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 THEIR
MOTION FOR CLASS CERTIFICATION

I. Introduction.

The Plaintiffs O.B., C.F., J.M., and S.M. are children who, because of their complex medical needs, require in-home shift nursing services. ECF No. 1 at ¶¶ 21-24. The Defendant cannot dispute that the Plaintiffs are entitled to in-home shift nursing services, because she has determined a specific amount of in-home shift nursing services to be medically necessary for each child. ECF Nos. 6-1, 6-2, 6-4, 6-6; *See also*, ECF No. 1 at ¶¶ 21-24, 99, 113, 125, 139. The Defendant has not presented any evidence to undermine its own findings. ECF Nos. 21, 22, 24, 25, 34. Despite the Defendant's determinations of medical need and the efforts of Plaintiffs' families, the Defendant has failed to provide medical necessary services for months, in some cases years. ECF No. 1 at ¶¶ 21-24, 100, 102, 115, 127, 129, 141, 143. The inadequate service levels are common to the named Plaintiffs as well as the proposed class members. The named Plaintiffs and proposed class are subject to the same policies, procedures, and practices, which have resulted in the Defendant's systemic failure to provide services that the Defendant found to be medically necessary. Therefore, class certification is appropriate in this case.

II. The Proposed Class is Ascertainable and Definite.

Consistent with Rule 23, the proposed class definition is based on objective criteria and easily ascertainable. "Rule 23 requires that a class be defined, and experience has led courts to require that classes be defined clearly and based on objective criteria." *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015). In *N.B. v. Hamos*, 26 F.Supp.3d 756, 763 (N.D. Ill. 2014), the Court stated:

> [A]scertainability entails two important elements. First, the class must be defined with reference to objective criteria. Second, there must be a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition. If class members are impossible to identify without extensive and individualized fact-finding or 'mini-trials,' then a class action is inappropriate. *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 355 (3rd Cir. 2013) (internal quotation marks and citations omitted).

As the Defendant noted in her Response, the Seventh Circuit has rejected a heightened ascertainability requirement. ECF No. 24 ("Def. Resp.") at p. 4. (citing *Mullins*, 795 F.3d at 657-58). It is also notable that the ascertainability requirement can be applied with more flexibility in suits for equitable relief under Rule 23(b)(2), such as this case. In *Thorpe v. District of Columbia*, 303 F.R.D. 120, 139 (D.D.C. 2014)[1], the Court stated:

> "where certification of a (b)(2) injunctive class is sought, actual membership need not . . . be precisely delimited" because such cases will not require individualized notice, opt-out rights, or individual damage assessments, and the defendant will be required to comply with the relief ordered no matter who is in the class. [fn. omitted] *Kenneth R.*, 293 F.R.D. at 264 (internal quotations omitted); *see* Newberg on Class Actions § 3:7. In those cases, the definiteness requirement is satisfied as long as plaintiffs can establish the "existence of a class" and propose a class definition that "accurately articulates 'the general demarcations' of the class of individuals who are being harmed by the alleged deficiencies." *See, e.g.*, *Kenneth R.*, 293 F.R.D. at 264; *see also DL*, 302 F.R.D. at 17 ("Because the rationale for precise ascertainability is inapposite in the 23(b)(2) context, ... it is not required in cases such as this where only injunctive relief is sought and notice is not required.").

[1] *Thorpe v. District of Columbia*, 303 F.R.D. 120, 139 (D.D.C. 2014), leave to appeal denied sub nom. *In re District of Columbia*, 792 F.3d 96 (D.C. Cir. 2015).

This Court recognized the objective nature of the Plaintiffs' proposed class definition when ruling on the Plaintiffs' Motion for a Preliminary Injunction.

