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' SUPPLEMENT TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to the leave granted by this Court, Plaintiffs and Class, by and through their attorneys, supplement the Plaintiffs' Motion for a Preliminary Injunction and the Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction, concerning Counts III and IV of the Complaint, which raise claims under the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), respectively.

I. Introduction.

Plaintiffs and Class seek a Preliminary Injunction Order that requires Defendant to make reasonable modifications to her in-home shift nursing program. Specifically, Plaintiffs seek a reasonable modification that increases reimbursement rates for in-home shift nursing services.

Named Plaintiffs and members of the Class are facing a serious risk of institutionalization as their caretakers struggle to care for them at home and have been

institutionalized, even though Defendant has approved in-home skilled nursing care as medically necessary for them. *See* Exhibits "A", "F", "G"; *see also*, ECF No. 7-12 at ¶¶ 19-20; ECF No. 7-15 at ¶ 15; ECF No. 7-16 at ¶ 16; *see also*, ECF No. 28-1 at 3, ¶ 14; ECF No. 28-2 at 3, ¶ 12; ECF No. 28-3 at 3, ¶ 13. The Defendant's inaction violates the ADA and Section 504. The ADA and Section 504 impose a duty on Defendant to reasonably modify her policies, procedures, or practices to avoid unjustifiable institutionalization and the serious risk of institutionalization. *See* 42 U.S.C. §§ 12131-32; 29 U.S.C. § 794; 28 C.F.R.§ 35.130(b)(7).

Defendant's obligations to comply with the ADA and Section 504 are independent of her obligation to comply with this Court's Preliminary Injunction Order. However, the Preliminary Injunction Order afforded Defendant the opportunity and discretion to determine the steps (which are, in essence, reasonable modifications) that could arrange for approved levels of home nursing services. In nine months, Defendant has failed to address the deficiencies in Plaintiffs' and Class Members' approved care. She has also failed to demonstrate that she can arrange for approved levels home nursing services at the current reimbursement rate.

Increased reimbursement rates would be a reasonable modification to, not a fundamental alteration of, Defendant's program. Defendant willingly pays the high financial cost of unjustified institutionalization when she fails to arrange for in-home shift nursing services. Additionally, she selectively pays a higher reimbursement rate for individual Class Members. The Seventh Circuit has recognized that such financial paradoxes and disparate reimbursement rates can establish violations of the ADA and Section 504.

II. An Evidentiary Hearing Is Not Required and Has Not Been Requested As To Counts III and IV.

This Court's Memorandum Opinion, dated March 21, 2016 stated:

> Accordingly, the Court will allow Norwood the opportunity to request an evidentiary hearing regarding the following factual issues raised by Plaintiffs' ADA and Rehabilitation Act claims: (1) the feasibility of treating O.B. at home, (2) whether such in-home treatment would require fundamental alteration of HFS's program or services, and (3) the likelihood that reduced services to Plaintiffs who remain at home (C.F., J.M., and S.M.) would cause their institutionalization. As explained above, however, Norwood "must be able to persuade the court" that "a hearing would be productive," meaning that she "intends to introduce evidence that if believed will so weaken the moving party's case as to affect the judge's decision on whether to issue an injunction." *Aimster*, 334 F.3d at 654.

ECF No. 36 at 17. Below, Plaintiffs and Class address each issue raised by the Court sequentially.

A. It is Feasible to Treat O.B. at Home.

O.B. was discharged home on or around February 23, 2016; since that time O.B. has received some amount of in-home shift nursing services. However, O.B.'s mother, Julie Burt, states that O.B. has not received the full amount of nursing care approved by the Defendant since his February 2016 discharge. Exhibit "A" at ¶¶ 2-3 (Decl. of Julie Burt (Jan. 3, 2017). When signing the Home Health Plan of Care for O.B., Dr. Jeffrey C. Benson certified the medical necessity of 120 hours per week of RN/LPN nursing care. *See* Exhibit "B" at 2, §§ 21, 26 (Home Health Care Certification and Plan of Care for O.B., dated Mar. 1, 2016.)

