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

O.B., et al., individually and on behalf of a class,	)	
	)	No. 15-cv-10463
Plaintiffs,	)	
vs.	)	Judge: Charles P. Kocoras
	)	
FELICIA F. NORWOOD, in her official capacity as Director of the Illinois Department of Healthcare and Family Services,	)	Magistrate: Michael T. Mason
	)	
Defendant.	)	

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION UNDER THE ADA & SECTION 504 (COUNTS III & IV)

The Plaintiffs and Class, by and through their attorneys, file this Reply to the Defendant's Response to Plaintiffs' Supplement to Plaintiffs' Motion for a Preliminary Injunction.

I. Introduction.

Approximately ten months after this Court entered a Preliminary Injunction, the Defendant admits "[w]e recognize that the pace of change in this case has challenged the patience of the plaintiffs and the Court," but requests "[t]he parties and the Court should allow sufficient time to determine if HFS's changes are improving the level of nursing before determining if any additional remedies or modifications are necessary or appropriate." *See* EFC No. 109 at 2-3.

However, sufficient time has already elapsed for Defendant to determine what "immediate and affirmative steps" are appropriate. Appropriately, this Court gave Defendant ample opportunity and discretion to determine how to deliver medically necessary services. But Defendant has failed to "take immediate and affirmative steps to arrange" for in-home shift nursing services at the levels she herself found to be medically necessary. *See* ECF No. 42 at 2.

Defendant has purported to study this issue since May 6, 2016. *See* ECF No. 67 at 5. ("Defendant will be undertaking a comprehensive review of each case…through a comprehensive case by case review will the Department be able to determine the affirmative steps that can be enacted to achieve greater alignment.") However, Defendant has not identified a single step that has achieved approved service levels for Plaintiffs or Class. Defendant appears to concede that it will require "system-wide policy changes …to attract and retain nursing service for plaintiff class." *See* ECF No. 109 at 2. Furthermore, Defendant's proposed steps almost entirely ignore simple economics. Nursing agencies, such as Advantage Nursing (which employs 300 nurses), are unable to adequately staff nursing services for Class Members due to the low reimbursement rate and other lack of financial incentives. *See* ECF No. 100-6 at 3-5. Defendant must address the economic issues to provide adequate nursing services to the Plaintiffs and Class. This Court has clear authority under the ADA and Section 504 to order Defendant to make any reasonable modifications necessary to arrange for approved levels of home nursing services, including financial expenditures. *See generally* ECF No. 105.

II. Plaintiffs And Class Face A Serious Risk Of Institutionalization.

The Defendant's failure to arrange for the delivery of in-home shift nursing services at the levels she herself deemed medically necessary puts the Plaintiffs and Class at serious risk of institutionalization. In *Steimel v. Wernert*, 823 F.3d 902, 914 (7th Cir. 2016), the Seventh Circuit held:

> Based on the purpose and text of the ADA, the text of the integration mandate, the Supreme Court's rationale in *Olmstead*, and the DOJ Guidance, we hold that the integration mandate is implicated where the state's policies have either (1) segregated persons with disabilities within their homes, or (2) put them at serious risk of institutionalization.

An ADA plaintiff "need not show that institutionalization is 'inevitable' or that she has 'no choice' but to submit to institutional care in order to state a violation of the integration mandate." *M.R. v. Dreyfus*, 697 F.3d 706, 734-735 (9th Cir. 2012); *see also*, *M.A. v. Norwood*, 133 F. Supp. 3d 1093, 1106-07, n.12 (N.D. Ill. 2015). Rather, a plaintiff "need only show that the challenged state action creates a serious risk of institutionalization." *M.R.*, 697 F.3d at 734-35. Imminent risk of institutionalization is not required. *Id.* Rather, "[t]he elimination of services that have enabled Plaintiffs to remain in the community violates the ADA, regardless of whether it causes them to enter an institution immediately, or whether it causes them to decline in health over time and eventually enter an institution in order to seek necessary care." *Id.* at 734-35 (quoting with approval from Department of Justice Statement of Interest.) By failing to provide nursing services that allow Plaintiffs and Class Members to stay in the community, Defendant places them at serious risk of institutionalization and violates the ADA and Section 504.

a. Defendant Has Already Found that Many Plaintiffs and Class Members Are at Risk of Institutionalization.

