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

O.B. by and through his parents GARLAND BURT and JULIE BURT, **C.F.** by and through his mother, KRISTEN FISHER, **J.M.** and **S.M.** by and through their parents, DAN MCCULLOUGH and MICHELE MCCULLOUGH, **Sa.S.** and **Sh.S.**, by and through their mother, SHEILA SCARO individually and on behalf of a class,	)	
Plaintiffs,	)	No. 15-CV-10463
vs.	)	Judge: Charles P. Korocas
FELICIA F. NORWOOD, in her official capacity as Director of the Illinois Department of Healthcare and Family Services,	)	Magistrate: Michael T. Mason
Defendant.	)	

PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF CLASS CERTIFICATION

Now comes the Plaintiffs, by and through their attorneys, Robert H. Farley, Jr., Ltd., the Legal Council for Health Justice, and the National Health Law Program, and file this Memorandum of Law in support of the Plaintiffs' Motion for Class Certification as follows:

I. INTRODUCTION

The Plaintiffs and Class have all been found eligible by the Defendant for Medicaid in-home shift nursing services which will allow either a registered nurse (RN) or a licensed practical nurse (LPN) to provide these services in the child's home. Yet they do not receive these nursing services because the Defendant has failed to "arrang[e] for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment [nursing services]" as mandated by the federal Early and Periodic Screening, Diagnostic and Treatment (EPSDT)

provisions of the Medicaid Act pursuant to 42 U.S.C. Sec. 1396a(a)(43)(C). The Defendant also violates the Americans with Disabilities Act (ADA), the Rehabilitation Act and other provisions of the Medicaid Act by failing to arrange for the delivery of in-home shift nursing services, which results in the Plaintiffs and Class being either institutionalized or facing the serious risk of institutionalization. The Defendant has failed the Plaintiffs and Class of children with severe disabilities. As a result of the Defendant's systemic policies, practices, and procedures, the Plaintiffs and Class members do not receive adequate and necessary in-home shift nursing services.

II. CLASS DEFINITION

The Plaintiffs seek certification as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The proposed Class is defined as follows:

> 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 who are enrolled in a Medicaid waiver program, such as the Medically Fragile Technology Dependent (MFTD) Waiver program, and children enrolled in the non-waiver Medicaid program, commonly known as the Nursing and Personal Care Services (NPCS) program.

III. ARGUMENT

To be entitled to class certification, a plaintiff must satisfy each requirement of Rule 23(a) - - numerosity, commonality, typicality, and adequacy of representation - - as well as one of the subsections of Rule 23(b). *Messner v. Northshore Univ. HealthSys.*, 669 F.3d 802, 811 (7th Cir. 2012) (citation omitted). "A class may be certified only if 'the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.' " *Creative Montessori Learning Ctrs., v. Ashford Gear LLC,* 662 F.3d 913, 916 (7th Cir. 2011) (quoting *Wal-Mart Stores, Inc. v. Dukes* __U.S. __, 131 S. Ct. 2541, 2551 (2011)). The named plaintiff

bears the burden of showing by a preponderance of evidence that all of Rule 23's requirements are satisfied. *See Comcast Corp. v. Behrend,* ___U.S. ___, 133 S. Ct. 1426, 1432 (2013); *Messner,* 669 F.3d at 811. All four 23(a) prerequisites are fully satisfied here, and this case falls squarely under the 23(b)(2) category.

Additionally, civil rights cases alleging discriminatory policies or practices are "by their very nature" class actions, provided they meet the other requirements of Rule 23(a). *General Telephone Co. of Sw., v. Falcon,* 457 U.S. 147, 157 (1982); *see also Wal-Mart Stores, Inc. v. Dukes,* __ U.S.__, 131 S. Ct, at 2557 (stating that civil rights cases against parties charged with unlawful, class-based discrimination are "prime examples" of what Fed. R. Civ. P. 23 (b)(2) is meant to capture.). Class certification is routinely allowed in civil rights cases alleging states' violations of the community integration mandates of the Americas with Disabilities Act. *See Colbert v. Blagojevich,* No. 07 C 4737, 2008 U.S. Dist. LEXIS 75102, *28 (N.D. Ill. Sept. 29, 2008) (J. Lefkow) (certifying class consisting of "all Medicaid-eligible adults with disabilities in Cook County, Illinois, who are being, or may in the future be, unnecessarily confined to nursing facilities and who, with appropriate supports and services, may be able to live in a community setting").

