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

DAVID GROOMS, Plaintiff, v. BARRY S. MARAM, Director, Illinois Department of Healthcare and Family Services, Defendant.	)	No. 06 C 2211 Judge Rebecca R. Pallmeyer Magistrate Judge Martin C. Ashman

DEFENDANTS' EXHIBITS AND SUPPORTING MATERIALS PURSUANT TO LOCAL RULE 56.1(b)(1) IN RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Exhibit A: Defendant's Amended Answer to Plaintiff's First Set of Interrogatories to Defendant.

Exhibit B: Analysis for *Grooms v. Maram*, prepared by Matthew Werner, Bates numbered HFS301460-HFS30168.

Exhibit C: Unsworn Declaration of Barbara Ginder, with Attachment 1, Bates numbered 003016-003142.

Exhibit D: Plaintiff's Answers to Defendant's First Set of Interrogatories.

Exhibit E: Plaintiff's Expert Report of Samuel S. Flint, Ph.D., *Grooms v. Maram*, dated 5/7/07.

Exhibit F: *Grooms v. Maram*, Menenberg Rebuttal to Samuel S. Flint Report, dated 5/25/07.

Exhibit G: *Petroff Trucking Co, Inc. v. Envirocon, Inc.*, 2006 WL 2938666 (Dist. Ct. S.D. Ill. October 13, 2006).

Exhibit H: *Frances J. by Murphy v. Bradley*, 1992 WL 390875 (N.D. Ill. 1992).

Exhibit I: *Najieb v. Chrysler-Plymouth*, 2002 WL 31906466 (N.D. Ill. December 31, 2002).

Exhibit J: *Stark v. PPM Am., Inc.* No. 01 C 1494, 2002 WL 31155083 (N.D. Ill. Sept. 26, 2002).

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Dated: June 20, 2007

EXHIBIT A

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DEFENDANT'S AMENDED ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT

NOW COMES the Defendant, BARRY S. MARAM, Director of the Illinois Department of Healthcare and Family Services, in his official capacity, by his attorney, LISA MADIGAN, Attorney General of Illinois, and pursuant to Rule 33 of the Federal Rules of Civil Procedure, amends his response to Plaintiff's First Set of Interrogatories to Defendant as follows:

> To the extent any individual identified in these interrogatory responses is a current employee of the Illinois Department of Healthcare and Family Services ("HFS"), the individual is represented by the Office of the Attorney General, Welfare Litigation Bureau, and may be contacted only through the Defendant's attorneys except to the extent that subpoenas must be issued to these employees at their respective business addresses. The Office of the Attorney General cannot accept subpoenas on behalf of the HFS employees.
>
> To the extent identified herein, Documents Bates numbered HFS 300416 – HFS 300785 have been previously withheld from production because they are documents pertaining to David Grooms which contain personal health information, including information regarding David Grooms's disability and medical condition (including diagnoses), and information relating to David Grooms's medical services under the Home and Community Based Services Waiver for Medically Fragile and Technology Dependent Children and Home and Community Based Services Waiver for

> Persons with Disabilities. The documents contain individual Medicaid recipient information and personal health information that is confidential and protected under federal Medicaid law and the Health Insurance Portability Accountability Act of 1996. *See* 42 U.S.C. § 1396a(a)(7); 42 C.F.R. § 431.305; 45 C.F.R. Part 160; and 45 C.F.R. Part 164, Subparts A and E. Consequently, these documents cannot be disclosed without written authorization and an appropriate protective order entered by the Court.

INTERROGATORY NO. 1:

Please state, by year, for years 2000 through 2006, the number of participants in the Medically Fragile Technology Dependent Children's Waiver Program who lost eligibility because they reached the age of 21.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 1:

The Defendant objects to Interrogatory No. 1 because it seeks information which is neither relevant to the subject matter involved in this action nor is reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 2:

For each individual identified in response to Interrogatory No. 1 above, please, state, with respect to the last year of participation in the children's waiver program, which of the individuals were considered by the Department of Specialized Care for Children (DSCC) to require a hospital level of care if they [sic] not receive home and community based services under the Medically Fragile Technology Dependent Children's Waiver Program.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 2:

The Defendant objects to Interrogatory No. 2 because it is unintelligible and vague, argumentative, seeks further information that was not requested in Interrogatory No. 1, and seeks information which is neither relevant to the subject matter involved in this action nor is reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 3:

Please identify each and every person who, within the past five years, participated in evaluating or approving any care plan for David Grooms relative to his participation in the Waiver Program for Medically Fragile, Technology Dependent Children under 21. Please state the current job title, telephone number and address for each person.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 3:

Defendant objects to Interrogatory No. 3 because it seeks information which is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 4:

Please state the institutional setting Defendant believes David Grooms would require if he were not to continue to receive home or community bases services. Please include in your response:

(a) The factual basis for your response.