O.B. is enrolled in the Medically Fragile, Technology Dependent (MFTD) Waiver Program. ECF No. 91 at ¶ 5 (Defendant's Answer to Complaint). One of the "Eligibility Criteria" for the MFTD Waiver Program is that "[t]he family is able to safely care for the child in the family's home." *See* Exhibit "C" (Fact Sheet, Medically Fragile, Technology

Dependent Home and Community-Based Services (HCBS) Waiver for children under age 21). A hearing is not required to demonstrate that O.B. can feasibly be treated at home.

B. Providing In-Home Shift Nursing Services Does Not Require a Fundamental Alteration of Defendant's Programs or Services.

Providing in-home shift nursing services does not require a fundamental alteration of the Defendant's program or services. Under the Medicaid Act, ADA, and Section 504, Defendant has independent legal duties to arrange for medically necessary private duty nursing services to Plaintiffs and Class Members. *See* 42 U.S.C. §§ 1396a(a)(43)(C), 1396a(a)(8); 42 U.S.C. §§ 12131-32; 29 U.S.C. § 794.

Plaintiffs and Class Members are enrolled in one of Defendant's two nursing programs, the Nursing and Personal Care Services Program ("NPCS" or "non-waiver" program) or the MFTD Waiver Program. ECF No. 1 at ¶¶ 56-78. Defendant administers these two nursing program for the express purpose of providing home care to eligible children. *Id*. The Defendant's prior authorization signifies her finding that in-home shift nursing is "medically necessary and appropriate to meet the participant's needs." ILL. ADMIN. CODE tit. 89, § 140.473(e). According to the Defendant's regulations, in-home home shift nursing services are "home health care services," and "[h]ome health services are services provided for participants in their places of residence . . . 'residence' does not include a hospital, a skilled nursing facility. . . or a supportive living facility." *Id*. at Part 140, Subpart D ("Payment for Non-Institutional Services"); *see also Id*. at §§ 140.471(a),(c). No fundamental alteration of Defendant's program is required.

Furthermore, in-home shift nursing services are cost-effective for Defendant; the cost of in-home nursing care is substantially less than the cost of institutional care.[1]

[1] When administering the MFTD Waiver program, the Defendant determines that:

According to Defendant, the average, annual cost of a hospital-based care for a child enrolled in the MFTD Waiver program is $228,897; the average, annual cost of home care (including home nursing services) is $139,846. Exhibit "D" at Sec. 3, *The Report of Medicaid Services for Persons who are Medically Fragile, Technology Dependent* (January 2016). In fact, one of the "Eligibility Criteria" for the MFTD Waiver Program is that "[t]he estimated cost of the in-home support services is not greater than the cost of the institutional level of care appropriate to the child's medical need." Exhibit "C" at 2; *see also*, *Radaszewski v. Maram*, 383 F.3d 599, 614 (7th Cir. 2004) (noting that if the cost of institutional placement "equaled or exceeded the cost of caring for [the plaintiff] at home, then it would be difficult to see how requiring the State to pay for at-home care would amount to an unreasonable, fundamental alteration of its programs and services.").

C. Reduced Services To Plaintiffs Who Remain At Home Results in a Serious Risk of Institutionalization.

Defendant determined that named Plaintiffs O.B., C.F., J.M., and S.M. and numerous Class Members require an institutional level of care.[2] ECF No. 91 at ¶¶ 5-9.

> The estimated cost of the individual's in-home care to be paid by the State shall not be greater than the institutional level of care appropriate to the individual's medical needs (hospital or skilled nursing facility), as determined by the Department.
> ILL. ADMIN. CODE tit. 89, § 120.530(e)(4).

When deciding the Defendant's appeal, the Seventh Circuit noted, "[t]he state was willing to pay $19,178 a month for home nursing services for O.B. . . . But O.B.'s hospitalization cost the state roughly $78,000 a month – four times the expense of home nursing. *O.B.*, 838 F.3d 837 at 843.