> But the class criteria are clearly defined: "All Medicaid eligible children under the age of 21 in the State of Illinois who have been approved for in-home shift nursing services by the Defendant, but who are not receiving in home shift nursing services at the level approved by the Defendant," including children enrolled in a waiver program or a non-waiver program. Dkt. 1, ¶ 28. As Plaintiffs note, "Defendant need only review her own records to determine who these children are." Dkt. 31, at 9. Indeed, Norwood's memorandum describes the records, HFS keeps regarding the children for whom such services have been approved and the services provided to them, if only to meet federal reporting requirements, Dkt. 22, at 5-6.

ECF No. 36 at pp. 20-21. As recognized by the Court, the putative class is ascertainable as is defined by objective criteria. Those two objective criteria are: (1) the Defendant's approval for in-home shift nursing services at a specific level; and (2) the Plaintiffs' receipt of a lower service level.

A. The Proposed Class Definition Is Based On Objective Criteria.

Without merit, the Defendant argues that the class definition is "vague" and "it is impossible to know what children have been approved for in-home shift nursing services and 'are not receiving in-home shift nursing services at the level approved by the Defendant' ". Def. Resp. at p. 4. In Illinois, approximately 1,200 children are eligible to receive in-home shift nursing services through the Defendant's Medicaid program. ECF No. 4 ("Pls. Mot.") at ¶ 2. The Defendant knows the identity of these children, as the Defendant approved these children for services. ECF No. 1 at ¶ 74. Through her business billing records, the Defendant also knows the identity of children who are not receiving in-home shift nursing services at the approved, medically necessary level. ECF No. 1 at ¶ 78. Additionally, the Defendant has actual or constructive knowledge of such children through the activities of her agent, the University of Illinois at Chicago Division of Specialized Care for Children (DSCC). As alleged in the

Complaint, DSCC assists the Defendant with certain administrative activities. ECF No. 1 at ¶¶ 80-85. In particular, DSCC collects a Nursing Supervisory Summary every 60 days for each child the Defendant approves for nursing services. The Nursing Supervisory Summary calls for the following relevant information:

> * Amount of nursing hours/week prescribed for above time period.
>
> * Average amount of nursing hours provided per week for above time period.
>
> * Please explain any reasons for unfilled shifts.

ECF No. 1 at ¶¶ 80, 84-85.

At this stage, it is not necessary to know the specific reason(s) why each putative class member does not receive adequate services. The Defendant unconvincingly argues that "it [a review of Medicaid claims data] only tells one that the allotted hours have not been billed in full for any number of reasons." Def. Resp. at p. 5. However, the Court is not required to analyze the specific reason(s) why the Plaintiffs are not receiving approved, medically necessary services in order to find there is an ascertainable class. The Plaintiffs will establish these reasons through the discovery process and at trial. Ultimately, if this Court finds that Defendant is not at fault for certain service gaps, the Defendant will not be liable for those service gaps.

The Seventh Circuit analyzed this nuance of class certification in *Parko v. Shell Oil Co.*, 739 F.3d 1083 (7th Cir. 2014):

> To require the district judge to determine whether each of the 150 members of the class has sustained an injury…would make the class certification process unworkable; the process would require, in this case, 150 trials before the class could be certified. The defendants are thus asking us to put the cart before the horse. How many (if any) of the class members have a valid claim is the issue to be determined *after* the class is certified.

Parko, 739 F.3d at 1085 (emphasis in original). *See also Kohen v. P. Inv. Mgt. Co. LLC*, 571 F.3d 672, 675 (7th Cir. 2009) ("[P]utting the cart before the horse in that way would vitiate the

economies of class action procedure; in effect the trial would precede the certification.") As a result, the Seventh Circuit has recognized that a class "will often include persons who have not been injured by the Defendant's conduct." *Kohen*, 571 F.3d at 677. In *Kohen*, the Seventh Circuit further stated "…this is almost inevitable because at the outset of the case many of the members of the class may be unknown, or if they are known still the facts bearing on their claims may be unknown. Such a possibility or indeed inevitability does not preclude class certification…" *Kohen*, 571 F.3d at 677, citing *Carnegie v. Household Int'l, supra*, 376 F.3d at 661; 1 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 2:4, pp. 73–75 (4th ed. 2002). The Plaintiffs' proposed class definition is objectively defined and ascertainable.