As set forth below, the Class meets the Rule 23(a) prerequisites of numerosity, typicality, commonality, and adequacy of representation. They also meet the Rule 23(b)(2) standard. Notably, the claims raised by this case are similar to those previously raised against the Defendant by Medicaid-enrolled children in Illinois who required in-home and community based care. In these cases, courts in the Northern District of Illinois granted class certification for similarly defined classes. As occurred in those cases, Plaintiffs ask the Court to Grant their

Motion for Class Certification. For example, in *Hampe v. Hamos,* the District Court certified the following class:

> All persons who are enrolled or will be enrolled or were enrolled in the State of Illinois' Medically Fragile, Technology Dependent Medicaid Waiver Program (MF/TD) and when they obtain the age of 21 years are subjected to reduced Medicaid funding which reduces the medical level of care which they had been receiving prior to 21 years.
> *Hampe v. Hamos,* 2010 U.S. Dist. LEXIS 125858, * 19 (N.D. Ill. 2010).

Similarly, in *N.B. v. Hamos,* the District Court certified the following class:

> 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 756, 770 (N.D. Ill. 2014).

A. Plaintiffs Have Established The Prerequisites For A Class Action Pursuant To Rule 23(a)

1. Numerosity

The Class is so numerous that joinder of all persons is impracticable. There are approximately 1,200 children eligible to receive in-home shift nursing services through the Defendant's administration of two Medicaid programs. (Pls. Mot. for Class Certif. at 2). The Class members have limited financial resources and are unlikely to institute individual actions.

Courts have ruled that a class action can proceed with a group which would encompass the size of the persons enrolled in the Medically Fragile Technology Dependent (MFTD) Waiver program and Nursing and Personal Care Services (NPCS) program. *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)).

Courts have observed, moreover, that a "relatively small group may form a class if other considerations make joinder impracticable." *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996) (quoting *Patrykus v. Gomilla*, 121 F.R.D. 357, 361 (N.D. Ill. 1988)). These other considerations, all of them present here, include judicial economy, the ability of class members to initiate individual suits, geographic dispersion of the potential class members, the type of relief sought by the class, and the practicability of relitigating a common core of issues. *See Radmanovich v. Combined Ins. Co. of Am.*, 216 F.R.D. 424, 431 (N.D. Ill. 2003); *Patrykus*, 121 F.R.D. at 360-61; *Riordan v. Smith Barney*, 113 F.R.D. 60, 62 (N.D. Ill. 1986). Citing these considerations, the court in *Bamer v. City of Harvey* held that a class of 13 was sufficiently numerous. 1997 WL 139469, at *3 (N.D. Ill. Mar. 25, 1997). *See also Dale Electronics v. R.D.L. Electronics, Inc.*, 53 F.R.D. 531, 534 (D.N.H. 1971) (citing considerations including geographic dispersement, a single common central issue of law, and increased likelihood of settlement to certify class of 13); *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996) (citing the geographic dispersion of class members and the fact that the issue would resolved by a single legal question to certify a class of 18); *Rosario v. Cook Co.*, 101 F.R.D. 659, 661 (N.D. Ill. 1983) (citing the potential of future class members, the prospective nature of the relief, the reluctance of employees to bring their employers into court, relitigation of common issues, and administrative delay to certify a class of 20). As Medicaid recipients, class members in this case are located throughout the state and do not have the financial means to bring individual lawsuits. *See Fields v. Maram*, 2004 U.S. Dist. LEXIS 16291, *18 ("Because the class members reside throughout the state, and because they are disabled and therefore are often of limited financial resources, joinder would be particularly difficult in this case."). Judicial economy plainly would be served by consolidating the actions of all similarly-situated persons rather than

having them litigate individually. *Arenson v. Whitehall Convalescent & Nursing Home*, 164 F.R.D. 659, 663 (N.D. Ill. 1996).

Case law has also recognized that courts should make "common sense assumptions" to support a finding of numerosity. *Grossman v. Waste Mgt., Inc., 100 F.R.D. 781, 785 (N.D. Ill. 1984).* Rule 23(a) requirements, including numerosity, should be construed liberally in civil rights actions. *Jones v. Diamond*, 519 F.2d 1090, 1099-1100 (5th Cir, 1975); *Harris v. General Development Corp.*, 127 F.R.D. 655, 660 (N.D. Ill. 1989). Accordingly, in this case, numerosity is satisfied .