(b) The name, telephone number, job title and address of each person having information concerning the level of institutional care David Grooms would require if he does not continue to receive home or community based services.

(c) Please identify each and every document that supports your response, or is related to your response in any way.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 4:

Defendant objects to Interrogatory No. 4 because it calls for speculation. If David Groom's physician would not approve his current participation in HSP because he cannot be safely served in the home within the program limits, David Grooms would have to make his own

arrangements for care, for example, enter a nursing facility. The Defendant does not determine the appropriate institutional setting that individuals, such as David Grooms, may require if they choose not to participate in the Home Services Program.

(b) Barbara Ginder, Chief
Bureau of Interagency Coordination
Department of Healthcare & Family Services
1320 S. Second Street
Springfield, Illinois 62704

Ms. Ginder's is identified to the extent her knowledge is limited to statements in (a) regarding the operation of HSP. She has no knowledge of David Grooms's particular case file or institutional setting needed.

(c) David Groom's case records in the DRS HSP case file, Documents Bates numbered HFS 300416 – HFS 300785.

See also Documents Bates numbered 3016 – 3142, HCBS Waiver for Persons with Disabilities, previously produced by Defendant to Plaintiff's counsel in *Sidell v. Maram*. The Defendant also cites Parts 676 through 686 of Title 89 of the Illinois Administrative Code as being related to his response.

INTERROGATORY NO. 5:

Please state whether Defendant, either individually, or in conjunction with another person or entity, determines or approves the cost of home and community based care for children on the Medically Fragile Technology Dependent Children Waiver Program.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 5:

Defendant objects to Interrogatory No. 5 because it seeks information which is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 6:

Please specify any policy, rationale or formula, whether written or oral, that Defendant, either individually or in conjunction with some other person or entity, uses, relies on, or otherwise considers concerning the cost that [sic.] of home and community based care for children in the Medically Fragile Technology Dependent Children's Waiver Program.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 6:

Defendant objects to Interrogatory No. 6 because it seeks information which is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 7:

With respect to Defendant's Response to Interrogatories 5 and 6, describe any differences or changes in the application of any program for participants who have reached the age of 21 years who still require a hospital level of care, the policy and/or rationale for the change, and state the name, telephone number and job title or each person having knowledge of, or information concerning the policy or rationale, or the basis for any difference or change in application.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 7:

Defendant objects to Interrogatory No. 7 because it is argumentative, assumes facts not in evidence, presents an unintelligible and incomplete hypothetical, and seeks information which is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 8:

State with specificity any differences or variances between the DSCC Waiver (or waiver program) provided by or through Defendant, and any other home services program offered by or through Defendant.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 8:

Defendant objects to Interrogatory No. 8 as being vague, overbroad, and seeking information which is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence.

To the extent Interrogatory No. 8 seeks the differences or variances between the DSCC Waiver—also known as the MFTD Waiver—(or program) provided by or through HFS, and the HCBS Waiver for Persons with Disabilities, the Defendant responds by specifying the following records, previously produced by the Defendant, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure:

1. MFTD Waiver, Documents Bates numbered 2808 – 3015, previously produced pursuant to Request No. 9 of the Plaintiff's First Production Request.

2. HCBS Waiver for Persons with Disabilities, Documents Bates labeled 3016 - 3142 previously produced pursuant to Request No. 7 of the Plaintiff's First Production Request.

INTERROGATORY NO. 9:

List with specificity and [sic] all policies, rationales, formulas or criteria of any kind that Defendant, either alone or in conjunction with any other entity, uses, utilizes, relied on, or otherwise considers in determining the amount or amounts approved for home or community based care of adults with disabilities.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 9:

Defendant objects to Interrogatory No. 9 as being vague, overbroad, and seeking information which is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence.