B. Class Definition Contains Reasonable Time Limitations.

The Defendant also incorrectly argues that the class cannot be certified because it includes future members and, thus, "[e]veryone 'in the history of Time' who was, is or will be a Medicaid-eligible child not receiving the full nursing hours" would be a class member. Def. Resp. at p. 5, citing *Spano v. The Boeing Co*., 633 F.3d 574, 586 (7th Cir. 2011). On the contrary, the proposed class definition is consistent with Seventh Circuit precedent. The Seventh Circuit has affirmed certification of Medicaid classes that include future members. In *Collins v. Hamilton,* 349 F.3d 371, 372 (7th Cir. 2003), for example, the Seventh Circuit affirmed a permanent injunction under the Medicaid Act's EPSDT benefit against the State of Indiana on behalf of a class of "**all present and future Medicaid-eligible children** under age twenty-one who require mental health services for which Federal Financial Participation is available, and those children's parents." *Collins*, 349 F.3d at 372, fn. 1, (emphasis added). *See Holmes v. Godinez*, 311 F.R.D. 177, 209 (N.D. Ill. 2015) (granting class certification in ADA case of class defined as "(i) all current and future deaf or hard of hearing individuals incarcerated by [Illinois

Department of Corrections], and (ii) who require accommodations, including interpreters or other auxiliary aids or services, to communicate effectively and/or to access programs or services available to individuals incarcerated by IDOC [from January 1, 2007, to the present]"); *See also*, *Bontrager v. Ind. Fam. & Soc. Servs. Admin.*, 829 F. Supp. 3d 688 (N.D. Ind. 2011), aff'd, 697 F.3d 604 (7th Cir. 2012) (concerning class stipulated by parties to include "All past, current and future Indiana Medicaid enrollees age twenty-one and older, who from January 1, 2011 (when the $1,000 cap took effect) forward, need, have needed, or will need coverable dental services that are administratively or judicially determined to be medically necessary, that are routinely provided in a dental office, and that cost more than $1,000 per twelve month period.")

Furthermore, the Defendant's reliance on *Spano* is misplaced. While *Spano* does object to a class "breathtaking in its scope," that statement quoted by the Defendant was dicta. *See Spano*, 633 F.3d at 586. In its holding, *Spano* court found that "the certified classes that were defined so broadly that the requirements of Rule 23(a) cannot be met." *Spano*, 633 F.3d at 591. Accordingly, the court vacated and remanded the issue of class certification for "additional proceedings to consider the requirements of both Rule 23(a) and Rule 23(b) are required." *Id.* Here, the requirements of Rule 23(a) and 23(b) are clearly met; the concerns of the *Spano* court are not triggered by the Plaintiffs' proposed class definition.[2]

In the instant case, the class definition does not include anyone in the "history of time" who was a participant or who will be a participant in the Illinois Medicaid program. Rather, the class is limited to Medicaid-enrolled children under age 21 who are not receiving necessary in-

[2] Moreover, *Spano* did not overrule *Collins*, which found no problems with the issuance of a permanent injunction which included "future Medicaid-eligible children." Pursuant to Circuit Rule 40(e), "[a] proposed opinion approved by a panel of this court adopting a position which would overrule a prior decision of this court . . . shall not be published unless it is first circulated among the active members of this court" and "the opinion, when published, shall contain a footnote worded," to the effect that the opinion overrules a specific case. In *Spano*, there is neither a footnote nor any statement that *Spano* is overruling any prior decisions of the Seventh Circuit, such as *Collins*.

home shift nursing services. The inclusion of future class members merely allows additional children to come into the class, as must be so in a case like this one that seeks prospective, injunctive relief to prevent on on-going legal violations.[3]

C. Class Is Readily Identifiable Without an Individual Inquiry into the Facts and Merits of Each Class Member.

The Defendant's reliance on *Jamie S. v. Milwaukee Public Schools*, 668 F.3d 481 (7th Cir. 2012) is not persuasive. Def. Resp. at pp. 5-6. In *Jamie S.*, the Seventh Circuit rejected the following class definition:

> Those students eligible for special education services from the Milwaukee Public School System who are, have been or will be either denied or delayed entry or participation in the processes which result in a properly constituted meeting between the IEP team and the parents or guardians of the student.