In the event that the Defendant opposes class certification on numerosity, the Plaintiffs request that they be permitted discovery on the issue. At the time of the filing of the Complaint for Declaratory and Injunctive Relief, the Defendant failed to arrange for the delivery of in-home shift nursing services to the 4 named Plaintiffs. As set forth in the Complaint, upon the information and belief of Julie Burt, the mother of O.B., there are 4 other children like O.B. who are currently unable to be discharged from the Children's Hospital of Illinois due to the unavailability of in-home shift nursing services. Pltfs.s.' Compl. para. 5. Moreover, attached to the Motion for Class Certification, are Declarations identifying another 2 children for whom the Defendant failed to arrange for the delivery of in-home shift nursing services.

2. Commonality

Rule 23(a) is satisfied by "'[e]ven a single [common] question." *Jamie S. v. Milwaukee Public Schools*, 668 F.3d 481, 497 (7th Cir. 2013). "A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2)." *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). *See Equal Rights Center v. Kohl's Corp.*, 2015 WL 3505179 at *4 (N.D. Ill. June 3, 2015) (holding "requirement is usually met where class claim

arises out of some form of standardized conduct by the Defendant); *see also Lightbourn v. Co. of El Paso*, 118 F.3d 421, 425 (5th Cir. 1997) ("The commonality test is met when there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.") (citations omitted); *Baby Neal v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994) (commonality met where "named plaintiffs share at least one question of fact or law with the grievances of the prospective class"); *Marisol A. v. Guiliani*, 126 F.3d 372, 375 (2d Cir. 1997) (class must "share a common question of law or fact").

In fact, "[w]hen the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected." *Newburg on Class Actions*, Sec. 3.10, p 3-51. So long as one issue of law or fact is common to the class, "the presence of individual questions will not prevent satisfaction of the Rule 23(a)(2) prerequisite." *Id*. at p. 3-60. *See also N.B. v. Hamos*, 26 F. Supp. 3d 756, 773 (N.D. Ill. 2014) (stating that when there are allegations of a "systemic failure" or an "illegal policy … the policy is the 'glue' that unites otherwise individualized claims).

The Supreme Court recently explained the commonality requirement in *Wal-Mart Stores, Inc. v. Dukes*. Plaintiffs' claims must

> depend upon a common contention. . . of such a nature that it is capable of classwide resolution – which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.

Wal-Mart Stores, Inc., 131 S. Ct. at 2551. The claims of the Class members raise common questions of law and fact. The factual questions common to the Class include what system-wide policies, practices, and procedures were instituted or permitted by the Defendant and resulted in her failure to arrange for Medicaid-covered, medically necessary in-home nursing services.

These legal questions are common to both non-waiver and waiver enrollees in the Medicaid program. The legal questions common to the Plaintiffs and all Class members include:

(a) Whether the Defendant has failed to "arrange for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment [in-home shift nursing services]" to the Plaintiffs and Class as mandated by the federal Early and Periodic Screening, Diagnostic and Treatment (EPSDT) provisions of the Medicaid Act pursuant to 42 U.S.C. Sec. 1396a(a)(43)(C) and 42 U.S.C. Sec. 1396d(r)(5);

(b) Whether the Defendant has failed to furnish medical assistance with reasonable promptness to the Plaintiffs and Class, who are eligible children with disabilities, pursuant to 42 U.S.C. Sec. 1396a(a)(8);

(c) Whether the Defendant violated the ADA and/or the Rehabilitation Act when the Defendant failed to arrange for Medicaid-covered, medically necessary in-home nursing services;

(d) Whether the Defendant violated the ADA and/or the Rehabilitation Act by failing to assure that in-home shift nursing services are administered to the Plaintiffs and Class in the most integrated setting appropriate to their needs; and

(e) Whether the Defendant violated the ADA and/or the Rehabilitation Act when the Defendant failed to make reasonable modifications to the existing Medicaid benefit which would result in the availability of in-home shift nursing services.

These questions rest upon a common contention – that Defendant's system-wide failure to arrange for in-home nursing services has deprived Plaintiffs of the nursing services they need and violated the Medicaid Act. Those same system-wide failures violated the ADA and the

Rehabilitation Act. Similar to the certified class in *N.B.*, the Plaintiffs and Class allege that the Defendant provides inadequate shift nursing services outside of institutional settings, failing to arrange for medically necessary, in-home services. *See N.B.*, 26 F. Supp. 3d at 772-73. Accordingly, this Court should find that commonality exists.