To the extent Interrogatory No. 9 requests the policies, rationales, formulas or criteria that the Defendant, either alone or in conjunction with any other entity, uses, utilizes, relies on, or otherwise considers in determining the amount of funding approved for home or community based care for adults with disabilities under the HCBS Waiver for Persons with Disabilities, the Defendant responds by specifying the following records pursuant to Rule 33(d) of the Federal Rules of Civil Procedure:

1. HCBS Waiver for Persons with Disabilities, Documents Bates labeled 3016 - 3142 previously produced pursuant to Request No. 7 of the Plaintiff's First Production Request;

2. The Determination of Needs ("DON") Instructions Maunual (1/19/04), Documents Bates numbered HFS 008609 – HFS 008706;

3. The DON Form (rev. 10-02), Documents Bates numbered HFS 008707 – HFS 008713;

4. Instructions for Administering the HSP Needs Assessment, Documents Bates numbered HFS 008714 – HFS 008719;

5. HSP Needs Assessment Form, Documents Bates numbered HFS 008720 – HFS 008721;

6. The Defendant also references Title 89 of the Illinois Administrative Code, Parts 676, 679, 682 and 684.

INTERROGATORY NO. 10:

State the full name, job title, address and phone numbers of all persons with knowledge of the policies formulas or other criteria, identified in response to Interrogatory No. 9.

DEFENDANT'S ANSWER TO INTERROGATORY 10:

Defendant objects to Interrogatory No. 10 as being vague and over-broad.

To the extent Interrogatory No. 10 requests the identity of the individual employed by HFS with the most knowledge of the policies, formulas and other criteria identified in Defendant's Response to Interrogatory No. 9, the Defendant identifies:

Barbara Ginder, Chief
Bureau of Interagency Coordination
Department of Healthcare & Family Services
1320 S. Second Street
Springfield, Illinois 62704

INTERROGATORY NO. 11:

Defendant alleges as an Affirmative Defense, in its Amended Answer and Affirmative Defenses to Complaint that the "relief Plaintiff seeks would be inequitable and would require the Defendant to fundamentally alter the nature of the services and programs that Illinois is legally obligated to provide . . ." State, with specificity the fact or facts regarding David Grooms and/or his medical condition that Defendant relied upon for its response, and state the name, and job title of each person at HFS with knowledge of the basis or rationale for Defendant's contention that Defendant would be required to "fundamentally alter" if services in order to provide relief to David Grooms.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 11:

Defendant objects to Interrogatory No. 11 because the Plaintiff has never articulated the reasonable accommodation he seeks in this action. Moreover the Plaintiff has not stated the

relief sought in his Complaint with any specificity. The prayer for relief merely requests this Court "restore David's pre-age 21 levels of funding for home nursing services." In other parts of the Plaintiff's Complaint, the Plaintiff either seeks an amount of funding equivalent to that he received while participating in the Home and Community Based Services Waiver for Medically Fragile Technology Dependent Children, or funding for "constant monitoring," which could mean 24 hours per day of in-home skilled nursing care. Consequently, any answer Defendant proffers is hypothetical and speculative.

DEFENDANT'S AMENDED ANSWER TO INTERROGATORY NO. 11:

Defendant incorporates his previous objection to Interrogatory No. 11 because the Plaintiff has never articulated the reasonable accommodation he seeks in this action. Moreover the Plaintiff has not stated the relief sought in his Complaint with any specificity. With those qualifications, Defendant states:

1. In the Plaintiff's Complaint, the prayer for relief merely requests this Court "restore David's pre-age 21 levels of funding for home nursing services." In other parts of the Plaintiff's Complaint, the Plaintiff either seeks an amount of funding equivalent to that he received while participating in the Home and Community Based Services Waiver for Medically Fragile Technology Dependent Children, or funding for "constant monitoring," which could mean 24 hours per day of in-home skilled nursing care. To the extent that David was approved for participation in the Persons with Disabilities Medicaid Waiver, Defendants reasonably accommodated him in the following particulars:

(a) David was not excluded from participation in the Persons with Disabilities Medicaid Waiver by reason of his disability or by any act or omission of Defendants.

David is currently enrolled in the Persons with Disabilities Medicaid Waiver and, in fact, is receiving services in this Waiver program that include in-home nursing services.