[2] As many as 700 Class Members are enrolled in the MFTD Waiver program. One of the "Eligibility Criteria" for the MFTD Waiver program includes "[a] determination [is made] that without the in-home support services provided through the waiver program, the child would be at risk to be in an institutionalization in a skilled nursing facility or a hospital." (Exhibit "C" at p. 2); *see also*, ILL. ADMIN. CODE tit. 89, § 120.530(b). To receive MFTD waiver services, the child must "be determined at risk of institutionalization due to his or her medical condition . . .". Exhibit "E" 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=70579.

However, not one of the named Plaintiffs is receiving the full amount of approved nursing service. *See* Exhibit "A" at ¶¶ 3-5, Exhibit "F" at ¶¶ 3-5, Exhibit "G" at ¶¶ 3-5. Parents of the named Plaintiffs have repeatedly stated that Defendant's failure to provide medically necessary services creates a serious risk of institutionalization and harm to their children. *See Id.*; *see also*, ECF No. 7-12; ECF No. 7-15; ECF No. 7-16.

Julie Burt declared that O.B. has not received the full amount of nursing care approved by Defendant, which results in a serious risk of his re-institutionalization. Exhibit "A" at ¶¶ 3-5. Defendant admits that "[O.B] requires an institutional level of care." ECF No. 91 at ¶ 5.

Kristen Fisher declared that C.F. has not received the full amount of nursing care approved by the Defendant, which results in a serious risk of institutionalization. Exhibit "F" at ¶¶ 3-5. Declaration of Kristen Fisher (Jan. 3, 2017.). Defendant admits that C.F. is enrolled in the MFTD waiver program, which means that C.F. requires an institutional level of care. *See* ECF No. 91 at ¶ 7.

Michelle McCullough declared that J.M and S.M. have not received the full amount of nursing care approved by Defendant, which results in a serious risk of institutionalization. Exhibit "G" at ¶¶ 3-5. Declaration of Michele McCullough, (Jan 3. 2017.) Defendant admits that J.M. and S.M. are enrolled in the MFTD waiver program, which means that J.M. and S.M. require an institutional level of care. *See* ECF No. 91 at ¶¶ 8, 9.

III. Plaintiffs and Class are Likely to Succeed on the Merits of the ADA and Section 504 Claims.

Under the Medicaid Act, Defendant has a duty to provide medically necessary private duty nursing services to Plaintiffs and Class Members. 42 U.S.C. §§

1396a(a)(43)(C), 1396a(a)(8). Under the ADA and Section 504, Defendant must provide private duty nursing services in the most integrated setting and in a non-discriminatory manner. *See* 28 C.F.R.§ 35.130(b)(7), 42 U.S.C. § 12131-32, 29 U.S.C. § 794; *see also Olmstead v. L.C. ex rel. Zimring*, 527 U.S. at. 527 U.S. 581, 604-07 (1999). Defendant has already determined that the medical needs of each Plaintiff and Class Member are appropriately met in the home setting through a specific amount of "in-home shift nursing services." *See* ILL. ADMIN. CODE tit. 89, § 140.473(e); *see also*, ECF No. 7-8 to 7-11. Plaintiffs are likely to show that Defendant's systemic failure to provide the approved, medically necessary amounts of in-home shift nursing services violates the ADA and Section 504.

This Court previously determined that the Defendant's systemic failure risks irreparable harm and that both the public interest as well as balancing of equities favors the Plaintiffs. ECF No. 36 at 14-17. As further detailed in this memorandum, this Court has the authority to order economic modifications that are reasonable and would not fundamentally alter Defendant's program.

A. The Defendant's Failure to Provide Home Nursing Services Results in Unjustified Institutionalization.

Defendant's unjustified institutionalization of O.B. and other Class Members implicates the ADA and Section 504. *See* U.S. Dept. of Justice, *Questions and Answers on the ADA's Integration Mandate and* Olmstead *Enforcement*, https://www.ada.gov/olmstead/q&a_olmstead.htm, ("The ADA's integration mandate is implicated where a public entity administers its programs in a manner that results in unjustified segregation of persons with disabilities."). Defendant has repeatedly demonstrated her willingness to unjustifiably institutionalize Plaintiffs and Class

Members. For example, Plaintiff O.B. remained hospitalized for eleven months after he was medically ready for discharge due to the Defendant's failure to provide in-home shift nursing services.