3. Typicality

Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. at 59 (1982). When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is met irrespective of varying fact patterns which underlie individual claims. *Id*; *see also Robidoux v. Celani*, 987 F.2d 931, 936-37 (2d Cir. 1998); *Baby Neal,* 43 F.3d at 56. Courts should look to the elements of the cause of action that the class representative must prove in order to establish the defendant's liability. If they are substantially the same as those needed to be proved by the class members' claims, the representative's claim is typical. *Johns v. DeLeonardis*, 145 F.R.D. 480, 483 (N.D. Ill. 1992).

As with commonality, typicality does not require that all class members suffer the same injury as the named plaintiff. "Instead, we look to the defendant's conduct and the plaintiff's legal theory to satisfy Rule 23(a)(3)." *Rosario,* 963 F.2d at 1018; *see also De La Fuente v. Stokely-Van Camp*, 713 F.2d 225, 232 (7th Cir. 1983) (typicality satisfied regardless of whether "there are factual distinctions between the claims of the named plaintiffs and those of other class members. Thus, similarity of legal theory may control even in the face of differences of fact.");

N.B. v. Hamos, 2014 U.S. Dist. LEXIS 18232, *37 (N.D. Ill. 2014) ("If the services are 'medically necessary,' the origin of the condition is irrelevant.").

The Plaintiffs' claims are typical of the class members' claims. Plaintiffs and Class members all have been found eligible by the Defendant for in-home shift nursing services. Plaintiffs O.B., C.F., J.M., S.M., and Sa.S. are enrolled in one of the Defendant's waiver programs, the Medically Fragile Technology Dependent (MFTD) Waiver program. Plaintiff Sh..S. is enrolled not enrolled in a waiver program. However, the Defendant acknowledges that in-home shift nursing services are medically necessary for all named Plaintiffs and Class members, including Sh.S. Despite these facts, the Defendant has failed to "arrang[e] for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment [nursing services]" as mandated by the federal EPSDT provisions of the Medicaid Act, pursuant to 42 U.S.C. Sec. 1396a(a)(43)(C) and failed to provide services with reasonable promptness as required by 42 U.S.C. Sec. 1396a(a)(8).

The Plaintiffs and Class members are qualified persons with disabilities under the ADA and Section 504 of the Rehabilitation Act and are entitled to medically necessary in-home skilled nursing services pursuant to EPSDT.

4. Adequacy of representation

The two factors that are universally recognized as the guidelines for adequate representation are: 1) the representative must not have interests antagonistic to or conflicting with the interests of the class, and 2) the representative must appear able to prosecute the action vigorously through qualified counsel. *Newberg on Class Actions*, Sec. 3.22, p. 3-126 (3d ed. 1992). *See also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283,312 (3rd Cir. 1998); *Amchen Products, Inc. v. Windsor*, 521 U.S. 591, 626, n. 20 (1997); *In*

re United Energy Corp. Solar Power Modules Tax Shelter Invs. Secs. Litig., 122 F.R.D. 251, 257 (C.D. Cal. 1988) (holding that the plaintiffs were adequate representatives for the class where they expressed an interest in and understanding of the case and participated in depositions). The burden of proving "the class representative's adequacy is not heavy." *Lacy v. Dart*, 2015 WL 1995576 (N.D. Ill. 2015).

The Plaintiffs are adequate representatives of the putative class. The ability of the Plaintiffs to represent the class goes to whether they have "sufficient interest in the outcome to insure vigorous advocacy" or any interests that would be "antagonistic to the interests of the class." *Riordan v. Smith Barney*, 113 F.R.D. 60, 64 (N.D. Ill. 1986). Courts may deny certification based on grounds of antagonism only if that antagonism "goes to the subject matter of the litigation." *Id.* Potential conflicts that are remote or speculative will not defeat class certification. *Hispanics United of DuPage County v. Village of Addison, Ill*, 160 F.R.D. at 689 (N.D. Ill. 1995).

In this case, the Plaintiffs' interests are entirely coextensive with those of the class. The Plaintiffs and the putative class share the same claim to prevent the Defendant from eliminating or reducing in-home shift nursing services which are medically necessary. The Plaintiffs and putative class share the same Medicaid Act claims. Additionally, the Plaintiffs and Class share the same ADA and Rehabilitation Act claims. There are no conflicts or antagonism, whether actual or apparent, between the named Plaintiffs and the Class.

