

**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	)	Magistrate: Michael T. Mason
as Director of the Illinois Department of	)	
Healthcare and Family Services,	)	
	)	
Defendant.	)	

**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS’ MOTION TO MODIFY PRELIMINARY INJUNCTION**

Plaintiffs and Class Members, by and through their attorneys, present this Memorandum of Law in Support of Plaintiffs’ Motion to Modify the Preliminary Injunction.

**I. Introduction**

Despite multiple orders from this Court, an opinion from the Seventh Circuit Court of Appeals, and numerous efforts by Plaintiffs’ Counsel to reach further agreements, Defendant continues to resist taking sufficient steps to ensure that the medically fragile children who constitute the Class are actually receiving the in-home nursing hours that Defendant has determined they need. Well over a year and a half after this Court first ordered Defendant to improve staffing for the Class, these children continue to face violations of their rights under the Medicaid Act and the Americans with Disabilities Act, and remain institutionalized or at serious risk of institutionalization.

As her own reports demonstrate, Defendant’s efforts to address staffing issues through a joint Action Plan agreed to by the parties and accepted by Magistrate Judge Mason, simply have not addressed the deficiencies in Plaintiffs’ and Class Members’ approved level of care. *See*

ECF120-121. Moreover, Defendant’s actions throughout this case—including her recent failure to even schedule the meeting with Plaintiffs’ Counsel that she proposed before the Magistrate Judge over three months ago—have caused significant delays in implementing adequate steps to remedy the ongoing violations. Plaintiffs, therefore, seek a modification of the Preliminary Injunction Order that requires Defendant to make certain additional, reasonable modifications to her in-home shift nursing program, as outlined below.

## **II. Legal Standard for Modifying a Preliminary Injunction**

This court has broad discretion to enforce its preliminary injunction, including the power to issue ancillary orders and to modify the injunction to achieve its purpose. *See Brown v. Plata*, 563 U.S. 493, 542–43 (2011) (“The power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible.”) (quoting *New York State Assn. for Retarded Children, Inc. v. Carey*, 706 F.2d 956, 967 (2d Cir. 1983)); *Fid. Nat’l Title Ins. Co. v. Intercountry Nat’l Title Ins. Co.*, 412 F.3d 745, 752 (7th Cir.2005) (“[A] judge's power includes not only what he is expressly empowered to do but also such ancillary powers as are necessary and proper to his exercise of the explicitly conferred ones.”).

Critical to this motion, the “essence of a court's equity power,” is “its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action.” *Freeman v. Pitts*, 503 U.S. 467, 487 (1992). The Court’s authority to revise its injunction is greater when earlier efforts have failed to protect the rights of the parties. *See Brown*, 563 U.S. at 516 (“When a court attempts to remedy an entrenched constitutional violation through reform of a complex institution . . . it may be necessary in the ordinary course to issue multiple orders directing and adjusting ongoing remedial efforts.”); *Cf. Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 770 (1994) (“The failure of the first order to

accomplish its purpose may be taken into consideration in evaluating the constitutionality of the broader order.”). Courts, therefore, should readily modify an injunction where, as here, Plaintiffs have shown “that the injunction should be altered to ensure that the rights and interests of the parties are given all due and necessary protection.” *Brown*, 563 U.S. at 542-43. And notably, the standard for modifying a *preliminary* injunction is particularly flexible: the Court may “revise a preliminary remedy” so long as it is “persuaded that [the] change ha[s] benefits for the parties and the public interest.” *Commodity Futures Trading Comm'n v. Battoo*, 790 F.3d 748, 750 (7th Cir. 2015).

Indeed, in this case, the Court of Appeals expressly contemplated that this court would need to revise, modify, and adapt the injunction based on the efficacy of Defendant’s efforts to secure the required in-home nursing: “The preliminary injunction should be understood simply as a first cut: as insisting that the state do something rather than nothing to provide in-home nursing care for these children. The adequacy of what it does can then be evaluated, perhaps leading to modification or even abrogation of the preliminary injunction.” *O.B. v. Norwood*, 838 F.3d 837, 841–42 (7th Cir. 2016).