During her appeal to the Seventh Circuit, Defendant admitted her willingness to institutionalize Plaintiffs and Class when she fails to arrange for home-based nursing services. Brief of Defendant-Appellant at 17, 21, 24, *O.B. v. Norwood*, (No. 15-2049) (7th Cir. July 13, 2016). Though the ADA and Section 504 claims were not before the Court of Appeals, the Seventh Circuit rejected this argument for institutionalization. *O.B. v. Norwood,* 838 F.3d 837, 841-42 (7th Cir. 2016). The Seventh Circuit commented that Defendant herself authorized home services and rejected her contention that institutionalization is a suitable alternative.[3] *Id*. at 841. The Defendant's practice of unjustified institutionalization violates both the ADA and Section 504 as well as the Medicaid Act.

B. The Defendant's Failure to Provide Home Nursing Services Results in the Unjustified and Serious Risk of Institutionalization.

The ADA and Section 504 are also implicated when, as here, the Defendant's failure to provide home-based services causes a "sufficient risk of institutionalization" and "will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution." *See* U.S. Dept. of Justice, *Questions and Answers on the ADA's Integration Mandate and* Olmstead *Enforcement*,

[3] In relevant part, the Court of Appeals for the Seventh Circuit commented that:
> 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. *O.B.*, 838 F.3d at 841.

https://www.ada.gov/olmstead/q&a_olmstead.htm. The Defendant's continued failure to provide the medically necessary amount of home nursing services places named Plaintiffs and Class Members at the serious risk of institutionalization. Defendant determined that named Plaintiffs O.B., C.F., J.M., and S.M. require an institutional level of care.[4] ECF No. 91 at ¶¶ 5-9. However, not one of the named Plaintiffs is currently receiving the approved nursing services. Exhibit "A" at ¶¶ 3-5, Exhibit "F" at ¶¶ 3-5, Exhibit "G" at ¶¶ 3-5. Parents of the named Plaintiffs have repeatedly declared that the Defendant's failure to provide medically necessary services creates a serious risk of institutionalization and harm to their children. *See* Exhibit "A","F","G"; *see also*, ECF No. 7-12; ECF No. 7-15; ECF No. 7-16.

C. Defendant Failed to Make Reasonable Modifications to Arrange for In-Home Shift Nursing Services at the Current Reimbursement Rate.

In violation of the ADA and Section 504, Defendant failed to reasonably modify their policies, procedures or practices to avoid the unjustifiable institutionalization of O.B. and similarly situated Class Members. *See* 28 C.F.R.§ 35.130(b)(7). Defendant has legal obligations to comply with the ADA and Section 504, independent of her obligation to comply with this Court's Preliminary Injunction Order. However, the Preliminary Injunction Order afforded Defendant the opportunity and discretion to determine the steps could arrange for home nursing services. Such a "comprehensive, effectively

[4] O.B., C.F., J.M., S.M., as many as 700 Class Members are enrolled in the MFTD Waiver program. One of the "Eligibility Criteria" for the MFTD Waiver program includes "[a] determination [is made] that without the in-home support services provided through the waiver program, the child would be at risk to be in an institutionalization in a skilled nursing facility or a hospital." (Exhibit "C" at p. 2); *see also*, ILL. ADMIN. CODE tit. 89, § 120.530(b). To receive MFTD waiver services the child must "be determined at risk of institutionalization due to his or her medical condition . . ." (Exhibit "E" at p. 2) *MR #14.27: Transitioning Medically Fragile Technology Dependent (MFTD) Waiver Cases to Central Office 238* (available at http://www.dhs.state.il.us/page.aspx?item=70579).

working plan for placing qualified persons … in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated" could satisfy the reasonable modifications standard. *See Olmstead*, 527 U.S. at 605-06. However, in nine months, Defendant has failed to demonstrate that she can arrange for approved levels of home nursing services at the current reimbursement rate.

