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16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**

18 I. N., a minor, by and through her mother  
 and *Guardian ad Litem*, Zarinah. F.;  
 19 J. B., a minor, by and through his mother  
 and *Guardian ad Litem*, Alisa. B.,

20 Plaintiffs,

21 v.

22 JENNIFER KENT, Director of the  
 Department of Health Care Services;  
 23 State of California DEPARTMENT OF  
 HEALTH CARE SERVICES,  
 24

25 Defendants.

Case No.: 3:18-cv-3099 WHA

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

CLASS ACTION

Action Filed: May 24, 2018

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1 **I. INTRODUCTION**

2 1. This class action lawsuit seeks declaratory and injunctive relief requiring  
3 Defendants California Department of Health Care Services and its Director, Jennifer Kent,  
4 to arrange for in-home skilled nursing care necessary to meet the undisputed needs of  
5 medically fragile Medi-Cal eligible children under the age of 21 in the most integrated  
6 setting appropriate. Defendants have determined that in-home shift nursing services are  
7 medically necessary for the named Plaintiffs and other Medi-Cal eligible children like  
8 them, but Defendants have failed to arrange for these services as required by federal law.  
9 Defendants' systemic failures have placed Plaintiffs and members of the proposed Class at  
10 serious risk of injury, hospitalization, or institutionalization and, in some instances, have  
11 even resulted in the institutionalization of Class members.

12 2. Plaintiffs I. N. and J. B.<sup>1</sup> and Class members are children under the age of 21  
13 residing in California who are beneficiaries of Medi-Cal, California's Medicaid program, a  
14 state and federally-funded health insurance program for individuals with limited income  
15 and resources. The two named Plaintiffs are dependent on medical technologies for  
16 survival. They cannot feed, dress, bathe, or otherwise take care of themselves. Plaintiffs  
17 are incontinent. Each of them needs care to engage in activities of daily life. Plaintiffs  
18 require in-home skilled nursing services, also known as in-home shift nursing or private  
19 duty nursing, to live safely in their homes and with their families in the community.

20 3. Defendants are responsible for administering the Medi-Cal program, and are  
21 required by federal law to ensure that Plaintiffs and Class members receive all medically  
22 necessary care covered by the Medicaid Act and that they receive this care in the most  
23 integrated setting appropriate.

24 4. The Medicaid Act expressly requires that Defendants provide case  
25 management services and to "arrang[e] for (directly or through referral to appropriate  
26 agencies, organizations, or individuals) corrective treatment" covered by the Early and  
27

28 <sup>1</sup> Plaintiffs and their *Guardians ad Litem* are proceeding pseudonymously as set forth in  
the Court Order dated July 6, 2018. ECF No. 33.

1 Periodic, Screening Diagnostic and Treatment (EPSDT) provisions of the Medicaid Act,  
2 which includes private duty nursing services for Medicaid beneficiaries under the age  
3 of 21. 42 U.S.C. §§ 1396a(a)(43)(C), 1396d(r); 1396d(a)(8) (listing private duty nursing  
4 as covered service); 1396d(a)(19) (listing case management as a covered service).

5 5. Defendants have approved and authorized coverage for in-home skilled  
6 nursing services for Plaintiffs, but Plaintiffs have not been able to receive this medically  
7 necessary care because Defendants have systemically failed to arrange for these nursing  
8 services as mandated by federal law.

9 6. The Medicaid Act also requires that medically necessary medical assistance  
10 be provided with reasonable promptness. 42 U.S.C. § 1396a(a)(8). However, due to  
11 systemic deficiencies in their policies, practices, and procedures, Defendants have failed to  
12 fulfill these legal obligations; therefore, Plaintiffs and Class members have not received  
13 medically necessary services in a timely manner.

14 7. Defendants' deficient policies, practices, and procedures related to  
15 arrangement of in-home skilled nursing services violate not only these provisions of the  
16 Medicaid Act, but also provisions of the Americans with Disabilities Act, 42 U.S.C.  
17 § 12132, and Section 504 of the federal Rehabilitation Act, 29 U.S.C. § 794(a). These  
18 violations have left Plaintiffs and Class members without medically necessary services,  
19 placing Plaintiffs at a serious risk of injury, hospitalization, and institutionalization.

20 8. This class action lawsuit asks the Court to order Defendants to take all steps  
21 necessary to arrange for previously-approved, medically necessary in-home shift nursing  
22 services for Plaintiffs and Class members.

## 23 **II. JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

24 9. This is an action for declaratory and injunctive relief to enforce Plaintiffs'  
25 rights under the EPSDT and reasonable promptness mandate of Title XIX of the Social  
26 Security Act (Medicaid Act); the Americans with Disabilities Act (ADA), 42 U.S.C.  
27 § 12132; and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C.  
28 § 794(a).

1           10.    Jurisdiction is based on 28 U.S.C. §§ 1331 and 1343 for a violation of 42  
2 U.S.C. § 1983, Title II of the ADA, and Section 504.

3           11.    At all times relevant to this action, Defendants have acted under color of  
4 state law.

5           12.    This Court is authorized to award Plaintiffs' requested declaratory,  
6 preliminary, and permanent injunctive relief under 28 U.S.C. §§ 2201-2202, 42 U.S.C.  
7 § 1983, and Fed. R. Civ. P. 65.

8           13.    Venue is proper in the Northern District of California pursuant to 28 U.S.C.  
9 § 1391(b) because the Defendants operate and perform their official duties therein and thus  
10 reside therein for purposes of venue, and because a substantial part of the events and  
11 omissions giving rise to the claims herein occur in counties that are part of the Northern  
12 District of California.

13           14.    Intradistrict Assignment: Pursuant to Local Rule 3-2(d), this action shall be  
14 assigned to the San Francisco Division or the Oakland Division because a substantial part  
15 of the events or omissions which give rise to the claims occurred in Alameda County.

16 **III. THE PARTIES**

17           15.    Plaintiff I. N. is seven years old and is a Medi-Cal beneficiary. As a result of  
18 her medical conditions, her physician has recommended 63 hours per week of Licensed  
19 Vocational Nursing (LVN) skilled nursing at home, and Defendants have authorized 56  
20 hours per week of LVN skilled nursing at home. Because of missed nursing shifts, I. N.  
21 often receives less than 56 hours per week of in-home shift nursing services. She resides  
22 at home with her adoptive parents, two siblings, and two cousins in Castro Valley,  
23 California. Pursuant to Fed. R. Civ. P. 17(c), I. N. brings this action through her mother.