The adequacy of Defendant’s actions, to date, are clear. Defendant has “failed to come forward with a reasonable plan or remedy,” and has caused significant delays, and a court-devised solution is now necessary. *See Dean v. Coughlin*, 804 F.2d 207, 214 (2d Cir. 1986); *see also United States v. Paradise*, 480 U.S. 149, 181 (1987) (explaining that “[i]t would have been improper for the District Judge to ignore the effects of the Department's delay,” and approving order designed to “compensate for past delay and prevent future recalcitrance”).

**III. Steps taken under the Preliminary Injunction Orders to-date demonstrate that Defendant's current efforts are inadequate.**

Defendant has been resistant to remedying Class Members lack of in-home nursing services throughout this litigation. This Court has already entered a Preliminary Injunction, and granted a motion to enforce that Order. *See* ECF Nos. 42 and 79. Upon appeal of the Preliminary Injunction, the Seventh Circuit observed that “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.” *See* ECF No. 94 at 7. Most recently, in response to lack of improvement in staffing, this Court issued an order supplementing and modifying the Preliminary Injunction to include relief under Counts III and IV of Plaintiffs’ complaint, based on likely success on Plaintiffs’ Americans with Disabilities Act and Rehabilitation Act claims. *See* ECF No. 113.

The Court also referred the case to a Magistrate Judge, with an order that the parties negotiate and that the Defendant implement a Joint Action Plan that would include mandated first steps for Defendant to take to increase staffing for Class Members. *See* ECF Nos. 112, 113, 120, and 121. The Court further ordered that Defendant provide monthly reports on the staffing for specifically identified children, and quarterly reports on her affirmative steps to implement the Joint Action Plan, noting, “I think anybody overseeing this now has to measure that the services -- all of these steps that are being put in place for -- are materializing and the child is benefitting as the recipient of the services.” *See* ECF No. 115 p. 15 at ¶¶ 13-16.

In addition, and after assessing ongoing problems with relief, Plaintiffs have advocated for several additional steps Defendant could take. For instance, Plaintiffs observed that Defendant has repeatedly raised reimbursement rates for host of other providers to ensure access to care for Medicaid recipients, but reimbursement rates for in-home shift nursing have not been raised

since 2002.<sup>1</sup> In fact, the rates are actually *lower* in actual dollars than they were in 2002 due to recent rate cuts.<sup>2</sup> From 2002 to 2017, inflation as measured by the consumer price index (CPI) for medical care has risen more than 35 percent.<sup>3</sup> Thus, the payment for in-home shift nursing has more than one third of its value since the last rate increase, as measured by the general inflation index. Plaintiffs and Class Members cannot ascertain why medically fragile children in Illinois should bear the burden of lack of access to approved care due to fifteen years of stagnant and decreasing rates.

Plaintiffs have also raised the issue of inadequate health insurance coverage for nurses, travel reimbursement, and training time pay, among many other obstacles. However, Defendant would agree only to certain limited steps for the joint Action Plan, (such as lifting the one year license requirement, allowing more dual agency staffing, providing notice that a federal moratorium does not prevent new agencies from serving Class members, and surveying nursing agencies without sharing the results with Plaintiffs) and have, as yet, even failed to meet to discuss additional steps. Unfortunately, seven months into the joint Action Plan, Defendant's steps have failed to remedy staffing issues for Plaintiffs and Class, and she has failed to-date to engage in any further negotiation or discussion with Plaintiffs' counsel.

**a. Reporting by Defendant demonstrates significant staffing shortages continue.**

Defendant has been providing Plaintiffs' Counsel and the Magistrate Judge with monthly

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<sup>1</sup> We note that within the past two years the Department has increased rates for Hospitals (\$8.1 million), for Home Services Program providers (\$12.6 million), for those serving individuals with developmental disabilities (\$15.9 million), for specialized mental health rehabilitation facilities (\$4.45 million), for supportive living facilities (\$4.3 million), and for psychiatric and behavioral health providers (\$27.5 million), among others. *See* <https://www.illinois.gov/hfs/MedicalProviders/notices/Pages/default.aspx>; *see also* Exhibit "A".