Jamie S., 668 F.3d at 487-88. The Court held that "a class of unidentified but potentially IDEA-eligible disabled students is inherently too indefinite to be certified." *Id.* at 496. The Court noted that "identifying disabled students who might be eligible for special-education services is a complex, highly individualized task, and cannot be reduced to the application of a set of simple, objective criteria." *Id.*

In stark contrast, the Plaintiffs' proposed class definition makes no reference to potentially eligible individuals. Here, eligibility for Medicaid (in particular, eligibility for Medicaid-funded in-home shift nursing) is a prerequisite to class membership. Moreover, the Defendant knows the identities of children who are currently eligible for in-home shift nursing

[3] Plaintiffs agree that the court could define the class without include temporal references and still allow future members to come into the class as they are harmed. This is what the court did in *N.B.v. Hamos* when it certified the following class:

> The Court will certify class defined as follows: All Medicaid-eligible children under the age of 21 in the State of Illinois: (1) who have been diagnosed with a mental health or behavioral disorder; and (2) for whom a licensed practitioner of the healing arts has recommended intensive home- and community-based services to correct or ameliorate their disorders. *N.B. v. Hamos*, 26 F. Supp. 3d at 776.

services; in the future, the Defendant will similarly know of such children. Furthermore, to ease the process of identification, the Plaintiffs have proposed two specific methods that can be used: (1) review claims data; or (2) review Nursing Supervisory Summaries. ECF No. 1 at ¶¶ 74, 76, 78. As discussed in context of numerosity, the Plaintiffs used the second method to identify class members. *See infra* at Section III.A. The Plaintiffs efforts demonstrate the viability of that method.

D. Class Definition Does Not Create a "Fail-Safe Class."

The proposed class definition excludes causation or liability. The Defendant's conclusory argument that the "class definition has been framed as a legal conclusion respecting Defendant's ultimate liability" which "creates a fail-safe class" is without merit. Def. Resp. at p. 7. In fact, the Defendant fails to identify any part of the class definition in support of her claim.

A "fail-safe" class definition makes class membership contingent on liability. For example, "All individuals **wrongfully** denied *Z by XY* Corporation." (emphasis added). *See* Erin L. Geller, *The Fail-Safe Class as an Independent Bar to Class Certification*, 81 Fordham L. Rev. 2769 (2013). *See also, Adashunas v. Negley*, 626 F.2d 600, 604 (7th Cir. 1980), where the class definition "consists of children entitled to a public education who have learning disabilities and 'who are **not properly identified** and/or who are not receiving' special education." (emphasis added). In *Mullins v. Direct Digital*, the Seventh Circuit stated that "[t]he key to avoiding this [fail-safe class] problem is to define the class so that membership does not depend on the liability of the defendant." *Mullins*, 795 F.3d at 660. That is what the Plaintiffs have done here.[4] In the instant case, class membership is based on two objective criteria: (1) the

[4] Furthermore, the Defendant's argument that the class definition fails to identify "children whose inability to receive 100% staffing was likely attributable to Defendant's purported violations of federal

Defendant's approval for in-home shift nursing services at a specific level; and (2) the Plaintiffs' receipt of a lower service level. Class membership does not depend on liability. Therefore, the Plaintiffs' proposed class definition would not create a fail-safe class.