24           16.    Plaintiff J. B. is five years old and is a Medi-Cal beneficiary. As a result of  
25 his medical conditions, Defendants have authorized 135 hours per week of LVN skilled  
26 nursing at home. J. B. only receives about 50-60 hours per week of in-home nursing  
27 services. He resides at home with his parents, older brother, and younger sister in Orange  
28

1 County, California. Pursuant to Fed. R. Civ. P. 17(c), J. B. brings this action through his  
2 mother.

3 17. Each individual Plaintiff is a “qualified person with a disability” within the  
4 meaning of all applicable statutes, including 42 U.S.C. § 12131(2) and 29 U.S.C.  
5 § 705(20)(B).

6 18. Defendant California Department of Health Care Services (DHCS) is the  
7 single state agency responsible for administering California’s Medicaid program, called  
8 “Medi-Cal.”

9 19. Defendant Jennifer Kent is DHCS’ current Director and is sued only in her  
10 official capacity. Director Kent is responsible for directing, organizing, and administering  
11 DHCS’ medical programs and contractual arrangements. Her responsibilities in this role  
12 include the responsibility to ensure DHCS’ compliance with federal and state laws.

13 **IV. CLASS ACTION ALLEGATIONS**

14 20. Plaintiffs bring this action as a statewide class action pursuant to Fed. R. Civ.  
15 P. 23(a) and (b)(2) on behalf of:

16 All Medi-Cal beneficiaries under the age of 21 in California who have been  
17 approved for in-home shift nursing or private duty nursing services by the  
18 Defendants, but are not receiving the nursing services at the level approved  
19 by the Defendants.

20 21. The Class is so numerous that joinder of all persons is impracticable. Upon  
21 information and belief, there are approximately 4,000 children eligible to receive in-home  
22 shift nursing services through the Medi-Cal program, and hundreds, if not thousands, of  
23 them are unable to receive all the in-home shift nursing services they are authorized by  
24 Defendants to receive.

25 22. Plaintiffs and Class members have severe disabilities and limited financial  
26 resources. They are unlikely to institute individual actions.

27 23. The claims of Plaintiffs and Class members raise common questions of law  
28 and fact. The factual questions common to the entire Class include whether Defendants’  
system-wide policies, practices, and procedures have resulted in Medi-Cal beneficiaries

1 under the age of 21 being unable to obtain the levels of Medicaid-covered, medically  
2 necessary in-home shift nursing services they have been approved by Defendants to  
3 receive. The legal questions common to Plaintiffs and all Class members include:

4 (a) Whether Defendants have failed to “arrange for (directly or through referral  
5 to appropriate agencies, organizations, or individuals) corrective treatment [in-home shift  
6 nursing services]” to Plaintiffs and Class members as mandated by the EPSDT provisions  
7 of the Medicaid Act pursuant to 42 U.S.C. § 1396a(a)(43)(C) and 42 U.S.C. § 1396d(r)(5);

8 (b) Whether Defendants have failed to furnish medical assistance with  
9 reasonable promptness to Plaintiffs and Class members pursuant to 42 U.S.C.  
10 § 1396a(a)(8);

11 (c) Whether Defendants have violated the ADA and/or Rehabilitation Act by  
12 failing to arrange for Medicaid-covered, medically necessary in-home shift nursing  
13 services thereby placing them at risk of unnecessary institutionalization;

14 (d) Whether Defendants have violated the ADA and/or Rehabilitation Act by  
15 failing to ensure that all medically necessary in-home shift nursing services are  
16 administered to Plaintiffs and Class members in the most integrated setting appropriate to  
17 their needs;

18 (e) Whether Defendants have violated the ADA and/or the Rehabilitation Act by  
19 failing to make reasonable modifications to their programs and policies, which would  
20 result in the availability of all medically necessary in-home shift nursing services; and

21 (f) Whether Defendants have violated the ADA and/or Rehabilitation Act by  
22 utilizing criteria or methods of administration that have the effect of subjecting Plaintiffs  
23 and Class Members to discrimination on the basis of disability, or defeating or  
24 substantially impairing accomplishment of the objectives of Defendants’ program.

25 24. Plaintiffs’ claims are typical of the Class members’ claims. None of the  
26 Plaintiffs and Class members are receiving in-home shift nursing services at the level that  
27 Defendants found to be medically necessary to correct or ameliorate their conditions.  
28



1           25. Plaintiffs are adequate representatives of the Class because they suffer from  
2 the same deprivations as the other Class members and have been denied the same federal  
3 rights that they seek to enforce on behalf of the other Class members.

4           26. Plaintiffs will fairly and adequately represent the interests of the absent Class  
5 members.

6           27. Plaintiffs' interest in obtaining injunctive relief for the violations of their  
7 rights and privileges are consistent with and not antagonistic to those of any person within  
8 the Class.

9           28. Plaintiffs' counsel are qualified, experienced, and able to conduct the  
10 proposed litigation.

11           29. Prosecution of separate actions by individual Class members would create a  
12 risk of inconsistent or varying adjudication with respect to individual Class members,  
13 which would establish incompatible standards of conduct for the party opposing the Class  
14 or could be dispositive of the interests of the other members or substantially impair or  
15 impede the ability to protect their interests.

16           30. A class action is superior to other available methods for the fair and efficient  
17 adjudication of the controversy in that:

18           (a) A multiplicity of suits with consequent burden on the courts and Defendants  
19 should be avoided; and

20           (b) It would be virtually impossible for all Class members to intervene as  
21 parties-plaintiffs in this action.

22           31. Defendants have acted or refused to act, and continue to act or refuse to act,  
23 on grounds applicable to the Class, thereby making appropriate final injunctive and  
24 declaratory relief with respect to the Class as a whole.

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27 ///

28 ///

1 **V. IN-HOME SHIFT NURSING STATUTORY AND REGULATORY**  
2 **FRAMEWORK**

3 **A. The Medicaid Act and EPSDT**

4 32. The Medicaid Act, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-  
5 1396w-5, establishes a medical assistance program cooperatively funded by federal and  
6 state governments. The purpose of the Medicaid program is to enable states to furnish, as  
7 far as practicable, “medical assistance on behalf of . . . aged, blind or disabled individuals,  
8 whose income and resources are insufficient to meet the costs of necessary medical  
9 services,” and “to help such families and individuals to attain or retain capability for  
10 independence or self-care . . . .” 42 U.S.C. § 1396-1.