Counsel for the Plaintiffs are experienced civil rights attorneys with experience in complex class action litigation. Robert H. Farley, Jr.[6] has been appointed class counsel in *N.B. v.*

[6] The United States of America stated, "Robert Farley is an experienced advocate who previously has represented clients in both title II and class actions." *Hampe v. Hamos*, No. 10-3121 (N.D. Ill. 2010) Doc. 26 at page 11, fn. 12.

Hamos, No. 11-6866 (Judge Tharp); *Hampe v. Hamos*, No. 10-3121 (Judge Hibbler); *Bullock v. Sheahan*, No. 04 C 1051 (Judge Bucklo); *Streeter v. Sheriff of Cook County*, No. 08-732 (Judge Castillo); *Phipps v. Sheriff of Cook County*, No. 07-3889 (Judge Bucklo); and *Gary v. Sheahan*, No. 96 C 7294 (Judge Coar). Mary Denise Cahill has been appointed class counsel in *N.B. v. Hamos*, No. 11-6866 (Judge Tharp); and *Hampe v. Hamos*, No. 10-3121 (Judge Hibbler) and *Watson v. Sheahan* (Judge Bucklo). Michelle N. Schneiderheinze has been appointed class counsel in *N.B. v. Hamos*, No. 11-6866 (Judge Tharp). Thomas Yates has been appointed class counsel in *Memisovski v. Maram*, No. 92-1082 (Judge Lefkow); *Shvartsman v. Apfel*, No. 97-5229 (Judge Conlon); *Chappell by Savage v. Bradley*, No. 91-4572 (Judge Leinenweber); and *Boatman v. Sullivan*, No. 78-299 (Judge Williams). Jane Perkins has extensive experience litigating on behalf of persons with disabilities. *See St. Louis Effort for AIDS v. Huff*, 782 F.3d 1016 (8th Cir. 2015); *Wilson v. Gordon*, 2014 WL 4347807 (M.D. Tenn. Sept. 2, 2014); *Davis v. Shah*, 2013 WL 6451176 (W.D. N.Y. Dec. 9, 2013); *K.C. v. Wos*, 716 F.3d 107(4th Cir. 2013) and *Wood v. Betlach & Sebelius*, 2013 WL 474369 (D. Ariz. Feb. 7, 2013). Sarah Somers has extensive experience litigating on behalf of persons with disabilities. *K.D. v. Winterer*, Case No. CI12 2009 (Neb. Dist. Ct.); *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2012); *Van Meter v. Harvey*, 272 F.R.D. 274 (D. Me. 2011) and *Brantley v. Maxwell-Jolly*, 656 F. Supp. 2d 1161 (N.D. Cal. 2009).

B. Plaintiffs Meet The Requirements Of Rule 23(b)(2)

Plaintiffs meets the requirements of Rule 23(b)(2), which allows courts to certify a class if the defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Civil rights cases against parties charged with broad-based

discrimination are "prime examples" of actions under Rule 23(b)(2). *Amchem Products*, 521 U.S. at 613.

Yet, the Defendant's systems, policies, and practices fail to arrange for adequate in-home skilled nursing services for the Plaintiffs and Class. The plight of Plaintiff O.B. exemplifies the Defendant's systemic failure. In a letter dated, April 7, 2015, O.B.'s care coordinator for in-home nursing services, Rebecca Robards, informed the Defendant that:

> O.[B.]'s resource allocation is $19,178 per month. O.[B.] has been a waiver recipient since 1202/2014 but has remained hospitalized. … Accurate Home Care is the nursing agency provident services for O.[B.]. The nursing agency has not been able to fully staff the case, so O.[B.] is still residing at Children's Hospital of Illinois (CHOI) in Peoria. O.[B.] was scheduled to be discharged to home on 3/23/2015. Staffing from the nursing agency was not enough that it was felt to be safe for O.[B.] to go home. … O.[B.] remains hospitalized.

See Exhibit "A", page 1. Though notified of the inadequacy of O.B.'s nursing services and his resulting institutionalization six months ago, the Defendant's failure to arrange for medically necessary in-home shift nursing services still persist.