<sup>2</sup> *See* Illinois Home Health Fee Schedule 2016, <https://www.illinois.gov/hfs/SiteCollectionDocuments/homehealthfeeschedule2016.pdf>.

<sup>3</sup> *See* U.S. Department of Labor, Bureau of Labor Statistics, <https://www.bls.gov/data/>.

reports on the staffing percentages for the children selected by Class Counsel as a small but potentially illustrative set of children. *See* Exhibit B. Defendant has also provided quarterly reports noting the affirmative steps taken to attempt to improve staffing.<sup>4</sup>

Defendant’s monthly reports for these children demonstrate that the pervasive and persistent shortages in staffing for Plaintiffs and Class Members have not be resolved by Defendant’s steps under the Action Plan. Ten of the children were consistently staffed below 80% during weeks throughout the reporting period, with many staffed below 60% for the majority of the seven-month reporting period. Four children were consistently staffed below 50%. *See id.* One child was forced to remain in institutional care for more than seven months because Defendant failed to arrange for nursing services sufficient for discharge. *See id.* Median nursing hours for each month show significant staffing shortages for the group:

Month	March	April	June	July	September
Median Percent Staffed	79%	67%	58%	53%	66% <sup>5</sup>

These staffing percentages are similar to those provided to the Court by Defendants in September and October, 2016, under the Court’s order:

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<sup>4</sup> The joint Action Plan was sent to Judge Mason marked as Confidential, For Settlement Purposes, and is therefore not attached here. Likewise, Defendant’s quarterly reports on the Action Plan are not attached. Plaintiffs have no objection to providing the Court with these documents.

<sup>5</sup> The medians here omitted several children to try to create a more accurate picture. Children with low staffing percentages by parent choice (O.M., D.G., and M.M.), a child in the hospital by parent choice (M.R.), a child whose parent did not want her included (D.C.). Also omitted were weeks with temporary hospitalization, or vacation that led to low staffing. Weeks with respite care were rounded to 100%. *See* Exhibit B for spreadsheets for all children for each week.

	Jun-16	Jul-16	Aug-16
Percent of Hours Received for NPCS/Waiver children excluding those with only private insurance	58.26%	59.18%	49.06% <sup>6</sup>

Defendant's effort to this point simply have not succeeded in systematically addressing staff shortages for Class Members.

**b. Reports by parents likewise illustrate the impact of shortages on Plaintiffs and Class Members.**

Parents and caregivers of these children have also provided reports to the Court describing their staffing in their own words. *See* Exhibit C. These reports detail the obstacles and challenges families continue to face in securing staffing. *See id.* Specifically, one family explained “[a]t no time have we ever had all of our nursing covered. At no time have we had the opportunity or capability of using respite hours.” *See id.* at p. 5. Another family noted “[w]e don’t have regular full time nurses to cover the weekends or nights. We have 10 nurses to puzzle the schedule together. . . We really just never know month to month.” *See id.* at p. 11; *see also* Exhibits D, E, F, G and H. (declarations from the parents/caregivers of the children selected for review). These experiences are not limited to the children described in Defendant’s reports. Families of other class members continue to face equally dire shortages. As one parent notes whose child is receiving only 12 of the 112 approved hours of nursing, “[p]roviding all the daytime and nighttime care for E.I. is exhausting and I cannot sustain it over the long term. I fear that without adequate nursing, E.I.’s condition will worsen and she will end up in the hospital.” *See* Exhibit I (declaration of Karen Irizarry). Another caregiver whose child receives just over half of her approved nursing hours states, “[t]he lack of nursing hours and instability

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<sup>6</sup> These staffing percentages are calculated from the Defendant’s reports provided under Court order. *See* ECF No. 79, pp. 7-8. Due to the size of the class, Plaintiffs can provide this report to the Court under seal to protect the identities of the children named therein.

in staffing has caused extreme stress and fatigue within our home.” *See* Exhibit J (declaration of Abby Huff); *see also* Exhibit K (declaration of Nancy Saunders).