The named Plaintiffs, O.B., C.F., J.M., S.M., and as many as 700 Class Members are enrolled in the MFTD Waiver program. *See* ECF No. 91 at ¶¶ 5-9 and ECF No. 105 at 9, n. 4. One of the "Eligibility Criteria" for the MFTD Waiver program is "a determination must be made that, except for the provision of in-home care, these individuals would require the level of care provided in a hospital or a skilled nursing facility." ILL. ADMIN. CODE tit. 89, § 120.530(b) (emphasis added); *see also* ECF No. 105-4 at 2 ("[a] determination [by Defendant] that without the in-home support services provided through the waiver program, the child would be at risk to be in an institution[alization] in a skilled nursing facility or a hospital.") To receive MFTD waiver services, therefore, the Defendant must have determined that the child is "at risk of institutionalization due to his or her medical condition . . .". ECF No. 105-6 at 2, *MR* #14.27:

Transitioning Medically Fragile Technology Dependent (MFTD) Waiver Cases to Central Office 238, http://www.dhs.state.il.us/page.aspx?item=705799.

b. Defendant Concedes that Institutionalization as the Only Alternative when She Fails to Arrange for Adequate In-Home Nursing Services.

When Defendant fails to provide nursing services, she offers parents two choices: attempt to care for their child at home with inadequate nursing, creating a serious risk of the child's hospitalization, or admit/maintain their child in hospital, thus requiring them to live in a more restrictive institutional setting than is medically necessary. The Defendant articulated this paradox to the Seventh Circuit Court of Appeals by stating:

> Plaintiff repeatedly use the phrase "unnecessary institutionalization," *see*, e.g., AE Br. at 35, but if the child cannot receive enough medical care elsewhere, or if her complex medical conditions have deteriorated, the reality is that hospitalization may become necessary.

Reply Brief of Defendant-Appellant (App. Doc. 40) at 13, *O.B. v. Norwood*, (No. 16-2049) (7th Cir. July 13, 2016). Defendant's statement demonstrates that institutionalization is the only alternative when she fails to provide adequate home nursing services. The Seventh Circuit summarily rejected Defendant's flawed assertions about the necessity of such preventable institutionalization, and so should this Court.

> The state argues that "if nurses are not able to fully staff [the plaintiffs'] hours [presumably the reference is to the hours that HFS has agreed to pay for], Plaintiffs can receive care elsewhere at the State's expense." The "elsewhere" probably means hospitals. But it's the state that decided that home nursing was right for the plaintiffs' children. So far as appears, the only alternative would be the indefinite confinement of O.B. and the other class members in hospitals. The state has yet to provide any evidence that alternatives to home nursing, such as hospitalization, are adequate to the children's needs. It argues that HFS "simply cannot guarantee that enough nurses will be available to care for Plaintiffs in their homes," which is doubtless true. But the plaintiffs aren't asking for a guarantee; they're asking for the nurses, and there is no indication that HFS will (unless compelled by the courts) lift a finger to find nurses to provide home nursing for children in O.B.'s situation. *O.B. v. Norwood*, 838 F.3d 837, 841-42 (7th Cir. 2016).

Defendant's past acknowledgement that "if the child cannot receive enough medical care elsewhere, or if her complex medical conditions have deteriorated, the reality is that hospitalization may become necessary" establishes that there is a serious risk of institutionalization. Reply Brief of Defendant-Appellant (App. Doc. 40) at 13, *O.B. v. Norwood*, (No. 16-2049) (7th Cir. July 13, 2016). Distressingly, Defendant does not acknowledge that such institutionalization can be avoided if she provides the medically necessary and approved levels of home nursing services.

When Defendant fails to provide home nursing services, the only safety net that prevents institutionalization is a parent's willingness to sacrifice all else to keep their child out of an institution. *See* ECF No. 36 at 11 ("Norwood has similarly declined to give such assurances here"); *see also Steimel*, 823 F.3d at 912-13 (explaining how the lack of adequate safeguards distinguishes from *Amundson*). If the Defendant's failure to provide adequate staffing causes a medical decline for these children, then even the parental safety net will falter and the Class Member would be hospitalized. This Court should not punish parents for trying desperately to maintain their children at home, despite Defendant's failure to provide medically necessary care to their severely disabled children. Similarly, this Court should not reward Defendant for her failure to ensure appropriate staffing levels, allowing Defendant to ignore her initial determination that hundreds of children are at risk of institutionalization.

c. The Record Establishes that Some Plaintiffs and Class Members Are Currently or Were Institutionalized Due to Inadequate Nursing Services.