III. Plaintiff Have Satisfied the Prerequisites Pursuant To Rule 23(a).

A. Numerosity.

The Class is so numerous that joinder of all persons is impracticable. Currently, approximately 1,200 children are eligible to receive in-home shift nursing services. ECF No. 4 at pp. 4-5. The Plaintiffs moved this Court for limited discovery on the issue of numerosity. ECF No. 28. This Court continued the motion and instructed the Defendant to provide responsive documents. ECF No. 30; Feb. 2, 2016 Hearing. The Defendant produced documents Bates Stamped HFS DSCC OB 1 to 4864.

Though not an exhaustive list, Exhibit "A" demonstrates that numerosity is satisfied here. (Exhibit "A" lists hours approved, hours received, excerpted quotations regarding unfilled nursing shifts, and citations to Bates Stamped pages for certain putative class members. Filed under seal, Exhibit "B" contains the unredacted Bates Stamped pages cited in Exhibit "A".) Exhibit "A" identifies 75 putative class members who received inadequate nursing.[5] *See Hampe v. Hamos*, 2010 U.S. Dist. LEXIS 125858, *7 (N.D. Ill. 2010) ("Generally, a class of forty plaintiffs is sufficiently numerous for Rule 23(a) purposes.") (citing *Swanson v. Am. Consumer Indus.*, 415 F.2d 1326, 1333 (7th Cir. 1969)). Given that Exhibit "A" identifies far more than 40 putative class members, numerosity is satisfied.

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law" attempts to push this Court towards a fail-safe class definition. Def. Resp. at p. 5. As noted by the Defendant and discussed herein, a class defined by legal violations is not viable. *See* Def. Resp. at p. 7.

[5] Reviewing the documents labeled HFS DSCC OB 1 to 4864, the Plaintiffs have identified more than 75 putative class members. Additional class members can be identified for the Court by the Plaintiffs.

B. Commonality.

The Plaintiffs allege illegal and systemic failures based on the common policies, practices, and procedures. The Defendant claims that the "Plaintiffs nowhere alleged any policy or practice in which Defendant allegedly engages that operates to cause the same injury to the putative class members." Def. Resp. at p. 9. The Defendant makes this argument by assuming that she is only responsible for determining the need for such services and paying reimbursement should a child's family be able to secure those services: "[t]he Defendant found each of the Plaintiffs and Class eligible for Medicaid-funded in-home shift nursing services, which allow either a nurse (RN), licensed practical nurse (LPN), or a certified nursing assistant (CNA) to provide nursing services in the child's home." ECF No. 1 at ¶ 1. However, this misstates Plaintiffs' claims, because the Plaintiffs clearly allege that "the Defendant, through her systems, policies, and practices, has failed to arrange for adequate in-home shift nursing services for the Plaintiffs and Class," and they allege this violates both the EPSDT provisions of the Medicaid Act and the integration mandates of the ADA and Rehabilitation Acts. ECF No. 1 at ¶¶ 1, 2, 4. When ruling on the Plaintiffs' Motion for a Preliminary Injunction this Court stated, "Contrary to Norwood's contention, these are issues of "systemic failure," not "individual violations of the same law" prohibited under *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), and *Jamie S. v. Milwaukee Pub. Schs.*, 668 F.3d 481 (7th Cir. 2012). *See Hamos*, 26 F. Supp. 3d at 772." ECF No. 36 at p. 22.

Similarly, in *N.B. v. Hamos*, the court found that the plaintiffs satisfied commonality as follows:

> This is the central, common, issue in the plaintiffs' claim that the State's system violates both the EPSDT provisions and the integration mandate of the ADA and the Rehabilitation Act: whether there is system-wide failure to provide services that already have been prescribed and that, therefore, the EPSDT program requires the

> State to provide. . . . If this is so, then every plaintiff is suffering the same injury as a result of a general policy of the State – even if the services recommended for each patient vary among the class members. And it is resolvable on a class-wide basis. Indeed, *Jamie S.* specifically allows for a different result where a "systemic failure" or an "illegal policy" is alleged; in such cases, the policy is the "glue" that unites otherwise individualized claims. 668 F.3d at 498 (cites omitted).