D. A Court Order to Increase Reimbursement Rates is a Reasonable Modification.

Increased reimbursement rates would be a reasonable modification to, not a fundamental alteration of, Defendant's program. Defendant willingly pays the high financial cost of unjustified institutionalization when she fails to arrange for in-home shift nursing services. Additionally, she selectively pays a higher reimbursement rate for individual Class Members. Defendant also authorizes higher reimbursement rates for certain medically complex children who are or were wards of the state.

1. Defendant has a Policy and Practice of Increasing Nursing Rates for Individual Children to Improve Staffing.

Defendant has a policy that allows her to increase reimbursement rates to arrange for in-home shift nursing services. Defendant applies a two-tiered reimbursement rate structure for in-home shift nursing services, as illustrated in Table A below. (Table A summarizes Defendant's procedure codes G0299-G0300, *see* Exhibit "H" at 2-3.)

Table A: Defendant's Fee Schedule for In-Home Shift Nursing Services

Defendant's Rate Structure	Applicability of Fee Schedule	Services Provided by a RN (Registered Nurse)	Services Provided by an LPN (Licensed Practical Nurse)
"Tier 1" Rates	▪ Fee Schedule for children residing in Cook, DuPage, Kane and Will counties. ▪ Apparently authorized on a case-by-case basis for children outside of these counties.	$35.03	$31.14
"Tier 2" Rates	▪ Fee schedule for children residing outside of Cook, DuPage, Kane and Will counties.	$28.75	$24.78

"Tier 1" includes a rate of $35.03 per hour for services provided by an RN (Registered Nurse) and $31.14 per hour for services provided by an LPN (Licensed Practical Nurse). "Tier 2" includes a rate of $28.75 per hour for services provided by an RN (Registered Nurse) and $24.78 per hour for services provided by an LPN (Licensed Practical Nurse).

In an implicit recognition that nursing rates affect the availability of nursing services, Defendant will authorize Tier 1 rates (a rate of $35.03 for RN and $31.13 for LPN services) on an individual basis for children outside of Cook, DuPage, Kane and Will counties in attempt to secure in-home shift nursing services. *See* Exhibit "I" (authorizing "an increase in the hourly nursing rates in order for the Division of Specialized Care for Children (DSCC) to secure in-home skilled nursing services for O.B. . . ."). Plaintiffs and Class Members now seek a mechanism to increase

reimbursement rates above Tier 1 rates (above $35.03) due to Defendant's systemic failure to arrange for nursing services at the current fee schedule.

2. Defendant is Reimbursing In-Home Shift Nursing Services at a Higher Reimbursement Rate for Certain Class Members who are or were Wards of the State.

Defendant reports that she reimburses above Tier 1 (above $35.03) rates for at least sixteen children who are or were wards of the state. Specifically, Defendant reports that she reimburses services provided by an RN and LPN at the following rates:[5]

Child's Initials	RN Rate	LPN Rate
S.C.	$ 84.00	$ 53.51
A.NA.	70.00	35.03
E.F.	53.51	53.51
A.F.	53.51	53.51
A.G.	53.51	53.51
T.J.	53.51	53.51
A.P.	53.51	-0-
B.F.	48.65	48.65
C.F.	48.65	48.65
E.H.	48.65	48.65
C.S.	48.65	48.65
A.S.	48.65	48.65
A.Y.	48.65	48.65
J.P.	42.81	42.81
T.P.	42.81	-0-
J.N.	39.89	39.89

As this Court has previously stated:

> Norwood does not challenge this aspect of Plaintiffs' ADA and Rehabilitation Act claims; nor does she respond to Plaintiffs' argument that *Amundson* acknowledges their viability. *See* 721 F.3d at 874-75 (acknowledging discrimination claim where a state "buys the best available care" for one disability, "but pays only for mediocre care" for another). ECF No. 32, at 14. (ECF No. 36 at page 9, fn. 5).

[5] Plaintiffs obtained reimbursement rate data cited in Paragraph 11 from the Exhibit A to Defendant's Report of September 23, 2016; this Report and Exhibit A to the Report are incorporated by reference herein and are not attached to this filing.

An order from this Court requiring Defendant to increase reimburse rates above Tier 1 is reasonable modification, as Defendant already reimburses at higher rates for certain children.