In a case almost identical to the instant case, in *A.H.R. v. Wash. State Health Care Auth.*, 2016 WL 98513 (W.D. Wash. Jan. 7, 2016), the State of Washington's Medicaid agency, determined that each of the child plaintiffs was eligible for 16 hours of in-home private duty nursing care, but the children were not receiving it. *Id.* at *13. The *A.H.R.* court reviewed

declarations of the plaintiff, all related submissions from the parties, and, after oral argument, found "there is substantial evidence that those Plaintiffs still living at home will likely be forced into group homes or institutionalized care unless they are able to secure 16 hours of private duty nursing care within a short period of time. (*See supra* § II.B.)" *A.H.R.* at *15. Citing this evidence, the *A.H.R.* court found plaintiffs likely to succeed on their ADA and Section 504 claims. This Court should similarly find that Plaintiffs and Class have demonstrated a likelihood of success on Counts III and IV.

Plaintiffs submitted a Market Analysis Report by Advantage Nursing Services (dated November 30, 2016) as Exhibit E to the Second Motion to Enforce and/or Modify the Preliminary Injunction Order. *See* Exh. 100-6. The report stated "data clearly dictates the we need to be able to attract, hire, and put to work Registered Nurses (RN's) if we hope to meet the staffing demands of the clients we currently have much less the ones sitting in the hospital waiting to go home." Exh. 100-6 at 2, ¶ 3. Zach Howze, Illinois Staffing Manager at Advantage Nursing Services, further explains that:

> [i]n October 2016, Advantage Nursing Services was aware of *12 children* who were in a hospital and were ready to be discharged from the hospital, *but could not be discharged solely due to the lack of pediatric nurses* who could provide in-home services to the children. It is not unusual for a child to remain in the hospital for an *additional 30 to 90 days* after the family or caregiver of the child has been told by the hospital that the child is ready to be discharged from the hospital, due to the lack of staffing to provide in-home shift nursing services to the child at their home. As of today, January 26, 2017, Advantage Nursing Services is aware of *9 children* who are in the hospital ready for discharge but who could not be discharged due to lack of staffing.

Exhibit "A" at 2-3, ¶¶ 6-7 (January 26, 2017 Decl. of Zach Howze) (emphasis added.) If Advantage Nursing Services, only one of the twenty-seven nursing agencies serving the Class, is aware of nine children currently hospitalized due to inadequate home nursing

services, there are almost certainly more children in the Class currently institutionalized due to the Defendant's failure to arrange for approved levels of in-home shift nursing services.

Over the course of this case, Plaintiffs identified that O.B. was unnecessarily institutionalized due to the Defendant's failure to arrange for adequate home nursing services. Additionally, Class Counsel notified Defendant's counsel on September 30, 2016 that Class Member J.B. was hospitalized due to inadequate nursing services, but received no meaningful response.[1]

d. The Record Establishes that the Remaining Plaintiffs and Class Members are Currently at a Serious Risk of Institutionalization.

Named Plaintiffs J.M. and S.M. continue to go without medically necessary services, placing them at serious risk of institutionalization. Their adoptive mother, Michele McCullough, described her how she and her husband were "wearing out" in November 2015. *See* ECF No. 7-14 at 4 ¶ 15. It is not clear that Defendant has provided any additional services to the McCullough family since that time; as a result, Defendant's failure to arrange for adequate services continues to take its toll. "The lack of necessary nursing is wearing us down. We are 60 and 69 years old. It's an incredible strain on us. I worry that if we are too worn down and anything happens with my health or my husband's health, the children would need to be hospitalized." *See* ECF No. 110-6 at 3, ¶ 11 (Exhibit "E" to Reply to Second Motion to Enforce.) Furthermore, inadequate nursing service isolate J.M. and S.M., routinely preventing S.M. from attending school. *Id*. at 2, ¶¶ 3-6, 8.

[1] J.B. is a non-waiver enrollee in the Defendant's Medicaid program, approved for 70 hours per week of nursing services. (Exhibit A to Defendant's Report of October 28, 2016 provides J.B.'s approved service level as 70 hours per week; Exhibit A to the Defendant's Report is incorporated by reference herein and are not attached to this filing. Exhibit A to Defendant's October 28, 2016 report also shows that Defendant provided 0% of nursing services were provided to J.B. during January 2016, noting "No nursing services were provided while the patient was hospitalized which included 01/13/2016 to 01/30/2016.") Class Counsel notified Defendant's counsel via email on September 30, 2016 of a subsequent hospitalization due to inadequate home nursing services.