Plaintiffs and Class Members do not dispute that Defendant is generally taking the actions she reports in the quarterly reports to the Magistrate Judge, but the evidence demonstrates that these efforts are failing to ensure children receive the nursing they need—even for these few families which she has the opportunity to focus on and closely track. Based on the failure of the joint Action Plan and Defendant’s efforts under that Plan to address deficiencies in staffing, we ask this Court to modify the Preliminary Injunction to include the additional, specific steps outlined in Section IV, below, and to re-start the class-wide reporting to the Court and Class Counsel initially ordered by the Court on August 5, 2016. *See* ECF No. 79.

**c. Defendant has delayed any further negotiation regarding additional steps, requiring Court intervention.**

Plaintiffs have attempted to meet with Defendant to discuss additional steps that could increase staffing for Plaintiffs and Class members, a meeting which Defendant herself affirmatively proposed during proceedings before Magistrate Judge Mason on August 17, 2017. Plaintiffs’ Counsel prepared a detailed written letter describing numerous steps that Defendant could take to increase staffing. Despite six attempts over the last three months to schedule this agreed-to meeting, Defendant failed to even offer dates, let alone respond to Plaintiffs’ detailed, substantive suggestions, until Defendant became aware of the plan for this filing. To ensure that Defendant timely undertakes additional, meaningful, affirmative steps, Plaintiffs and Class Members now turn to this Court to order Defendant to take the following actions.

**IV. Affirmative Steps to Increase In-Home Nurse Staffing for Plaintiffs and Class**



**Members.**

- a. Allow parents or caregivers of class members who are either a Registered Nurse (RN) or Licensed Practical Nurse (LPN) to identify and contract directly with nurses at the nursing rate which is paid by Defendant to the nursing agencies to provide care for their children and to supervise the care provided by those nurses for their children.**

Upon information and belief, approximately 10 parents/caregivers of Plaintiffs and Class are themselves Registered Nurses (RNs) or Licensed Practical Nurses (LPNs). These professionals have the educational background necessary to recruit, screen, interview, hire, and supervise nurses to provide in-home nursing care services to their children. Allowing these professionals to engage nurses directly will enable the in-home shift nurses serving these children to be paid the full hourly rate set by the Department without a percentage being taken by a nursing agency (for recruiting, supervision, and the like) and will increase the ability of families to compete more successfully with hospitals, health centers, and other institutions for nurses.

There is precedent for this model of service provision in other Illinois waiver programs. In these programs, those individuals providing home care for Medicaid recipients are recruited directly by the individuals they will be assisting, must become registered as an “Individual Provider” with Defendant, and are paid by Defendant directly the full reimbursement rate for the services they render.<sup>7</sup>

- b. Allow parents or caregivers of class members who are neither an RN nor LPN, and whose median staffing levels have been less than 80% of the level authorized by the Department, during any 12 of the 20 weeks prior to the request, to identify and contract directly with RNs or LPNs to provide in-home shift nursing care at the nursing rate which is paid by Defendant to the nursing agencies. The Defendant will contract directly with nurse supervisors to supervise the nursing care provided to class members and the cost of this service will be paid by the**

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<sup>7</sup> See Illinois Department of Human services, *HSP Customer Guidance for managing providers*, <http://www.dhs.state.il.us/page.aspx?item=59704>, and Provider Information on *Nursing Services, Home-Based (HBS)*, <http://www.dhs.state.il.us/page.aspx?item=47505>.

**Defendant and will not be charged against the nursing monthly budget of the class members for in-home shift nursing services.**

The majority of Class Members do not have a parent or caregiver who is an RN or LPN and, although they may wish to do so, cannot directly contract with and supervise the provision of nursing services for their children. For those of these parents who wish to directly contract with nurses, two steps are requested from the Court. First, Defendant would be required to engage in contracts with RN's to supervise the services of families using direct contract nurses. Just as Defendant contracts with physicians to review applications and eligibility redeterminations for the waiver program, Defendant would contract directly with a discrete number of nurses to ensure adequate supervision of direct contract nurses working with families. *See M.A., et al, v. Norwood*, 15-cv-3116. Defendant's contracted nurse supervisors would provide the supervisory services currently conducted by the nursing agencies. The nurse supervisors would be paid directly by the Department and would not receive any of the hourly rate paid to the nurse providing the actual care to Class Members, nor use any portion of the Class Members nursing budget for the supervision services. We note that other states have allowed some direct contracting of nurses by families to address access to nurses. For example, New York regulations allow RNs and LPNs to provide services directly under certain circumstances. See 18 N.Y.C.R.R. & R. § 505.8(d)(3).