11 33. Participation by states in this program is voluntary; however, once a state  
12 elects to participate, it must comply with all requirements of the federal Medicaid Act and  
13 its implementing regulations.

14 34. California has elected to participate in and receive federal funding through  
15 the Medicaid program. Its Medicaid program, Medi-Cal, is codified at California Welfare  
16 & Institutions Code §§ 14000 *et seq.* with implementing regulations found in 22 California  
17 Code of Regulations §§ 51000 *et seq.*

18 35. States participating in the Medicaid program must designate a single state  
19 agency to administer or supervise the administration of the Medicaid program and ensure  
20 the program complies with all relevant laws and regulations. *See* 42 U.S.C. § 1396a(a)(5);  
21 *see also* 42 C.F.R. § 431.10 (2013).

22 36. Defendant DHCS is the single state agency that administers Medi-Cal. *See*  
23 Cal. Welf. & Inst. Code § 14100.1. As its Director, Defendant Kent “shall have those  
24 powers and duties necessary to conform to requirements for securing approval of a state  
25 [Medicaid] plan under the provisions of the applicable federal law.” Cal. Welf. & Inst.  
26 Code § 14100.1; *see also* Cal. Welf. & Inst. Code § 14154(d) (the “department is  
27 responsible for the Medi-Cal program in accordance with state and federal law”). These  
28 duties are non-delegable. *See, e.g.,* 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10 (2013).

1           37.     Medi-Cal does not itself provide health care services to beneficiaries, nor  
2 does Medi-Cal provide those beneficiaries with money to purchase health care services  
3 directly. Rather, Medi-Cal is a vendor payment program, wherein DHCS, or managed  
4 health care organizations with whom DHCS contracts, reimburse participating providers—  
5 including in-home shift nursing providers—for the services they provide to Medi-Cal  
6 recipients.

7           38.     Each state’s Medicaid program must make medical assistance available  
8 “with reasonable promptness to all eligible individuals.” 42 U.S.C. § 1396a(a)(8). “The  
9 term ‘medical assistance’ means payment of part or all of the cost of the . . . care and  
10 services or the care and services themselves, or both.” 42 U.S.C. § 1396d(a).

11           39.     States must assure that Medicaid services will be administered and provided  
12 consistent with the best interests of recipients. *See* 42 U.S.C. § 1396a(a)(19).

13           40.     Federal law requires states participating in Medicaid to cover certain  
14 mandatory services. One mandatory service is EPSDT for children under age 21. *See* 42  
15 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r).

16           41.     EPSDT requires that any of the services that are covered under 42 U.S.C.  
17 § 1396d(a) must be provided if they are “necessary health care, diagnostic services,  
18 treatment and other measures . . . to correct or ameliorate defects and physical and mental  
19 illnesses and conditions . . . regardless of whether or not such services are covered” for  
20 adults. 42 U.S.C. § 1396d(r)(5). Services must be covered if they correct, compensate for,  
21 improve a condition, or prevent a condition from worsening, even if the condition cannot  
22 be prevented or cured. U.S. Dep’t of Health & Human Servs., Ctrs. for Medicare &  
23 Medicaid Servs. (CMS), *EPSDT: A Guide for States: Coverage in the Medicaid Benefit for*  
24 *Children and Adolescents* at 10 (June 2014),  
25 [https://www.medicaid.gov/medicaid/benefits/downloads/epsdt\\_coverage\\_guide.pdf](https://www.medicaid.gov/medicaid/benefits/downloads/epsdt_coverage_guide.pdf).

26           42.     Private duty nursing is a service category listed under Section 1396d(a);  
27 accordingly, the EPSDT benefit includes in-home shift nursing necessary to ameliorate,  
28 correct, or maintain a child’s condition. *See* 42 U.S.C. § 1396d(a)(8).

1           43. Private duty nursing is defined as “nursing services for recipients who  
2 require more individual and continuous care than is available from a visiting nurse or  
3 routinely provided by the nursing staff of the hospital or skilled nursing facility . . . .”  
4 42 C.F.R. § 440.80 (2012).

5           44. Private duty nursing must be provided by a registered nurse (RN) or a  
6 licensed practical nurse (LPN). *See* 42 C.F.R. § 440.80 (2012). LPNs are also referred to  
7 as LVNs. RNs and LVNs are licensed to provide skilled nursing care in many settings  
8 including hospitals. *See* 42 C.F.R. § 409.31(a) (2005); *see also* 22 C.C.R. §§ 70055(a)(16)  
9 & 70217(a).

10           45. Case management, including Targeted Case Management, is a service  
11 category listed in the federal Medicaid Act. 42 U.S.C. §§ 1396d(a)(19), 1396n(g),  
12 1396n(c)(4)(B); 42 C.F.R. § 440.169(a), (b) (2009). Federal Medicaid regulations define  
13 case management, *inter alia*, as the development of a specific plan of care, referral to  
14 services, scheduling appointments, and monitoring and follow-up. 42 C.F.R.  
15 § 440.169(d)(1)-(4) (2009). Monitoring and follow-up activities are meant to ensure that  
16 the plan of care is implemented and services are being furnished in accordance with the  
17 care plan. 42 C.F.R. § 440.169(d)(4) (2009).

18           46. The EPSDT mandate requires Defendants to “provide for . . . arranging for  
19 (directly or through referral to appropriate agencies, organizations, or individuals)  
20 corrective treatment the need for which is disclosed by such child health screening  
21 services.” 42 U.S.C. § 1396a(a)(43)(C).

22           47. Defendants “must set standards for the timely provision of EPSDT services  
23 which meet reasonable standards of medical and dental practice. . . and must employ  
24 processes to ensure timely initiation of treatment, if required, generally within an outer  
25 limit of six months after the request for screening services.” 42 C.F.R. § 441.56(e) (2012).

26           48. DHCS is obligated to “design and employ methods to assure that children  
27 receive . . . treatment for all conditions identified as a result of examination or diagnosis.”  
28 CMS, *State Medicaid Manual* § 5310.

1           49. Defendants must “make available a variety of individual and group providers  
2 qualified and willing to provide EPSDT services.” 42 C.F.R. § 441.61(b) (2012).

3           **B. Anti-Discrimination Laws**

4           50. Qualified individuals with disabilities are protected from disability  
5 discrimination, including segregation in institutions, by the Americans with Disabilities  
6 Act (ADA) and Section 504 of the Rehabilitation Act (Section 504).