(b) Defendants reasonably accommodated David in the Persons with Disabilities Medicaid Waiver Program by extending an exceptional care rate to him. In the Persons with Disabilities Medicaid Waiver, HFS expressly represented to the federal government that it "will refuse to offer home and community-based services to any person for whom it can reasonably be expected that the cost of home or community-based services furnished to that individual would exceed the cost of a level of care referred to in item 2 of this request." (Persons with Disabilities Medicaid Waiver at Paragraph 8). In item 2 of the Persons with Disabilities Medicaid Waiver, HFS only requested a waiver to provide home and community-based services to individuals who would need a nursing home level of care. Under the express terms of the Waiver, Defendants cannot expend any more money on services to David than would be incurred if he were residing in a nursing facility. For the typical participant in the Persons with Disabilities Medicaid Waiver, the maximum monthly benefits he or she will receive is determined by referring to the Service Cost Maximum, or SCM, that corresponds to the Determination of Need, or DON, score that applicant received as part of the eligibility process. State law sets forth an SCM that corresponds to the DON score. 89 Ill.Admin.Code § 679.50. HFS recognized that individuals with certain disabling conditions, if residing in a nursing facility, would cost the facility more to treat or care for than the basic Medicaid nursing home per diem would reimburse. HFS created a now-defunct Exceptional Care Program for nursing facilities. 305 ILCS 5/5-5.8a; 89 Ill.Admin.Code § 140.569. Through the Exceptional Care Program, a nursing facility became certified to render exceptional care

to persons in approximately thirteen categories, such as HIV-positive, morbidly obese, medically complex, ventilator-dependent, etc. Prior to the current nursing home reimbursement methodology that is based on data contained on the resident's Minimum Data Set, or "MDS," HFS calculated and paid an exceptional care rate to the nursing facility that was above the basic Medicaid per diem to render care to those persons in the categories described in the immediately preceding sentence.

(c) State law at 89 Ill.Admin.Code § 682.520(c), authorizes DHS to extend a rate up to the exceptional care rate that HFS set for the nursing facilities participating in the Exceptional Care Program, to a participant in the Persons with Disabilities Medicaid Waiver Program whose medical condition corresponds to one of the conditions for which HFS would have paid an exceptional care rate if that person were in the nursing home. DHS finds the nursing facility in closest proximity to the applicant's residence that is qualified to render the care that the applicant would need, and extends a rate up to the rate that HFS had paid to that nursing home on behalf of the similarly situated nursing home resident to the Persons with Disabilities Medicaid Waiver applicant. An exceptional care rate was extended to David.

(d) David has accepted the reasonable accommodation of the exceptional care rate and is participating in the Persons with Disabilities Medicaid Waiver program.

2. If the reasonable accommodation that Plaintiff seeks is an amount of money to allow him to maintain the level of services that he had under the MFTD Waiver for which he is no longer eligible, (or, specifically, to receive $17,900.00 per month instead of the approximately $9,289.46 per month exceptional care rate he would have received under the Persons with Disabilities Medicaid Waiver), and/or the inclusion of certain services in the Waiver program

that the program does not now offer, then that relief would not constitute a reasonable accommodation because under the law as set forth in *Alexander v. Choate*, 469 U.S. 287 (1985) and *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F.3d 737 (7th Cir. 2006), these accommodations are not necessary, reasonable or grounded in any independent basis in Title II of the ADA.

(a) The reasonable accommodation David seeks is not necessary. Neither the Rehabilitation Act nor the Americans with Disabilities Act require Defendants to modify any of its programs for David because the benefits he seeks, *i.e.*, 2 times the amount of money for in-home private duty nursing services, were not denied to him by reason of his disabilities. David does not qualify for $17,900.00 per month worth of in-home private duty nursing (or more) because of qualities that David shares with all other Medicaid recipients and applicants. All the factors set forth below are qualities that David shares with all Medicaid recipients and applicants, as follows:

(i) No Medicaid program operated by HFS ever afforded David or anyone else, 24 hours per day of in-home private duty registered nursing services on a regular or non-emergency basis.

(ii) Private duty nursing services are an optional service under federal Medicaid law, 42 U.S.C. §§ 1396a(a)(10)(A), 1396d(a)(8,) and under the Persons with Disabilities Medicaid Waiver. (Waiver at Paragraph 11). Private duty nursing services are not covered under Illinois' Title XIX State Medicaid Plan. No Medicaid-eligible person qualifies to receive such services at any situs. Whether the State of Illinois covers an "optional" Medicaid service is a policy judgment committed to the discretion of State officials and for which there is no

right of judicial review. *DaimlerChrysler Corp. v. Cuno*, ___ U.S. ___, 126 S. Ct. 1854, 1863 (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (opinion of Kennedy, J.)).

(iii) No participant in the Persons with Disabilities Medicaid Waiver qualifies to receive private duty nursing services because they are not part of the Persons with Disabilities Medicaid Waiver or Illinois' Title XIX State Medicaid Plan.

(iv) David, an individual over the age of 21, is no longer eligible for EPSDT, 42 U.S.C. §§ 1396a(a)(43); 1396d(r) and, consequently, may not now receive services that are not covered under the State's Medicaid Plan.