N.B., 26 F.Supp.3d at 772-73. As in *N.B.*, the Plaintiffs in this case allege systemic failures. The Plaintiffs have already identified one systemic issue – low and disparate reimbursement rates. ECF No. 1 at ¶¶ 13. As alleged in the Complaint, the Defendant will pay nursing agencies to provide in-home nursing services for Plaintiffs and class members amounts that cannot exceed $35.03 per hour for a registered nurse and $31.14 per hour for a licensed practical nurse; however, the Defendant will pay $72.00 per hour for other Medicaid enrollees, and its sister agency, the Department of Children and Family Services, will pay nursing agencies $45.00 per hour for in-home nursing. ECF No. 1 at ¶¶ 13-15. Throughout the discovery process, the Plaintiffs will investigate and closely scrutinize the Defendant's systemic policies, practices, and procedures to determine what additional, systemic issues are resulting in the Defendant's failure to provide the medically necessary in-home shift nursing services that she has approved plaintiffs to receive. These systemic issues have caused Plaintiffs and class members to be institutionalized or face the serious risk of institutionalization. ECF No. 1 at ¶ 4. As the Plaintiffs are challenging systemic policies, practices, and procedures, the Plaintiffs have demonstrated commonality.

C. Typicality.

The Plaintiffs' claims are typical of the class members' claims. The Defendant's one sentence conclusory response in opposition falls flat. *See* Def. Resp. at p. 11 ("For the same reasons that commonality is lacking, Plaintiffs failed to establish typicality.")

The claims raised by the named Plaintiffs in the Complaint are typical of the proposed class. Each named Plaintiff and putative class member was found eligible for in-home shift nursing at a certain level. Through those eligibility determinations, the Defendant acknowledges that each class member is a child, that each class member is enrolled in Medicaid, and that a specific amount in-home shift nursing services is medically necessary for each Plaintiff and class member. All Plaintiffs and class members are entitled to medically necessary in-home skilled nursing services pursuant to Medicaid Act's EPSDT mandate and responsible promptness requirement. *See* 42 U.S.C. § 1396a(a)(43)(C), 42 U.S.C. § 1396a(a)(8). Moreover, all Plaintiffs and class members are qualified persons with disabilities under the ADA and Section 504 of the Rehabilitation Act. Therefore, the Plaintiffs' claims are typical of class members' claims under the Medicaid Act, the ADA, and Section 504 of the Rehabilitation Act. Accordingly, the Plaintiffs have satisfied typicality.

D. Adequacy of Representation.

The Plaintiffs will adequately represent the interests of the class. Rule 23(a)(4) aims to ensure that there are no conflicts of interest between the named plaintiffs and the putative class members. *See In re: SW. Airlines Voucher Litig.*, 799 F.3d 701, 714-15 (7th Cir. 2015). "The fundamental element of Rule 23(a)(4) is whether the representative party is able to protect diligently and thoroughly the interests of the class members." *Jones v. Blinziner,* 536 F.Supp. 1181, 1190 (N.D. Ind. 1982) (citation omitted). In *Jones*, the Court stated "[s]ince the relief plaintiffs seek is identical to the relief sought for the entire class, it is not inconsistent in any ways with the interests of the members of the class." *Id.*

Likewise, in the instant case, the Plaintiffs are adequate representatives of the class asthey are seeking the same preliminary and permanent injunctive relief against the Defendant on behalf of themselves and the class. The Defendant argues that Plaintiffs have not provided

"enough information to establish that the proposed class representatives' interests are aligned with those of the individuals they seek to represent pursuant to Rule 23(a)(4)…" Def. Resp. at p. 11. Yet, the Defendant has failed to identify any conflicts of interests between the named Plaintiffs and the putative class members.