7           51. In enacting the ADA, Congress found that, “[i]ndividuals with disabilities  
8 continually encounter various forms of discrimination, including . . . segregation . . . .”  
9 42 U.S.C. § 12101(a)(5). Title II of the ADA provides that “no qualified individual with a  
10 disability shall, by reason of disability, be excluded from participation in or be denied the  
11 benefits of services, programs, or activities of a public entity or be subjected to  
12 discrimination by such entity.” 42 U.S.C. § 12132. Section 504 imposes the same  
13 prohibition on programs or activities that receive federal funds. *See* Section 504, 29  
14 U.S.C. §§ 794-794a.

15           52. Regulations implementing Title II of the ADA provide: “[a] public entity  
16 shall administer services, programs, and activities in the most integrated setting  
17 appropriate to the needs of qualified individuals with disabilities.” *See* 28 C.F.R.  
18 § 35.130(d) (2016); *see also* Section 504, 29 U.S.C. §§ 794-794a; 28 C.F.R. § 41.51(d)  
19 (1981). Further, “[t]he most integrated setting appropriate to the needs of a qualified  
20 individual with a disability means a setting that enables individuals with disabilities to  
21 interact with non-disabled persons to the fullest extent possible.” 28 C.F.R. part 35,  
22 App. A (2010).

23           53. The United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527  
24 U.S. 581 (1999) held that the unnecessary institutionalization of individuals with  
25 disabilities is a form of discrimination under Title II of the ADA. In doing so, the Court  
26 interpreted the ADA’s “integration mandate” as requiring persons with disabilities to be  
27 served in the community when: (1) the state determines that community-based treatment  
28

1 is appropriate; (2) the individual does not oppose community placement; and (3)  
2 community placement can be reasonably accommodated. *Id.* at 607.

3 54. Regulations implementing Title II of the ADA and Section 504 also provide:  
4 “[a] public entity may not, directly or through contractual or other arrangements, utilize  
5 criteria or other methods of administration: (i) That have the effect of subjecting qualified  
6 individuals with disabilities to discrimination on the basis of disability; [or] (ii) That have  
7 the purpose or effect of defeating or substantially impairing accomplishment of the  
8 objectives of the entity’s program with respect to individuals with disabilities . . . .” *See* 28  
9 C.F.R. § 35.130(b)(3) (2016); *see also* 28 C.F.R. § 41.51(b)(3)(I) (1978); 45 C.F.R.  
10 § 84.4(b)(4) (2005).

11 55. ADA regulations further provide: “[a] public entity shall not impose or  
12 apply eligibility criteria that screen out or tend to screen out an individual with a disability  
13 or any class of individuals with disabilities from fully and equally enjoying any service,  
14 program, or activity, unless such criteria can be shown to be necessary for the provision of  
15 the service, program, or activity being offered.” *See* 28 C.F.R. § 35.130(b)(8) (2016); *see*  
16 *also* 45 C.F.R. § 84.4(b)(1)(iv) (2005).

17 56. As set forth in federal regulations: “[a] public entity shall make reasonable  
18 modifications in policies, practices, or procedures when the modifications are necessary to  
19 avoid discrimination on the basis of disability, unless the public entity can demonstrate that  
20 making the modifications would fundamentally alter the nature of the service, program, or  
21 activity.” *See* 28 C.F.R. § 35.130(b)(7) (2005).

## 22 **VI. FACTUAL ALLEGATIONS**

### 23 **A. DHCS’ Methods of Administering In-Home Nursing for Children**

#### 24 **1. EPSDT**

25 57. Oversight and responsibility for administering the EPSDT benefit in  
26 California, including in-home shift nursing, rests with Defendants.

27 58. The Medi-Cal program provides health care to beneficiaries either on a Fee-  
28 for-Service (FFS) basis or through a Medi-Cal Managed Care Plan (MCP).

1           59. With FFS, the beneficiary seeks care from any provider who is participating  
2 in the Medi-Cal program, willing to treat the particular beneficiary, and willing to accept  
3 reimbursement at a set amount from DHCS for the medical services provided. *See, e.g.*,  
4 Cal. Welf. & Inst. Code § 14016.5. With a MCP model, DHCS contracts with health plans  
5 to provide health care to Medi-Cal beneficiaries within a managed care system. *See* Cal.  
6 Welf. & Inst. Code §§ 14087.3, 14089.

7           60. California Children’s Services (CCS) is a state program administered by  
8 DHCS for Medi-Cal eligible children who have certain diseases or health problems. CCS  
9 is responsible for, *inter alia*, authorizing in-home shift nursing and providing case  
10 management for Medi-Cal eligible children enrolled in that program. Medi-Cal eligible  
11 children who do not qualify for CCS receive authorization for in-home shift nursing  
12 directly through DHCS if they are receiving Medi-Cal on a FFS basis or through their  
13 MCP if they are enrolled in one.

## 14           **2. Home and Community Based Alternatives (HCBA) Waiver**

15           61. California also includes Home and Community-Based Services (HCBS)  
16 “waivers” as part of its Medi-Cal program. These programs provide an expanded array of  
17 Medi-Cal home and community-based services to individuals who would otherwise be  
18 eligible for placement in an institution, including nursing homes and hospitals. *See* 42  
19 U.S.C. § 1396n(c)(1). Thus, waiver enrollees have very high medical needs and serious  
20 disabilities.

21           62. These programs are called waivers because they allow California to  
22 disregard certain Medicaid requirements that would otherwise apply to Medi-Cal services,  
23 which allows the state to have different eligibility requirements and provide a different  
24 scope of services to different categories of beneficiaries.

25           63. In California, one HCBS waiver program is called the Home and Community  
26 Based Alternatives (HCBA) Waiver (formerly known as the Nursing Facility/Acute  
27 Hospital Waiver). The HCBA Waiver provides case management services and  
28 authorization of in-home nursing and attendant care to persons at risk for nursing home or

1 other institutional placement. The HCBA Waiver also provides for “institutional deeming”  
2 Medi-Cal eligibility, which enables children, whose families’ income is too high to  
3 otherwise qualify for Medi-Cal, to receive benefits under EPSDT. The In-Home  
4 Operations (IHO) Branch of Defendant DHCS administers the HCBA Waiver.

5 64. Under the HCBA Waiver, DHCS is responsible for providing case  
6 management, ensuring that medically necessary services are provided in accordance with  
7 approved plans of treatment, and monitoring delivery of Waiver services, including in-  
8 home nursing.