- c. Allow both RN/LPN parent/caregivers coordinating their own nursing under (a) above, and parent/caregivers obtaining care through a nurse supervisors under (b) above, who live outside Cook, Will, Kane, or DuPage Counties to request the higher reimbursement rate for in home shift nursing following the same process available to nursing agencies working outside those four counties.**

Except in the four counties as described below, the approved in-home shift nursing rate for Class Members is \$28.75. Parents/caregivers with direct contract nurses described above whose child does not reside in Cook, DuPage, Kane, or Will Counties should be allowed to request the

higher in-home shift nursing rate for those counties in the same manner as do nursing agencies in those areas.

Currently, Defendant pays a higher reimbursement rate by geographic region to reflect competition for nurses, and selectively pays this higher rate outside those geographic regions upon request for higher rates due to lack of staffing. Recognizing the market demands of Cook and the collar counties, the Department has a tiered rate system, under which reimbursement for in-home shift nursing is higher in Cook, Will, Kane, and DuPage Counties. 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**

<b>Defendant’s Rate Structure</b>	<b>Applicability of Fee Schedule</b>	<b>Services Provided by a RN (Registered Nurse)</b>	<b>Services Provided by an LPN (Licensed Practical Nurse)</b>
<b>“Tier 1” Rates</b>	<ul style="list-style-type: none"> <li>▪ Fee Schedule for children residing in Cook, DuPage, Kane and Will counties.</li> <li>▪ Apparently authorized on a case-by-case basis for children outside of these counties.</li> </ul>	\$35.03	\$31.14
<b>“Tier 2” Rates</b>	<ul style="list-style-type: none"> <li>▪ Fee schedule for children residing outside of Cook, DuPage, Kane and Will counties.</li> </ul>	\$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* ECF No. 105-10, (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. . . .”). This proposal would allow parents/caretakers who directly contract their nurses to request the same case-by-case rate adjustment that the Department currently offers to nursing agencies.

- d. Defendant shall require nursing agencies to pay no less than ninety percent of the hourly rate directly to nurses serving Class Members. Defendant will provide each nursing agency with an annual fee for administrative costs based on the number of hours of in-home shift nursing provided to Class Members by nurses placed through and supervised by the agency.**

The Defendant neither demands compliance from nursing agencies in staffing Class Members’ cases nor does she monitor the percentage of the in-home shift nursing rate that nursing agencies pass along to nurses. This lack of oversight creates an incentive for nursing agencies to keep significant and varying percentages of the hourly nursing rate themselves, with no fear that their failure to attract nurses will jeopardize their business with the state. Setting a floor for pass-through of nursing rates will allow agencies to be more competitive with the pool of other nurse employers in the state. *See* ECF No. 100-6 (*Market Analysis Report* from Advantage Nursing). Providing an administration fee to the agencies will help compensate for revenue lost through this shift and further level the playing field among nursing agencies.

**e. Require Defendant to provide reports every two months on staffing levels for all Plaintiffs and Class Members as required in the prior Orders for Preliminary Injunction.**

Defendant's monthly reports regarding the selected children will fail to demonstrate whether the additional affirmative steps proposed here are improving staffing class-wide and bringing her in compliance with the Courts' Orders. This Court previously ordered Defendant to provide reports for staffing for the entire class and it is this level of data that is required to adequately analyze the effectiveness of any future affirmative steps. *See* ECF No. 42, ECF No. 79 at pp. 7-8. Plaintiffs request that the Court reinstate this earlier requirement for regular class-wide staffing reports.