In fact, the interests of the named Plaintiffs and putative class are aligned. The named Plaintiffs seek full nurse staffing for all eligible children. The Defendant acknowledges this in her Response. ("Admittedly, the Plaintiffs want nurses to cover 100% of the hours that Defendant authorized." Def. Resp. at p. 12.) To ensure that the Defendant provides all approved services, the named Plaintiffs seek systemic changes to policies, practices, and procedures that would benefits themselves as well as similarly situated proposed class members. Accordingly, the Plaintiffs' interests are entirely coextensive with those of the class.

IV. Plaintiffs Have Satisfied The Requirements Of Rule 23(b)(2).

The Defendant states that the "Plaintiffs here have superficially structured their prayer for injunctive relief to appear to satisfy Rule 23(b)(2)." Def. Resp. at p. 13. The Plaintiffs have, in actuality, structured the prayer for relief and class definition consistent with Rule 23. The Defendant incorrectly claims that "[t]his injunction seeks an individualized remedy tailored to secure each putative class member's nursing services."[6] Def. Resp. at p. 13. On the contrary, the Plaintiffs seek to correct system-wide policies, practices, and procedures that will arrange for adequate in-home skilled nursing services. ECF. No. 1 at ¶¶ 1 - 4.

The Seventh Circuit has repeatedly affirmed district courts granting permanent injunctive relief in situations like this one—where the state is violating the Medicaid Act's EPSDT

[6] Similar to her previous arguments, the Defendant's reliance to *Jamie S.* on this point is not persuasive. *Jamie S.* found that the plaintiffs did not satisfy Rule 23(b)(2) because "there could be no single injunction that provides final relief to the class as a whole" as "the intricate remedial scheme ordered by the district court, which requires thousands of individual determinations of class membership, liability, and appropriate remedies." *Jamie S.*, 668 F.3d at 499. That is not the case here.

mandate. *See Collins v. Hamilton*, 349 F.3d 371, 372, 376 (7th Cir. 2003) (affirming district court in class action where the court "permanently enjoined Indiana from denying Medicaid coverage for psychiatric residential treatment for all Medicaid-eligible children under the age of twenty-one when such treatment is found to be 'medically necessary' by an EPSDT screening."); *See also Stanton v. Bond,* 504 F.2d 1246, 1251 (7th Cir. 1974) (affirming district court in class action case where the "court enjoined defendants 'from continuing to administer EPSDT in violation of 42 U.S.C. § 1396d(a)(4)(B) and the regulations established thereunder' and ordered defendants to have a program meeting the minimum standards of, and in substantial compliance with, the regulations and guidelines, 'in effect in every county in Indiana by July 1, 1974.'"); *See also, Bontrager*, 697 F.3d at 611-12 (affirming district court in class action case challenging Indiana's $1,000 annual limit for dental services covered by Medicaid). Accordingly, Plaintiffs have satisfied the requirements of Rule 23(b)(2).

V. Conclusion.

Wherefore, for the foregoing reasons, the Plaintiffs respectfully request that this Court grant Plaintiff's Motion for Class Certification and certify the proposed class and designate attorneys, Robert H. Farley, Jr., Thomas D. Yates, Jane Perkins, and Sarah Somers as Class Counsel.

Respectfully submitted,

/s/ Thomas D. Yates
One of the Attorneys for
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CERTIFICATE OF SERVICE

I, Thomas D. Yates, one of the Attorneys for the Plaintiffs, deposes and states that he caused the foregoing Plaintiffs' Reply in Support of Plaintiffs' Motion for Class Certification to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 1st day of April, 2016, and will cause the foregoing Plaintiffs' Reply in Support of Plaintiffs' Motion for Class Certification, to be served on the named Defendant through the CM/ECF system on April 1, 2016. Exhibit "B" to this Reply will be filed under seal and will be served on the Defendant's counsel, John Huston and Karen Konieczny, via electronic mail on April 1, 2016.

/s/ Thomas D. Yates
One of the Attorneys for
the Plaintiffs