9 65. Regardless of the service delivery model, Defendants authorize Medi-Cal in-  
10 home shift nursing services only after a finding, with the support of treating physicians,  
11 that the services are medically necessary. The treating physician signs a plan of treatment  
12 which supports the medical necessity of the services.

13 66. Once approved, in-home shift nursing services may be provided by a home  
14 health agency or by an Independent Nurse Practitioner (INP).

15 67. A home health agency is a private organization licensed by the State which  
16 recruits, hires, and trains health professionals to provide services such as private duty  
17 nursing; arranges scheduling of nurses; and ensures that staff are in compliance with  
18 licensing and certification requirements. Home health agencies also develop plans of  
19 treatment for review and approval by patients’ physicians and provide services in  
20 accordance with approved plans of treatment.

21 68. An INP is an independent contractor or self-employed LVN or RN who  
22 provides private duty nursing services in the home to Medi-Cal beneficiaries.  
23 Beneficiaries or their families recruit INPs, who then must become approved by DHCS to  
24 provide services—a process which can take several months. INP case managers are  
25 responsible for developing plans of treatment for review and approval by physicians.

26 **B. DHCS’ Systemic Failure to Arrange for In-Home Shift Nursing**

27 69. Although Defendants have approved all Plaintiffs and Class members for in-  
28 home shift nursing services, Defendants have failed to meet their obligation to arrange for



1 these services with reasonable promptness by failing to establish and implement  
2 meaningful and effective policies, practices, and procedures to administer this benefit.

3 70. Defendants fail at a systematic level to provide effective case management  
4 and otherwise arrange for the medically necessary in-home nursing services they have  
5 approved, thereby placing the burden on families to find medically necessary in-home  
6 nursing services and navigate a complex system with little to no support in obtaining  
7 necessary services for their children.

8 71. Rather than assisting families with securing needed nurses, when DHCS has  
9 been informed that a child is not receiving authorized in-home shift nursing hours, it has  
10 instead: provided outdated and geographically irrelevant referral lists of home health  
11 agencies, independent nurse providers, and pediatric day health care centers, some of  
12 whom do not accept Medi-Cal; encouraged families to search online for nurses; and  
13 referred families to other programs that do not offer nursing services.

14 72. In some instances, case managers are reassigned without notice to families,  
15 are not responsive to requests for assistance, and/or do not assist with recruitment or  
16 retention of nurses.

17 73. Defendants have actual or constructive knowledge of the number of weekly  
18 hours of in-home shift nursing services they have found to be medically necessary for each  
19 Plaintiff and putative Class Member.

20 74. Defendants have knowledge of the monthly billing for each Plaintiff's and  
21 Class Members' in-home shift nursing services. Therefore, Defendants are or should be  
22 aware of their failure to arrange medically necessary in-home shift nursing services when  
23 Defendants are not billed for the full amount of in-home shift nursing services.

24 75. In December of 2016, DHCS prepared a written study to evaluate access to  
25 Medi-Cal private duty nursing services. This study was based on data from calendar year  
26 2015. The study identified a 29 percent state-wide gap between the number of hours of  
27 services authorized and actually provided across nearly 3,600 eligible beneficiaries under  
28

1 age 21. Department of Health Care Services, *Access Study to Private Duty Nursing*  
2 (Dec. 15, 2016).

3 76. Upon information and belief, DHCS has instructed home health agencies, or  
4 otherwise led them to understand that, when seeking to recertify a treatment authorization  
5 for in-home nursing, the home health agency can only request nursing hours the agency is  
6 able to provide, rather than the number of hours the primary care provider determined to be  
7 medically necessary. As a result, the statewide gap between authorized and rendered  
8 services is likely significantly larger than 29 percent.

9 77. Upon information and belief, DHCS does not monitor, on a systemic basis,  
10 when home health agencies are unable to fulfill authorized nursing hours to Medi-Cal-  
11 enrolled children, place such children on a waitlist, or reject them altogether as patients  
12 based on their inability to staff the in-home nursing shifts.

13 78. Defendants fail at a systemic level to identify and authorize children who are  
14 in need of in-home nursing services but are not receiving those services.

15 79. Defendants fail at a systemic level to effectively track and monitor children  
16 who are institutionalized, placed on waiting lists by home health agencies, or who have a  
17 shortfall between authorized and staffed nursing hours.

18 80. Upon information and belief, Defendants fail to take any action reasonably  
19 calculated to arrange for in-home shift nursing services for children whose requests for in-  
20 home nursing services they have approved beyond providing referral lists to families.

21 81. Defendants have claimed that they arrange for nursing by allowing two  
22 nursing agencies to staff individual cases, using certified nursing assistants rather than  
23 licensed nurses when the caregiver is in the home, offering individual nurse provider RNs,  
24 recruiting and certifying out-of-state providers to help children living in border areas, and  
25 working with community college and nursing agencies to encourage nurses to work with  
26 children who require in-home shift nursing.

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1           82.    The methods Defendants claim to employ fall short of Defendants’  
2 obligations to arrange for in-home shift nursing services and, to the extent they are actually  
3 implemented, these practices are unsuccessful.

4           83.    None of the above methods Defendants claim to employ have been offered  
5 or provided to Plaintiffs, except providing them with ineffective lists of individual nurse  
6 providers.

7           **C.    Plaintiff I. N.**

8           84.    Plaintiff I. N. is a seven-year-old girl diagnosed with spastic quadriplegic  
9 cerebral palsy, epilepsy, cortical visual impairment, dysphagia (problems with feeding,  
10 swallowing, and drooling), hypoxic ischemic encephalopathy (brain damage due to oxygen  
11 deprivation) and is incontinent. I. N. has resided with her adoptive family since she was an  
12 infant, first as a foster child. The State was unable to locate a home for I. N. and  
13 considered placing her in a facility, but I. N.’s parents accepted her into their family and  
14 later adopted her.

15           85.    I. N.’s father is a firefighter and I. N.’s mother is the primary caregiver for  
16 I. N. along with her four other children. Two of her other children are the biological  
17 children of her niece. I. N.’s mother accepted responsibility for them approximately three  
18 years ago because the children had been placed in the foster care system and placed in  
19 different homes. The foster children also have disabilities and require therapy and special  
20 education services. I. N.’s mother is also diagnosed with Lupus, an autoimmune disease  
21 that causes chronic fatigue and pain in the nerves and joints.

22           86.    I. N. is non-verbal and uses a wheelchair for mobility and transfers. She  
23 requires total assistance for all activities of daily living. She receives nutrition, hydration,  
24 and medication through her gastronomy tube (G-tube).