(v) No one qualifies for the MFTD Waiver after he or she has attained the age of 21. David is over 21 years of age and is no longer eligible for MFTD Waiver and may not now receive any services through the MFTD Waiver.

(vi) To the extent HFS's clinical professionals were reviewing plans of care for David before he turned 21 and participated in the MFTD Waiver, they were not reviewing medical need for "waiver" services. Rather, HFS's clinical experts were entitled to make an independent determination for the purposes of the EPSDT program that services prescribed for David that were not covered under Illinois' Title XIX Medicaid Plan were medically necessary. *Miller by Miller v. Whitburn*, 10 F.3d 1315 (7th Cir. 1993). Services in the Persons with Disabilities Medicaid Waiver, as required by federal law at 42 U.S.C. § 1396n(c), are based on medical need only insofar as they are up to or less than the Service Cost Maximum or exceptional care rate applicable to the individual. No services

in excess of the Waiver Program's cost caps are given on the basis of "medical need."

(b) The accommodation David seeks is not reasonable. The court need not reach this issue because it must conclude that the accommodation/modification David seeks is not necessary.

(i) If the court were to reach the issue of reasonableness, it would conclude that the accommodation/modification sought is not reasonable. First, the modification Plaintiff seeks to the Persons with Disabilities Medicaid Waiver is not necessary to avoid discrimination to David on the basis of disability. 42 U.S.C. § 12131(2); 28 C.F.R. §35.130(b)(7).

ii. Second, Defendants also contend that the accommodation/modification David seeks would fundamentally alter the nature of the Persons with Disabilities Medicaid Waiver. If Defendants were to provide a benefit in excess of existing home and community waiver benefit levels, Defendants would be required to extend the same benefit to all other persons. The benefit would have to be extended to all participants in the Persons with Disabilities Medicaid Waiver Program (and, presumably, all other programs operated under the umbrella of the Home and Community-Based Services Waiver), and to certain current residents of nursing facilities. Defendants believe that the relief Plaintiff seeks would fundamentally alter the Persons with Disabilities Medicaid Waiver in 1) a programmatic sense and, by the operation of the programmatic changes made, would 2) require expenditures of public funds that are not reasonable.

(A) The programmatic changes that fundamentally alter the Persons with Disabilities Medicaid Waiver are as follows:

(1) Granting Plaintiff the relief he wants requires Defendants to ignore or violate the Waiver's cost caps and the express representation to the federal government for approval of the Waiver at Paragraph 8, that the State will *refuse* to offer services to persons whose in-home service costs would exceed the cost of caring for that person in a nursing home. (Emphasis added).

(2) Granting Plaintiff the relief he wants would require Defendants to ignore or violate the "cost-neutrality" requirements of the federal Medicaid statute, at 42 U.S.C. § 1396n(c)(2)(D), and the assurances given to the federal government about cost neutrality in the waiver document itself at Paragraph 16(e) and (f).

(3) Granting Plaintiff the relief he wants requires Defendants to ignore the portion of the Waiver that "waived" 42 U.S.C. § 1396a(a)(10)(B), at Paragraph 10 of the Waiver document, or to have Defendants rewrite the Waiver in such a way as to eliminate the request that the "comparability" portion of the federal Medicaid law be "waived." Plaintiff wants waiver services to be measured by the "amount, scope and duration" concepts contained in Section 1396a(a)(10)(B).

(4) Granting Plaintiff the relief he wants requires the Defendant to rewrite Paragraph 2 of the Waiver to choose a "level of care" either on an individualized basis for David, or to choose a "level of care" that would afford all waiver participants a potentially larger sum of money on a monthly basis. The choice of the level of care is an option given to the State under 42 U.S.C. § 1396n(c) and there is no right of judicial review in how the State chose to exercise that discretion. *DaimlerChrysler, Id.*

(5) Granting Plaintiff the relief he wants requires Defendants to request a service for inclusion in the Waiver, i.e., "private duty nursing" that is optional for the State to include according to Paragraph 11 of the Waiver document. The choice of the services to include in the Waiver is an option given to the State under 42 U.S.C. § 1396n(c) and there is no right of judicial review in how the State chose to exercise that discretion. *DaimlerChrysler, Id.*

(6) Granting Plaintiff the relief he seeks requires impermissibly using another Act of Congress (i.e., the ADA or the Rehabilitation Act) or a federal regulation (i.e., the integration mandate) to change the intent of Congress respecting the operation of 42 U.S.C. § 1396 *et seq.* Nothing in the ADA, Rehabilitation Act or any federal regulation with respect to those civil rights

remedies evinces Congress' intent to allow the Medicaid program to be rewritten in the manner Plaintiff seeks.