E. A Court Order to Increase Reimbursement Rates is not Fundamental Alteration of the Defendant's In-Home Shift Nursing Program.

An increase in nursing rates by Defendant will not fundamentally alter the home nursing services program, given that the cost of in-home nursing care is substantially less than the cost of institutional care.

1. The Cost of Increasing Reimbursement Rates is Less than the Cost of Institutional Care.

The Seventh Circuit has considered the cost of institutional care when evaluating a fundamental alternation defense. "If the State would have to pay a private facility to care for Eric [Plaintiff], for example, and the cost of that placement equaled or exceeded the cost of caring for him at home, then it would be difficult to see how requiring the State to pay for at-home care would amount to an unreasonable, fundamental alteration of its programs and services." *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 614 (7th Cir. 2004)

As the Seventh Circuit noted when deciding the Defendant's appeal, "[t]he state was willing to pay $19,178 a month for home nursing services for O.B. . . . But O.B.'s hospitalization cost the state roughly $78,000 a month – four times the expense of home nursing. *O.B.*, 838 F.3d at 843. Defendant has also reported that the average, annual cost of a hospital-based care for a child enrolled in the MFTD Waiver program is $228,897; the average, annual cost of home care (including home nursing services) is $139,846. Exhibit "C", *The Report of Medicaid Services for Persons who are Medically Fragile*,

Technology Dependent (January 2016), https://www.illinois.gov/hfs/SiteCollectionDocuments/MFTD_BiAnnual_Report_2016.pdf.

2. An Increase to the Defendant's Reimbursement Rates would not be Fundamental Alteration.

A court order requiring increased reimbursement rates would require Defendant to spend more on its in-home shift nursing services program, albeit less than for institutional care for Plaintiffs and Class. However, " 'budgetary concerns do not alone sustain a fundamental alteration defense.' *M.R. v. Dreyfus*, 663 F.3d 1100, 1118 (9th Cir. 2011), amended by 697 F.3d 706 (9th Cir.2012); see also *Pa. Prot. & Advocacy, Inc. v. Pa. Dep't of Pub. Welfare*, 402 F.3d 374, 380 (3rd Cir. 2005) ('If every alteration in a program or service that required the outlay of funds were tantamount to a fundamental alteration, the ADA's integration mandate would be hollow indeed.'). *Pashby v. Delia*, 709 F.3d 307, 323-24 (4th Cir. 2013) (joining the Third, Ninth, and Tenth Circuits in holding that, although budgetary concerns are relevant to the fundamental alteration analysis, financial constraints alone cannot sustain a fundamental alteration defense.); *see also Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 614 (7th Cir. 2004). In this case, the increased expenditure to arrange for in-home shift nursing services would not be a fundamental alteration of the Defendant's program.

IV. Conclusion.

Plaintiffs and Class Members are likely to show that Defendant's systemic failure to provide medically necessary in-home shift nursing services at approved levels violate the ADA and Section 504. Having already demonstrated that Defendant's systemic failure risks irreparable harm and that both the public interest as well as the balancing of equities favors the Plaintiffs, Plaintiffs have met their burden for a Preliminary Injunction under

the ADA and Section 504. A court order that requires increased reimbursement rates for in-home shift nursing 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.

WHEREFORE, the Plaintiffs and Class request that the Court grant 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.
Robert H. Farley, Jr
One of the Attorney for the Plaintiffs and Class

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

Shannon M. Ackenhausen
Thomas D. Yates
Legal Council for Health Justice
180 N. Michigan Avenue, Suite 2110
Chicago, IL 60601
312-427-8990
tom@legalcouncil.org

Jane Perkins
Sarah Somers
National Health Law Program
200 N. Greensboro Street
Suite D-13
Carrboro, NC 27510
919-968-6308
perkins@healthlaw.org

CERTIFICATE OF SERVICE

I, Robert H. Farley, Jr., one of the Attorneys for the Plaintiffs, deposes and states that he caused the foregoing Supplement to the Plaintiffs' Motion for a Preliminary Injunction and the Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 5th day of January, 2017.

/s/ Robert H. Farley, Jr.
Robert H. Farley, Jr
One of the Attorney for the Plaintiffs and Class