25           87.    As set forth in her Plan of Treatment provided by her physician, I. N. has  
26 frequent, ongoing, and unpredictable skilled care needs that must be addressed by a  
27 licensed nurse. Since September 2015 and through to the present, her physician has  
28 determined that she needs 63 hours per week of in-home nursing.

1 88. I. N.'s physician has ordered one-on-one skilled nursing services because her  
2 care requires the exercise of judgment informed by experience and expertise in addressing  
3 the care needs of persons with severe disabilities and chronic illnesses.

4 89. Until August, 2016, Defendants approved I. N. for 63 hours per week of  
5 Medi-Cal LVN in-home shift nursing based on medical necessity.

6 90. Beginning in August 2016, DHCS has approved Treatment Authorization  
7 Requests for only 56 hours per week of in-home nursing for I. N.

8 91. Upon information and belief, in the months before August 2016, I. N.'s  
9 home health agency had not been able to staff many of I. N.'s authorized hours and  
10 therefore decreased the number of hours requested in the Treatment Authorization Request  
11 to 56 hours because they had been instructed or led to understand that they were not  
12 permitted to submit a Treatment Authorization Request or Plan of Treatment for hours  
13 they are unable to staff.

14 92. There are qualified in-home shift nursing care providers in I. N.'s geographic  
15 area.

16 93. Currently, I. N. is authorized for 56 hours per week of in-home nursing  
17 services; however, nurses frequently and unpredictably miss shifts due to illness, vacation,  
18 or because they are assigned to multiple cases at one time. As a result, the amount of  
19 nursing I. N. receives is often less than 56 hours per week. For example, between  
20 January 1, 2017 and June 16, 2018, I. N. faced an average weekly shortfall of  
21 approximately 6 hours per week.

22 94. I. N. is a recipient of HCBA Waiver services through Defendant DHCS. By  
23 definition, she is at serious risk of institutionalization if she does not receive the Medi-Cal  
24 services she needs.

25 95. I. N.'s mother has posted advertisements online and regularly contacted their  
26 home health agency and I. N.'s DHCS case manager. I. N.'s mother called home health  
27 agencies and INPs on referral lists provided by DHCS; however, the referral lists did not  
28 help I. N.'s mother secure more nursing for her daughter. The lists contained nurses who

1 were not in her geographic area, some located hundreds of miles away; phone numbers on  
2 the list were disconnected or were a wrong number; and some agencies placed her on a  
3 waiting list. Despite her efforts, she has been unable to find nursing to staff all of I. N.'s  
4 authorized hours. Some of the reasons she could not find nurses include: available nurses  
5 were unable to assist a child with I. N.'s personal care and/or nursing needs or available  
6 nurses did not accept Medi-Cal.

7 96. When I. N. does not have nursing services, her mother assumes the duties of  
8 providing her care all day and all night.

9 97. Because of the family circumstances, which include I. N.'s father's long  
10 work hours, her mother's health issues, and the special needs of the other children, the  
11 shortfall in hours and nurses missing shifts on a regular basis puts I. N.'s health and safety  
12 at risk and creates a great deal of stress on I. N.'s family. The shortage in reliable nursing  
13 hours has impeded the family's ability to take a vacation or enjoy their time together.

14 98. On or about November 17, 2017, I. N.'s mother sent Defendant Kent a letter  
15 notifying her of I. N.'s shortage of in-home shift nursing hours and requesting Defendant  
16 Kent's immediate assistance in arranging for all authorized nursing hours for I. N.

17 99. In late December 2017, I. N.'s mother received a call from a representative  
18 of Defendant DHCS named Georgina "Mimie" Silver inquiring about I. N.'s lack of  
19 nursing. No other assistance to find nurses was offered or provided at that time.

20 100. Since December 2017, I. N.'s mother has received several calls from  
21 Ms. Silver. During those conversations, Ms. Silver inquired about I. N.'s lack of nursing  
22 and the family's efforts to find nursing. Other than providing a referral list for independent  
23 nurse providers, some of whom were located hundreds of miles away, no other assistance  
24 to find nurses was offered or provided. I. N.'s mother attempted to contact the local nurses  
25 on the referral list but each number she called was either a wrong number or disconnected.

26 101. Although Defendants claim to make efforts to find nursing beyond providing  
27 referral lists to families, none of those efforts were offered or provided to I. N.'s mother.  
28 As a result, despite sending a letter to Defendant Kent in November 2017 and several calls

1 with Defendants' representative since, I. N. continues to experience a shortfall in staffed  
2 nursing hours.

3 102. I. N.'s family has received little to no case management from Defendants.

4 103. Defendants have failed to provide meaningful access to services, oversee the  
5 implementation of services, or assist with locating, coordinating, and monitoring services  
6 for I. N.

7 104. I. N.'s parents strongly desire that she continue to live at home with  
8 appropriate nursing services.

9 105. If Defendants fail to arrange for the in-home shift nursing services at the  
10 level they approved, then I. N. may be forced to go into an institution, or, if she remains at  
11 home and receives in-home shift nursing at a level which is less than what is medically  
12 necessary, then she faces a strong possibility of a life-threatening episode.

13 106. Defendants' failure to arrange for medically necessary nursing services puts  
14 I. N. at serious risk of institutionalization or injury.

15 **D. Plaintiff J. B.**

16 107. Plaintiff J. B. is a five-year-old boy, weighing around 26 pounds, with  
17 Hereditary Motor and Sensory Neuropathy, Neuromuscular Scoliosis, Dysphagia,  
18 constipation, milk protein intolerance, and is incontinent. J. B. has a seven-year-old  
19 brother with a potential learning disability and a three-year-old sister. His mother was an  
20 Engineer Corps Officer in the Navy before J. B. was born, but has been forced to stay  
21 home to care for J. B. because they do not have all of the nursing support they need.  
22 J. B.'s father is a project manager/engineer with the Army Corps of Engineers.

23 108. J. B. is ventilator dependent and unable to breathe on his own. He has a  
24 tracheostomy. He receives nutrition and medication through his G-tube. He uses a  
25 motorized pediatric wheelchair, stander, a thoracic spine brace, leg braces, ankle-foot  
26 orthotics, and wrist splints. He requires assistance with all activities of daily living.

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1           109. As set forth in his Plan of Treatment provided by his physician, J. B. has  
2 frequent, ongoing, and unpredictable skilled care needs that must be addressed by a  
3 licensed nurse.