(B) The relief Plaintiff seeks would fundamentally alter the Medicaid program by causing costs to be incurred that are not reasonable, as follows:

(1) Defendants incorporate the expert witness report of Todd D. Menenberg dated March 19, 2007.

(2) Some nursing home residents may be able to live outside a nursing home if substantially more hours of one-on-one nursing care were provided in a private home. Nursing homes provide quality care in an efficient manner by capitalizing on economies of scale. That is, one nurse can care for several patients in a centralized setting. Shifting patients from residential settings to home settings could have severe implications for the current medical assistance program and require a fundamental alteration of the program.

(3) More nurses would be required to provide home care as the care model becomes individualized.

(4) This would exacerbate the current nurse shortage. Increased demand combined with short supply would drive up wages. Wages would not stabilize until more nurses entered the market. This would likely take several years.

(5) Higher wages would drive up the cost of nursing home and private duty nursing care.

(6) Lower occupancy and higher wages would force some nursing homes to close. Nursing homes are the only option for some individuals. The consolidation would reduce access to this care in some areas.

(7) HFS does not know whether the current nursing home residents have private housing available to them, were they to leave the facility. If finding or making that housing available is held to be the obligation of the State of Illinois, the fiscal pressures on the State increase.

(8) If participants in the Persons with Disabilities Medicaid Waiver program are deemed to be entitled to receive substantial hours per day of in-home private duty nursing services, then nursing facility residents with similar medical conditions should similarly be able to expect and receive increased levels of registered nursing staffing at the nursing facilities. This, in turn, increases the pressures on the nursing profession, drives up the costs of the nursing homes and potentially subjects the Illinois Medicaid program to added expenditures.

(C) The manner in which the relief Plaintiff seeks would fundamentally alter the services currently available to participants in the Persons with Disabilities Medicaid Waiver program (and other programs

under the umbrella of the Home and Community-Based Services Waiver) is as follows:

It is not cost efficient for Defendant to provide Medicaid-eligible individuals with substantial hours per day in-home private duty nursing services. The current medical assistance program in Illinois services over 2 million people each month. This consists of children, parents, pregnant women, disabled adults, and elderly. The current program operates at a cost of over $10 billion annually. Without adjusting for the upward pressure on wages, the shift of only 10% of the current nursing home population to home care receiving benefits equivalent to the average Medically Fragile-Technology Dependent (MFTD) waiver child would cost an additional $856 million. That is more than the $578 million spent on all expanded eligible populations in FY 2005. In addition, it would cost another $665 million if 10% of the individuals in the Home Services Program were to begin receiving benefits equivalent to David Grooms during the last year in the MFTD Medicaid Waiver. This combined $1.52 billion shift is almost equal to the total amount of $1.8 billion spent on all children in the medical assistance program. Such a large shift in costs would force the State to fundamentally alter the current program from one that takes care of a mix of uninsured families, disabled, and elderly to one that only applies to the neediest families and a small population of the most severely ill.

(c) There is no independent basis on which the court can award the accommodation/modification the Plaintiff seeks. David has no present "right" to receive or "legally protected interest" in receiving any Medicaid-funded services in the community (*i.e.*, in his parents' home), unless he qualifies for a home and community-based services Medicaid waiver administered by Defendant pursuant to 42 U.S.C. § 1396n(c). Medicaid-funded waiver programs are an opportunity or capability for receiving some services in the community to prevent admission to a long-term care facility. Section 1396n(c). The only Medicaid-funded opportunity for David to receive services in the community is through the Persons with Disabilities Medicaid Waiver. This Waiver operates under the authority of 42 U.S.C. § 1396n(c). The United States Department of Health and Human Services approved the Persons with Disabilities Medicaid Waiver under the express terms and representations and assurances set forth in the Waiver document. The Persons with Disabilities Medicaid Waiver provides home and community-based services to individuals who, but for the provision of such services, would require care in a nursing facility.

In order to enroll in the Persons with Disabilities Medicaid Waiver, the individual must, among other things, be eligible for Medicaid, apply for services through the Home Services Program, have a severe disability which is expected to last at least twelve months, be an individual who is in need of long-term care, obtain certification from a physician that the individual is in need of long-term care and that this care can be safely and adequately be provided in the individual's home as provided in the service plan developed for the individual, and not require in-home services that are expected to cost more than what the State would pay for institutional care for persons similarly situated.