Similarly, Named Plaintiff C.F.'s staffing level is lower now at the time the Complaint was filed, placing him at serious risk of institutionalization. According to the Defendant's January 19 filing, C.F. only has night nursing coverage for two nights. *See* ECF No. 109-1 at 4 ("family requesting additional staffing to cover a third (evening/night) shift.") C.F.'s mother has described the grueling regimen she faces when C.F. does not have a night nurse. His single mother, who works fulltime, and his now 68 year old grandmother "often sleep in two hour shifts to cover all of his night time care. While one of us sleeps, the other one cares for C.F. We relieve each other every two hours or so that one of us can briefly rest." ECF No. 6-4 at 3-4, ¶¶ 2-3, 12. This regimen is unsustainable.

The mother of Class Member W.W. submitted a declaration about his inadequate nursing services in January 2016. *See* ECF 28-3 at 2-4 (reporting that 40 of 112 hours were staffed.) At that time, W.W.'s parent described their on-going staffing program. "Since July 2015, staffing issues have been extremely difficult. …Exhaustion is a problem due to the impossibility of getting consistent sleep. Nighttime alarm are handled by myself but wake up the entire family. Night nurses are in charge of cleaning of supplies…[t]hose takes now fall on the family…Our concern is that the task of a parent to provide 24 hour care with little to no nursing support is tedious and strenuous for the entire household. It is only a matter of time before exhaustion causes a significant problem that will adversely impact W.W.'s heath." *See* ECF 28-3 at 3-4, ¶¶ 14-17. Defendant reports that W.W.'s staffing the week of January 8, 2017 was 45.99 of the 112 approved hours, and that the family still identifies night nursing as one of the primary issues. *See* ECF No. 109-1 at 4. In the past year, W.W.'s nursing services have increased by less than 6 hours per week, which does not lessen W.W.'s serious risk of institutionalization.

Plaintiffs have also demonstrated how pervasive these staffing issues are among the Class, pointing to 75 Class Members with inadequate nursing services in support of class certification. *See* ECF No. 39-2. Furthermore, Defendant's October 28, 2016 report to Class Counsel indicates that at least 41 Class Members were hospitalized or institutionalized (in a respite or transitional care facility) in the month of July 2016 alone. *See* Exhibit "B" (redacted excerpt from Exhibit B1 to Defendant's October 28, 2016 report.) Defendant did not indicate whether the hospitalization or institutionalization was caused by a lack of adequate nursing services.[2] However, Defendant did report that Class Members T.B.A., J.M., U.H., T.S., and A.P. spent between 14 and 120 days each in a transitional care facility. *See e.g.*, Exhibit "B", (Defendant reported that A.P. (No. 5) spent 120 days in a transitional care facility.) The number of Class Members hospitalized or institutionalized during a one month period demonstrates that Class Members are medically fragile and at a serious risk of institutionalization.[3]

III. Defendant Admits That She Currently Provides Unequal Reimbursement Rates For In-Home Shift Nursing Services.

The Defendant admits that she guaranteed reimbursement rates for six children receiving in-home shift nursing services at a rate of $53.51 per hour. *See* ECF No. 109-2 at ¶¶ 3,7 (Declaration of Mark Huston.) These higher rates were offered "as an incentive for families to adopt children who were wards of the State of Illinois." *Id.* at ¶ 4. The families themselves do not receive any financial benefit from this increased reimbursement rate. Rather, the incentive comes from a presumption that higher rates would guarantee that nursing services would be actually

[2] Notably, Plaintiffs requested production of certain discovery materials, including "all documents…[and]…all communications regarding children who cannot be discharged from a hospital, transitional care facility, or respite facility due to inadequate staffing of in-home shift nursing services." Plaintiffs First Set of Requests for Production of Documents, Req. 24 and 25, dated May 17, 2016 (not attached.) However, Plaintiffs have not yet received responsive documents.

[3] In the alternative, if this Court determines that additional factual issues require resolution, Plaintiffs and Class Members respectively request an evidentiary hearing before this Court.

delivered at the approved level and that this security would make potential parents more willing to adopt. Likewise, Defendant admits that she has geographically based reimbursement rates, Tier One and Tier Two, but that she will make exceptions, using an unexplained process, for Tier Two children to receive the Tier One rate in order to secure adequate staffing. However, she has no mechanism to increase reimbursement rates if a child's nursing cannot be staffed at Tier One rates.[4] The Plaintiffs and Class seek benefits that Defendant grants to some children with disabilities, but refuses to grant to them.