4           110. Defendants have approved J. B. for 135 hours per week of Medi-Cal LVN  
5 in-home shift nursing based on medical necessity. J. B. is also authorized for two hours  
6 monthly of RN case management through the HCBA Waiver. J. B.'s physician has  
7 ordered one-on-one skilled nursing services because J. B.'s care requires the exercise of  
8 judgment informed by experience and expertise in addressing the care needs of persons  
9 with severe disabilities and chronic illnesses.

10           111. There are qualified in-home shift nursing care providers in J. B.'s geographic  
11 area.

12           112. From October 2014 to the present, J. B. has not had all of his authorized  
13 nursing hours fully staffed with the exception of two weeks. The amount of nursing  
14 services that J. B. receives changes from week to week or sometimes month to month.  
15 J. B. receives only 50-60 hours per week of staffed in-home nursing.

16           113. J. B. is a recipient of HCBA Waiver services through Defendant DHCS. By  
17 definition, he is at serious risk of institutionalization if he does not receive the Medi-Cal  
18 services he needs.

19           114. The family has informed Defendant DHCS several times that J. B.'s  
20 authorized nursing hours have not been fully staffed. In response, Defendant DHCS sent  
21 J. B.'s family two identical lists of home health agencies and independent nurse providers  
22 in early 2016 and again in March 2017. J. B.'s father called all of the nursing agencies and  
23 nurses on that list and spoke to approximately 30 agencies and nurses. None would accept  
24 J. B. as a patient. Despite their efforts, they have been unable to find nursing to staff all of  
25 J. B.'s authorized hours.

26           115. J. B.'s mother has advertised online for nurses and have also called their  
27 home health agency on a regular basis since 2013. Despite these efforts, she has been  
28 unable to find nursing to staff all of J. B.'s authorized hours.

1           116. When J. B. does not have nursing services, his parents must provide all of his  
2 medically necessary care. His parents take turns caring for J. B. at night, and at least one  
3 parent must remain in the room with him. The parent who cares for J. B. at night wakes up  
4 approximately every three hours to empty the water build-up in his ventilator, or ventilate  
5 his G-tube so that gas does not build up, which could cause him to vomit in his  
6 tracheostomy and suffocate.

7           117. J.B.'s mother takes medication for depression and anxiety due to the stress of  
8 caring for a child with high medical needs, and his parents' relationship with their other  
9 children has suffered.

10           118. On or about October 26, 2017, J. B.'s family sent Defendant Kent a letter  
11 notifying her of J. B.'s shortage of in-home shift nursing hours and requesting Defendant  
12 Kent's immediate assistance in arranging for all authorized nursing hours for J. B.

13           119. In late December 2017, DHCS representative Mimie Silver contacted J. B.'s  
14 father. J. B.'s father informed Ms. Silver that J. B.'s hours were not fully staffed.  
15 Although Ms. Silver inquired about the family's efforts to find nursing, no other assistance  
16 to find nurses was offered or provided at that time.

17           120. J. B.'s mother received one additional call from Ms. Silver on or around  
18 February 2018. During that conversation, Ms. Silver inquired about whether there had  
19 been any changes to J. B.'s nursing services. No other assistance to find nurses was  
20 offered or provided at that time.

21           121. In or around March 2018, J. B. had an annual home assessment by a nurse  
22 from Defendant DHCS who inquired about J. B.'s condition and his care over the past  
23 year, but she did not assist in finding additional nurses to staff J. B.'s hours.

24           122. Although Defendants claim to make efforts to find nursing beyond providing  
25 referral lists to families, none of those efforts were offered or provided to J. B.'s family.  
26 As a result, despite sending a letter to Defendant Kent in October 2017 and a few  
27 encounters with Defendants' representatives since, J. B. continues to experience a  
28 significant shortfall in staffed nursing hours.



1 123. J. B.’s family has received little to no case management from Defendants.

2 124. Defendants have failed to provide meaningful access to services, oversee the  
3 implementation of services, or assist with locating, coordinating, and monitoring services  
4 for J. B.

5 125. J. B.’s parents strongly desire that he continue living at home with  
6 appropriate nursing services.

7 126. If Defendants fail to arrange for J. B. to receive in-home shift nursing  
8 services at the level they approved, then J. B. may be forced to be either institutionalized in  
9 a hospital or, if he remains at home and receives in-home shift nursing at a level which is  
10 substantially less than what is medically necessary, then he faces a strong possibility of a  
11 life threatening episode.

12 127. Defendants’ failure to arrange for medically necessary nursing services puts  
13 J. B. at serious risk of institutionalization or injury.

14 **FIRST CLAIM FOR RELIEF**

15 (Against Defendant Director Jennifer Kent)

16 **Violation of the Federal Medicaid Early and Periodic Screening, Diagnostic and**  
17 **Treatment (EPSDT) Mandate**

18 128. Plaintiffs re-allege and incorporate herein by reference each and every  
19 allegation and paragraph set forth previously.

20 129. In violation of the EPSDT provisions of the Medicaid Act, 42 U.S.C.  
21 §§ 1396a(a)(10)(A), 1396d(a)(4)(B), and 1396a(a)(43)(C), Defendant Kent, while acting  
22 under the color of law, has failed to provide Plaintiffs and Class members with in-home  
23 shift nursing services necessary to correct or ameliorate their conditions.

24 130. In violation of the EPSDT provisions of the Medicaid Act, Defendant Kent,  
25 while acting under the color of law, has failed to “arrange for (directly or through referral  
26 to appropriate agencies, organizations, or individuals) corrective treatment [in-home shift  
27 nursing services]” to Plaintiffs and Class members pursuant to 42 U.S.C.  
28 § 1396a(a)(43)(C).

1 131. Defendant Kent’s violations have been repeated and knowing, and entitle  
2 Plaintiffs and Class members to relief under 42 U.S.C. § 1983.

3 **SECOND CLAIM FOR RELIEF**

4 (Against Defendant Director Jennifer Kent)

5 **Violation of the Federal Medicaid Reasonable Promptness Requirement**

6 132. Plaintiffs re-allege and incorporate herein by reference each and every  
7 allegation and paragraph set forth previously.

8 133. Defendant Kent is engaged in the repeated, ongoing failure to arrange for  
9 (directly or through referral to appropriate agencies, organizations, or individuals)  
10 corrective treatment, despite Defendant’s acknowledgment that in-home shift nursing  
11 services are medically necessary for all named Plaintiffs and Class members.