A participant in the Persons with Disabilities Medicaid Waiver can buy in-home nursing services, but under the program limitations, they are regarded as skilled nursing services; private duty nursing services are not available under the Persons with Disabilities Medicaid Waiver.

If David chooses not to participate in the Persons with Disabilities Medicaid Waiver, there is no other program or option administered by Defendants and funded by Medicaid through which she can receive in-home nursing services. If Plaintiff is claiming that Defendants must create new programs to care for him, that claim is not cognizable in the federal court. *DaimlerChrysler Corp. v. Cuno*, ___ U.S. ___, 126 S. Ct. 1854 (2006); *Olmstead v. L.C.*, 527 U.S. 581 (1999). The State need not create new programs for anyone, because federal court review of the State's judgment about establishing or declining to establish new programs raises grave constitutional concerns. *Olmstead v. L.C.*, 527 U.S. 581, 612-13 (1999) (Kennedy, J. concurring). The *Olmstead* Court stated that the "states must adhere to the ADA's nondiscrimination requirement with regard to the *services they in fact provide*." *Olmstead*, 527 U.S. at 603 n.14 (emphasis supplied).

(C) Barbara Ginder
Bureau Chief - HFS
Bureau of Inter-Agency Coordination
1320 S. Second St., 2nd Fl.
Springfield, IL 62704

Ms. Ginder has information regarding parts 1 - 2(b)(ii)(A)(1-6) of Defendant's Amended Response to Interrogatory No. 11.

Matthew Werner
Director's Advisor on Healthcare Finance - HFS
201 South Grand Ave. East
Springfield, IL 62763

Mr. Werner has information regarding part 2(b)(ii)(B)(2-8) and 2(b)(ii)(C) of Defendant's Amended Response to Interrogatory No. 11.

(D) *See* 1008-2109, 2808 – 3142, HFS 500001 – HFS 500825, DHS 000001 – DHS 000253, DHS 003671 – DHS 003758; Expert Witness Report of Todd D. Menenberg dated March 19, 2007; NAV 300001 - NAV 301506; NAV 001468 – NAV 001879; RSC 000001 - RSC 000039; HFS 009069 – HFS 009597; HFS 301460 – HFS 3014068; and MW 500042 – MW 500053.

INTERROGATORY NO. 12:

Defendant denied, in response to paragraph three of Plaintiff's Complaint, that it approved "extensive nursing services plan for David based on its determination that the services were medically necessary and that the cost of the care David needed to remain at home was less than the cost of the care in the hospital or other institutional setting." Please state whether Defendant is denying that is [sic] approved nursing services, or whether it disagrees with the basis of the determination that is stated. If the latter, please state with specificity the basis of any approval by HFS or any other state agency.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 12:

The Defendant objects to Interrogatory No. 12 as written because it is argumentative, misstates facts, assumes facts not in evidence, and presents a false dichotomy.

To the extent Interrogatory No. 12 seeks the basis for the Defendant's denial of the allegations contained in Paragraph 3 of the Plaintiff's Complaint, the Defendant denied the allegations contained in Paragraph 3 in their entirety because the allegations did not contain an

accurate statement of the programs, procedures, Defendant's actions, or bases for the Defendant's actions. Further, due to the extent of the inaccuracies pled in Paragraph 3, there were no averments that the Defendant could admit pursuant to Rule 8 of the Federal Rules of Civil Procedure.

INTERROGATORY NO. 13:

Please state whether there was one or more Home Services Program Service plans in existence for David Grooms during 2000. If so, please for each plan state:

(a) Type of service provided

(b) Total hours per month

(c) The rate for each service provided

(d) The subtotal for each service provided

(e) The total monthly or estimated service cost

DEFENDANT'S ANSWER TO INTERROGATORY NO. 13

There was not a Home Service Program Service Plan in existence for David Grooms during 2000.

INTERROGATORY NO. 14:

Please state whether there was one or more Home Services Program Service plans in existence for David Grooms during 2001. If so, please for each plan state:

(a) Type of service provided

(b) Total hours per month

(c) The rate for each service provided

(d) The subtotal for each service provided

(e) The total monthly or estimated service cost

DEFENDANT'S ANSWER TO INTERROGATORY NO. 14:

There was not a Home Service Program Service Plan in existence for David Grooms during 2001.