Setting the aside the irreparable harm to Plaintiff O.B. and his family, the institutionalization of O.B. highlights additional flaws in the Defendant's practices. Instead of arranging for the $19,178 per month in home care that Plaintiff O.B. and his family are desperate to receive, the Defendant pays almost four times that monthly amount (approximately $78,000 per month) for O.B.'s continued institutionalization. *See* Pls. Compl. at para. 5. The Plaintiff O.B.'s mother believes that four other children are institutionalized at Children's Hospital of Illinois, because the Defendant has not arranged for adequate in-home shift nursing services. *Id*. Yet, the Defendant's continues on with the same flawed practices, causing Plaintiff O.B. and similarly situated Class members to remain institutionalized. Furthermore, the Plaintiffs C.F.,

J.M.,S.M., Sa. S. and Sh. S. have remained at the serious risk of institutionalization and medical complications for months. *See* Pls. Compl. at para. 7-12, 97-173. The Defendant failed to correct its flawed policies, practices, and procedures.

This case is exemplary of a Rule 23(b)(2) action because the Defendant's policies and practices affect all members of the class as well as the named Plaintiff, the remediation of which is well-suited for and requires declaratory and injunctive relief. Indeed, it is commonplace for courts to certify classes under Rule 23(b)(2) in cases where Medicaid recipients seek to enforce their rights to benefits. *See Doe by Doe, v. Chiles*, 136 F.3d 709, 712 (11th Cir. 1998); *Marisol v. Guiliani,* 126 F.3d 372, 378 (2d Cir. 1997); *Baby Neal,* 43 F.3d at 64; *Hampe v. Hamos,* 2010 U.S. Dist. LEXIS 125858, * 19 (N.D. Ill. 2010)*; Boulet v. Cellucci,* 107 F. Supp. 2d 61, 81 (D. Mass. 2001); *Benjamin H. v. Ohl,* 1999 U.S. Dist. LEXIS 22454, **11-12 (S.D.W.V. Oct. 8, 1999); *Memisovski v. Maram,* 2004 U.S. Dist. LEXIS 16722 (N.D. Ill. 2004); *Fields v. Maram,* 2004 U.S. Dist. LEXIS 16291 (N.D. Ill. 2004). *See also Bzdawka v. Milwaukee Co.*, 238 F.R.D. 469, 476 (E.D. Wis. 2006) (class of elderly disabled persons in claim under ADA integration mandate). In *N.B. v. Hamos*, "[t]he plaintiffs claim that HFS violates their rights by failing to provide medically necessary treatment. . ." In granting class certification and addressing the requirements of Rule 23(b)(2), the district court stated the following:

> Here, success on the plaintiffs' claims will require policy modifications to properly implement EPSDT and the integration mandate; by their very nature such policy changes are generally applicable, and therefore would benefit all class members. This is consistent with *Dukes'* affirmation of the basic principle that the remedy in a Rule 23(b)(2) class action must be of an "indivisible nature" and provide relief to each member of the class. *See* 131 S. Ct. at 2557.
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> * * *
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> Thus, this case is more closely analogous to *Collins,* in which the Seventh Circuit affirmed the grant of a permanent injunction requiring the State of Indiana to provide Medicaid coverage for medically necessary placement in psychiatric residential treatment facilities. 349 F.3d at 376. In violation

> of the EPSDT mandate, the state had excluded such services. Although *Collins* predates both *Dukes* and *Jamie S.*, it is consistent with those cases because Indiana's exclusion was a system-wide policy of general applicability. So, too, in this case, the plaintiffs allege a failure by the State of Illinois to cover services that are mandatory under the EPSDT program.

N.B., 26 F. Supp. 3d 756 at 774-75. In the instant case, the Plaintiffs claim that the Defendant failed to arrange for the delivery of in-home shift nursing services in violation of EPSDT, ADA, and the Rehabilitation Act. Accordingly, the Plaintiffs have satisfied the requirements of Rule 23(b)(2).

IV. CONCLUSION

Wherefore, for the foregoing reasons, the Plaintiff respectfully request that this Court grant Plaintiffs' Motion for Class Certification and certify the proposed Class.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I, Shannon Ackenhausen, one of the Attorneys for the Plaintiffs, deposes and states that she caused the foregoing Plaintiffs' Memorandum of Law 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 20th day of November, 2015, and will cause the foregoing Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Class Certification, to be served on the named Defendant, by hand delivering a copy to the office of the Defendant, Felicia F. Norwood at 401 S. Clinton, Chicago, Illinois on November 20, 2015

/s/ Shannon Ackenhausen