12 134. Defendant Kent has acted under color of law in failing to provide in-home  
13 shift nursing services to Plaintiffs with “reasonable promptness,” in violation of 42 U.S.C.  
14 § 1396a(a)(8).

15 135. Defendant Kent’s violations have been repeated and knowing, and entitle  
16 Plaintiffs to relief under 42 U.S.C. § 1983.

17 **THIRD CLAIM FOR RELIEF**

18 (Against Defendant Director Jennifer Kent)

19 **Violation of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131 et seq.**

20 136. Plaintiffs re-allege and incorporate herein by reference each and every  
21 allegation and paragraph set forth previously.

22 137. Title II of the ADA provides that no qualified person with a disability shall  
23 be subjected to discrimination by a public entity. 42 U.S.C. §§ 12131-32. It requires  
24 public entities to administer services, programs, and activities in the most integrated setting  
25 appropriate to the needs of qualified individuals with disabilities. *See* 28 C.F.R.  
26 § 35.130(d) (2016).

27 138. Plaintiffs and Class members are “qualified individuals with a disability”  
28 within the meaning of the ADA in that they have physical and/or mental impairments that

1 substantially limit one or more major life activities, including their ability to live  
2 independently without support.

3 139. Plaintiffs and Class members meet the essential eligibility requirements for  
4 Medi-Cal services, including by requiring services necessary to maintain them in their  
5 homes in the community.

6 140. Defendant Kent is the Director of Defendant DHCS, which is responsible for  
7 administering California's Medicaid program in accordance with state and federal law, and  
8 is therefore a government entity subject to Title II of the ADA. 42 U.S.C. §§ 12131(1)(A)  
9 and (B) (1990).

10 141. Defendant Kent is obligated under the ADA to administer DHCS' programs  
11 in a manner that enables qualified individuals with disabilities to live in the most integrated  
12 setting appropriate to their needs. Defendant's failure to arrange for (directly or through  
13 referral to appropriate agencies, organizations, or individuals) corrective treatment (in-  
14 home shift nursing services) for qualified individuals with disabilities such as Plaintiffs  
15 and Class members has placed them at risk of institutionalization in violation of the ADA's  
16 integration mandate.

17 142. Defendant Kent has discriminated against qualified individuals with  
18 disabilities such as Plaintiffs and Class members by failing to provide reasonable  
19 modifications to programs and services in order to arrange for medically necessary in-  
20 home shift nursing.

21 143. Defendant Kent has utilized criteria and methods of administration that  
22 subject Plaintiffs, Class members, and other qualified individuals with disabilities to  
23 discrimination on the basis of disability, including risk of unnecessary institutionalization,  
24 in ways that include failing to take the necessary steps to arrange for medically necessary  
25 in-home shift nursing.

26 144. Defendant Kent's actions are in violation of Title II of the ADA.

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28 ///

1 145. Plaintiffs and Class members are entitled to declaratory and injunctive relief,  
2 and reasonable attorneys' fees and costs incurred in bringing this action pursuant to  
3 42 U.S.C. § 12133.

#### 4 **FOURTH CLAIM FOR RELIEF**

5 (Against Defendants DHCS and Director Jennifer Kent)

#### 6 **Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.***

7 146. Plaintiffs re-allege and incorporate herein by reference each and every  
8 allegation and paragraph set forth previously.

9 147. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, prohibits public  
10 entities and recipients of federal funds from discriminating against any individual by  
11 reason of disability. Public and federally-funded entities must provide programs and  
12 activities "in the most integrated setting appropriate to the needs of the qualified individual  
13 with a disability." *See* 28 C.F.R. § 41.51(d) (1981). Policies, practices, and procedures  
14 that have the effects of unjustifiably segregating persons with disabilities in institutions  
15 constitute prohibited discrimination under Section 504.

16 148. Plaintiffs and Class members are "qualified individuals with a disability"  
17 under Section 504 of the Rehabilitation Act of 1973 in that they have physical and/or  
18 mental impairments that substantially limit one or more major life activities, including  
19 their ability to live independently without support.

20 149. Plaintiffs and Class members meet the essential eligibility requirements for  
21 Medi-Cal services, including services necessary to maintain them in their homes in the  
22 community.

23 150. Defendant DHCS is a recipient of federal funds under the Rehabilitation Act  
24 and is therefore a government entity subject to Section 504. 29 U.S.C. § 794(b) (2014).

25 151. Defendants' failure to arrange for (directly or through referral to appropriate  
26 agencies, organizations, or individuals) corrective treatment (in-home shift nursing  
27 services) to Plaintiffs and Class members places them at risk of institutionalization in  
28 violation of Section 504's integration mandate.

1           152. Defendants have utilized criteria and methods of administration that subject  
2 qualified individuals with disabilities such as Plaintiffs and Class members to  
3 discrimination on the basis of disability, including risk of unnecessary institutionalization,  
4 by Defendants failure to arrange for (directly or through referral to appropriate agencies,  
5 organizations, or individuals) corrective treatment (in-home shift nursing services) to  
6 Plaintiffs and Class members.

7           153. Defendants' actions violate Section 504.

8 **VII. PRAYER FOR RELIEF**

9           154. WHEREFORE, Plaintiffs pray that the Court order the following relief and  
10 remedies on behalf of themselves and all others similarly situated:

11           155. Certify the proposed Class;

12           156. Issue a declaratory judgment in favor of the Plaintiffs and the Class that  
13 Defendants are failing to comply with the requirements of the Medicaid Act, the  
14 Americans with Disabilities Act, and the Rehabilitation Act;

15           157. Declare unlawful Defendants' failure to arrange directly or through referral  
16 to appropriate agencies, organizations, or individuals, corrective treatment (in-home shift  
17 nursing services) to Plaintiffs and Class members;

18           158. Issue preliminary and permanent injunctive relief enjoining Defendants from  
19 subjecting Plaintiffs and Class members to practices that continue to violate their rights  
20 under the Medicaid Act, Americans with Disabilities Act, and Section 504 of the  
21 Rehabilitation Act;

22           159. Issue preliminary and permanent injunctive relief requiring Defendants to  
23 arrange directly or through referral to appropriate agencies, organizations, or individuals,  
24 corrective treatment (in-home shift nursing services) to Plaintiffs and Class members;

25           160. Retain jurisdiction over the Defendants until such time as the Court is  
26 satisfied that Defendants' unlawful policies, practices, and acts complained of herein  
27 cannot recur;

28 ///