The Plaintiffs and Class seek services that exist (higher reimbursement rates) and are given to others. In *Steimel v. Wernert*, 823 F.3d at 913, the Seventh Circuit stated:

> While "a State is not obligated to create new services," it "may violate Title II when it refuses to provide an existing benefit to a disabled person that would enable that individual to live in a more community-integrated setting." *Radaszewski*, 383 F.3d at 609 (citing *Olmstead*, 527 U.S. at 603 n. 14, 119 S.Ct. 216 for the principle "that States must adhere to the ADA's nondiscrimination requirement with regard to the services they in fact provide").

Defendant's policy of reimbursing select children at a higher reimbursement rate while ignoring the needs of other families that are understaffed discriminates against Plaintiffs and Class Members, in violation of the ADA and Section 504. Defendant's analysis of *Amundson* is inapposite. *See* ECF No. 109 at 14. The *Amundson* plaintiffs did "not contend that they are now treated *worse* than some other set of disabled persons," and therefore their discrimination case failed. Plaintiffs and Class Members are alleging exactly this kind of discrimination in the instant

[4] Defendant does not present an argument that economic relief would constitute a "fundamental alteration" of her programs in her Response, "reserving" the point. ECF No. 3 (n. 2). Plaintiffs and Class have shown that such financial modifications, such as increased reimbursement rates, would not be fundamental alterations under the ADA and Section 504, due to the comparably high cost of institutional care. ECF No. 105 at 13-15. Accordingly, by failing to address this argument, Defendant has waived her ability to raise any fundamental alteration defense. *See Steimel v. Wernert*, 823 F.3d 902, 916 (7th Cir. 2016), citing *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 611 (7th Cir. 2004) and 28 C.F.R. § 35.130(b)(7) ("It is the state's burden to prove that the proposed changes would fundamentally alter their programs. It has failed to carry that burden here. In fact, it did not even argue that the plaintiffs seek fundamental alteration of their programs.")

case. *Amundson*, 721 F.3d 871, 875 (7th Cir. 2013). While Defendant may be phasing out the higher rate for nurses in DCFS-involved cases, the Plaintiffs and Class contend, and the Defendant admits that there are children in the program who receive higher nursing reimbursement rates specifically to incent staffing than they receive and thus that Plaintiffs and Class Members are being treated being worse than those children. *Amundson*, 721 F.3d 871, 875 (7th Cir. 2013).

IV. Plaintiffs Are not Judicially Estopped From Raising The Issue Of In-Home Nursing Rates

Contrary to Defendant's contention, Plaintiffs have consistently raised the issue of nursing rates.[5] Therefore, judicial estoppel does not apply. Judicial estoppel was designed to avoid unfairness and inconsistent court determinations across multiple proceedings. *See New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001). While some courts have contemplated its application within a single proceeding, courts acknowledge that parties may plead in the alternative and change legal strategy within a single cases based on the evidence adduced. *Astor Chauffeured Limousine Co. v. Runnfeldt Inv. Corp.*, 910 F.2d 1540, 1548 (7th Cir. 1990) (inconsistency in arguments is acceptable because only one of these positions can prevail and the pleader is limited to a single recovery no matter how many different (and conflicting) theories it offers.) At its core, judicial estoppel prevents parties from gaining advantage by: (1) misleading the first or second court with clearly inconsistent positions, (2) using intentional self-

[5] *See* ECF No. 1 at ¶¶ 8a, 9a, 10, 13-17 ("The Defendant's system-wide policies, practices, and procedures include a low reimbursement rate for the Plaintiffs' and the Class members' in-home shift nursing services. … if the state of Illinois increased nursing rates by $10.00 per hour, the net increase in the cost to Illinois would be less than $10.00 per hour. … This class action lawsuit asks this Court to order the Defendant to take all immediate and affirmative steps necessary to correct her system-wide policies, practices and procedures in order to arrange for adequate levels of previously-approved, medically necessary… services.")

contradiction to obtain an unfair advantage, or (3) avoiding inconsistent court determinations. *See New Hampshire,* 532 U.S. at 750-51. This case raises none of these concerns.

