. The Plaintiffs are indigent and unable to post bond.

SEVENTH CLAIM FOR RELIEF
(Most Integrated Setting: Rehabilitation Act)

204. Plaintiffs incorporate and re-allege paragraphs 1 through 203 as if fully set forth herein.

205. The Rehabilitation Act, 29 U.S.C. § 794, prohibits public entities and recipients of federal funds from discriminating against any individual by reason of disability. The implementing regulation for the statute requires that publicly and federally-funded entities provide programs and activities “in the most integrated setting appropriate to the needs of the qualified individual with a disability.” 28 C.F.R. § 41.51(d). Policies and practices that have the effects of unjustifiably segregating persons with disabilities in institutions constitute prohibited discrimination under the Rehabilitation Act.

206. The Illinois Department of Healthcare and Family Services is a recipient of federal funds under the Rehabilitation Act.

207. The Plaintiffs are qualified individuals with a disability under Section 504 of the Rehabilitation Act.

208. The actions by HFS constitute unlawful discrimination under 29 U.S.C. § 794(a) and violate the integration mandate of the regulations implementing this statutory prohibition. 28 C.F.R. § 41.51(d).

209. The Defendant’s actual elimination of funding or reduction of funding of the in-home shift nursing services which the Plaintiffs need in order to avoid institutionalization, violates Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) and its implementing regulation. 28 C.F.R. § 41.51(d).

210. The Plaintiffs and putative class have no adequate remedy at law.

211. The Plaintiffs are indigent and unable to post bond.

VII. REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

1. Certify this case to proceed as a class action.
2. Issue a Declaratory Judgment in favor of the Plaintiffs and the Class:
 - a. requiring Defendant to adhere to the requirements of the Fourteenth Amendment of the U.S. Constitution, the Medicaid Act, the Americans with Disabilities Act, and the Rehabilitation Act; and
 - b. declaring unlawful the Defendant's use of an unpublished, unascertainable eligibility standard when reviewing new applications or authorization renewals for in-home shift nursing services.
3. Issue Preliminary and Permanent Injunctive relief enjoining the Defendant from application of an unpublished, unascertainable eligibility standard when reviewing new applications or authorization renewals for in-home shift nursing services.
4. Issue Preliminary and Permanent Injunctive relief requiring the Defendant to restore the level of in-home shift nursing services that Plaintiffs received prior to the Defendant's notice of elimination or reduction of in-home shift nursing services; and prohibiting the Defendant from further eliminating or reducing any of the in-home shift nursing services that the Plaintiffs and Class are receiving, without:
 - a. first providing publishing an ascertainable and lawful standard that is no less restrictive than the federal EPSDT benefit; and
 - b. issuing a Court-approved notice that will allow Plaintiffs adequate notice of the decision and a meaningful participation in a fair hearing.

5. Issue Preliminary and Permanent Injunctive relief requiring the Defendant to redetermine the Plaintiffs' and Class' eligibility for other Medicaid programs and services prior to terminating NPCS services.
6. Award Plaintiffs and the Class the costs of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. Section 12205; Section 504 of the Rehabilitation Act, and 42 U.S.C. Section 1988; and
7. Award such other relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ Robert H. Farley, Jr.
One of the Attorneys for
the Plaintiffs

Robert H. Farley, Jr.
Robert H. Farley, Jr., Ltd.
1155 S. Washington Street
Naperville, IL 60540
630-369-0103
farleylaw@aol.com

Michelle N. Schneiderheinze
Hunziker, Heck & Schneiderheinze LLC
416 Main Street, 16th Floor
Peoria, IL 61602
309-676-7777
michelle@mnslawoffice.com

Mary Denise Cahill
Cahill & Associates
1155 S. Washington Street
Naperville, IL 60540
630-778-6500
mdcahill@sbcglobal.net

Shannon M. Ackenhausen
Sarah M. O'Connor
Thomas D. Yates
AIDS Legal Council of Chicago
180 N. Michigan Avenue, Suite 2110
Chicago, IL 60601
312-427-8990
tom@aidslegal.com

CERTIFICATE OF SERVICE

I, Robert H. Farley, Jr., one of the Attorneys for the Plaintiffs, deposes and states that he caused the foregoing Amended Complaint for Declaratory and Injunctive Relief to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 20th day of May, 2015.

/s/ Robert H. Farley, Jr.