**f. Place the in-home shift nursing program under the authority of a receiver to ensure Defendant is timely in her enactment of this order and in her communication with Plaintiffs' and Class Members' Counsel.**

Plaintiffs continue to note that placing the in-home shift nursing services program in receivership could address the ongoing deficiencies in staffing for families and effectuate this Court's Preliminary Injunction orders, remediating the year and a half delay in relief since the first Order was entered. Receiverships are a recognized tool for taking over governmental agencies that could not or would not comply with the law. *See Morgan v. McDonough*, 540 F.2d 527, 532-34 (1st Cir. 1976) (appointing temporary receivership of South Boston High School); *Dixon v. Barry*, 967 F. Supp. 535 (D.D.C. 1997) (appointing receiver for Commission on Mental Health Services); *Gary W. v. Louisiana*, Civ. A. No. 74-2412, 1990 WL 17537, at \*28-33 (E.D. La. Feb. 26, 1990) (appointing receiver to oversee state children's services agencies where court's mandates were met with "a dismal record of non-compliance and management by crisis"); *Turner v. Goosby*, 255 F. Supp. 724, 730 (S.D. Ga. 1966) (appointing state superintendent as receiver for county school system).

The use of receivers to reform public institutions has spread to analogous contexts in the civil rights arena. *See Shaw v. Allen*, 771 F. Supp. 760, 762 (S.D.W.Va. 1990) (“Where more traditional remedies, such as contempt proceedings or injunctions, are inadequate under the circumstances, a court acting with its equitable power is justified, particularly in aid of an outstanding injunction, in implementing less common remedies, such as a receivership, so as to achieve compliance with a constitutional mandate.”); *Newman v. State of Ala.*, 466 F. Supp. 628, 635-36 (1979) (appointing receiver for Alabama State Prisons, stating: “The extraordinary circumstances of this case dictate that the only alternative to non-compliance with the Court’s orders is the appointment of a receiver for the Alabama prisons.”). Given Defendant’s reticence to implement new solutions or even engage in discussions with Plaintiffs’ Counsel, a receiver is appropriate in this case.

#### **V. Conclusion.**

Plaintiffs have shown that Defendant’s systemic failure to provide medically necessary in-home shift nursing services at approved levels violates the federal Medicaid Act and the ADA and Section 504. Plaintiffs seek a court order that modifies the preliminary injunction to require the following relief.

WHEREFORE, the Plaintiffs and Class request that the Court grant the following relief:

- A) Allow parents or caregivers of class members who are either a Registered Nurse (RN) or Licensed Practical Nurse (LPN) to identify and contract directly with nurses at the nursing rate which is paid by Defendant to the nursing agencies to provide care for their children and to supervise the care provided by those nurses for their children.
- B) Allow parents or caregivers of class members who are neither an RN nor LPN, and whose median staffing levels have been less than 80% of the level authorized by the Department, during any 12 of the 20 weeks prior to the request, to identify and contract directly with RNs or LPNs to provide in-home shift nursing care at the nursing rate which is paid by Defendant to the nursing agencies. The Defendant will contract directly with nurse supervisors

to supervise the nursing care provided to class members and the cost of this service will be paid by the Defendant and will not be charged against the nursing monthly budget of the class members for in-home shift nursing services.

- C) Allow both RN/LPN parent/caregivers coordinating their own nursing under (a) above, and parent/caregivers obtaining care through a nurse supervisors under (b) above, who live outside Cook, Will, Kane, or DuPage Counties to request the higher reimbursement rate for in home shift nursing following the same process available to nursing agencies working outside those four counties.
- D) Defendant shall require nursing agencies to pay no less than ninety percent of the hourly rate directly to nurses serving Class Members. Defendant will provide each nursing agency with an annual fee for administrative costs based on the number of hours of in-home shift nursing provided to Class Members by nurses placed through and supervised by the agency.
- E) Require Defendant to provide reports every two months on staffing levels for all Plaintiffs and Class Members as required in the prior Orders for Preliminary Injunction.
- F) Place the in-home shift nursing program under the authority of a receiver to ensure Defendant is timely in her enactment of this order and in her communication with Plaintiffs' and Class Members' Counsel.
- G) That this Court waives or excuses the filing of any security or bond by the Plaintiffs and Class.
- H) Award such other relief as the Court deems just and appropriate.

Respectfully submitted,

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

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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 Memorandum of Law in Support of Plaintiffs' Motion to Modify the Preliminary Injunction to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 28th day of November, 2017.

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