As to the first and second factors, Plaintiffs have consistently pointed out that low rates are a contributing factor in lack of staffing for their nursing hours and that courts can order rate adjustments as a reasonable modification to achieve compliance with the ADA/section 504.[6] Defendant's claim of inconsistency from Plaintiffs' opposition to Defendant's motion to dismiss mischaracterizes Plaintiffs' position. In their memorandum, Plaintiffs noted that their request for relief under the federal Medicaid Act was not merely a request to raise rates; it was a request for the Defendant to arrange for nursing services as required by the Medicaid EPSDT provisions and to ensure the provision of those services in a timely manner as required by the Medicaid reasonable promptness provisions. Reading the passage in its entirety makes clear the consistency between Plaintiffs' position in this and previous motions:

> Plaintiffs are not arguing that the Defendant must raise reimbursement rates for in-home nursing services. Rather, they argue that the Defendant must, in one way or another, arrange for these services when they are medically necessary. ECF No. 32 at 6.

As to the third factor, Plaintiffs' discussion of relief in reference to the federal Medicaid Act cannot equitably preclude them from making arguments about rates under the ADA and Section 504 of the Rehabilitation Act. The Plaintiffs' Motion for a Preliminary Injunction under the ADA and Rehabilitation Act has not been adjudicated. The Court's rulings were based solely on Plaintiffs' claims under the Medicaid Act and, thus, any ruling on claims under the ADA and Rehabilitation Act could be not considered contradictory to the Court's prior rulings. Defendant has never been misled on these points, as evidenced by their responses to Plaintiffs' motions for

[6] *See* Tr. of Dec. 3, 2015 Hr'g at 2:15-16 (Mr. Farley: "The problem is that the reimbursement rate is so low, the nursing agencies can't recruit nurses."); *see also* ECF No. 1 at ¶¶ 15-16; ECF No. 39 at 11; ECF No. 100; ECF No. 105

both class certification and preliminary injunctive relief (ECF No. 24 at 10, 13; ECF No. 25 at 6,8), and they cannot now argue surprise or prejudice on this matter.

V. Conclusion.

Wherefore, for the foregoing reasons, the Plaintiffs respectfully request that this Court grant Plaintiffs and Class the following relief:

A) As to Counts III and IV, this Court finds that increasing in-home shift nursing rates to the Plaintiffs and Class is a reasonable modification of the in-home shift nursing services program and will not result in a fundamental alteration of the Defendant's program. That this Court will enter a Preliminary Injunction ordering the Defendant, Felicia F. Norwood, to take immediate and affirmative steps to increase the in-home shift nursing rates paid by the Defendant to the Plaintiffs and Class in order that the Plaintiffs and Class are able to receive in-home shift nursing services at the level approved by the Defendant.

B) As to Counts III and IV, this Court finds that the Defendant is paying for in-home shift nursing services at a lower rate than those paid by the Defendant to the group of children who also receive benefits from the Illinois Department of Children and Family Services. That this Court will enter a Preliminary Injunction ordering the Defendant, Felicia F. Norwood, to increase the in-home shift nursing rates paid by the Defendant to the Plaintiffs and Class in order that the Plaintiffs and Class are able to receive in-home shift nursing services at the level approved by the Defendant.

C) The Defendant shall provide to the Plaintiffs every 30 days the following: (1) what steps have been undertaken by the Defendant to increase the in-home shift nursing rates paid by the Defendant to the Plaintiffs and Class in order that the Plaintiffs and Class are able to receive in-home shift nursing services at the level approved by the Defendant; and (2) an identifying list of the Class members which contains their current approved level of in-home shift nursing care; and how much of their in-home shift nursing care is actually being used or delivered to the Class during the preceding 30 days. The information supplied by the Defendant to the Plaintiffs shall not be based solely on the submission of actual claims by the nursing agencies as such data contains a time lag, but shall be based on the Defendant obtaining current information from the nursing agencies as to the actual hours provided to the Plaintiffs and Class, prior to the submission of any claims.

D) This Court waives or excuses the filing of any security or bond by the Plaintiffs and Class.

E) Award such other relief as the Court deems just and appropriate.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I, Robert H. Farley, Jr., one of the Attorneys for the Plaintiffs, deposes and states that he caused the foregoing Plaintiffs' Reply In Support of Plaintiffs' Motion for a Preliminary Injunction Under the ADA and RA - Counts III & IV, to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 26th day of January, 2017.

/s/ Robert H. Farley, Jr.