INTERROGATORY NO. 15:

Please state whether there was one or more Home Services Program Service plans in existence for David Grooms during 2002. If so, please for each plan state:

(a) Type of service provided

(b) Total hours per month

(c) The rate for each service provided

(d) The subtotal for each service provided

(e) The total monthly or estimated service cost

DEFENDANT'S ANSWER TO INTERROGATORY NO. 15:

There was not a Home Service Program Service Plan in existence for David Grooms during 2002.

INTERROGATORY NO. 16:

Please state whether there was one or more Home Services Program Service plans in existence for David Grooms during 2003. If so, please for each plans state:

(a) Type of service provided

(b) Total hours per month

(c) The rate for each service provided

(d) The subtotal for each service provided

(e) The total monthly or estimated service cost

DEFENDANT'S ANSWER TO INTERROGATORY NO. 16:

There was not a Home Service Program Service Plan in existence for David Grooms during 2003.

INTERROGATORY NO. 17:

Please state whether there was one or more Home Services Program Service plans in existence for David Grooms during 2004. If so, please for each plan state:

(a) Type of serviced provided

(b) Total hours per month

(c) The rate for each service provided

(d) The subtotal for each service provided

(e) The total monthly or estimated service cost

DEFENDANT'S ANSWER TO INTERROGATORY NO. 17:

There was not a Home Service Program Service Plan in existence for David Grooms during 2004.

INTERROGATORY NO. 18:

Please state whether there was one or more Home Services Program Service plans in existence for David Grooms during 2005. If so, please for each plan state:

(a) Type of service provided

(b) Total hours per month

(c) The rate for each service provided

(d) The subtotal for each service provided

(e) The total monthly or estimated service cost

DEFENDANT'S ANSWER TO INTERROGATORY NO. 18:

The Defendant responds to Interrogatory No. 18 by specifying the following records pursuant to Rule 33(d) of the Federal Rules of Civil Procedure:

1. Home Services Program Service Plan of January 1, 2005, Document Bates numbered HFS 300428;

2. Home Services Program Service Plan of September 24, 2005, Documents Bates numbered HFS 300545 – HFS 300546;

3. Home Services Program Service Plan of October 11, 2005, Documents Bates numbered HFS 300543 – HFS 300544.

INTERROGATORY NO. 19:

State whether there was an addendum to, or reassessment of David Grooms' Home Services Program Plan after David's 21st birthday. If so, please state with specificity any change(s), modification(s), addendum(s) to the plan and the basis therefore.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 19:

To the extent Interrogatory No. 19 seeks any addendums or reassessments of the Plaintiff's Home Services Program Service Plan which occurred after his 21st birthday, the Defendant responds to Interrogatory No. 19 by specifying the following records pursuant to Rule 33(d) of the Federal Rules of Civil Procedure:

1. Home Services Program Service Plan of October 11, 2005, Documents Bates numbered HFS 300543 – HFS 300544;

2. Home Services Program Service Plan of January 24, 2006, Documents Bates numbered HFS 300581 – HFS 300582;

3. Home Services Program Service Plan of April 26, 2006, Documents Bates numbered HFS 300566 – HFS 300567;

To the extent Interrogatory No. 19 seeks the basis for any change(s), modification(s), addendum(s) to the Plaintiff's Home Services Program Service Plans after his 21st birthday, the Home Services Program is operated by the Illinois Department of Human Services and the Defendant has no independent knowledge of the basis for any such change(s), modification(s), or addendum(s) to the Home Services Program Service Plans other than what can be found in David Grooms's DRS HSP case file. Thus, the Defendant responds to the portion of Interrogatory No. 19 seeking the basis for any change(s), modification(s), addendum(s) to the Plaintiff's Home Services Program Service Plans after his 21st birthday by specifying Documents Bates numbered HFS 300416 – HFS 300785 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

INTERROGATORY NO. 20:

State whether there is a requirement that the Medicaid Waiver Program, as applied to David Grooms, be administered so that the cost or average cost of providing care in the home and/or community not exceed the cost of average cost of his care in a hospital and/or institution. If so, state the basis of the requirement, including in your answer any applicable state or federal policies, rules, regulations or guidelines.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 20:

The Defendant objects to Interrogatory No. 20 as being vague and ambiguous to the extent it fails to specify the "Medicaid Waiver Program" to which it requests a statement. The Defendant further objects to Interrogatory No. 20 as being vague and ambiguous to the extent it uses the term "institution" without further definition.

INTERROGATORY NO. 21:

State whether there is an existing waiver program for adults with disabilities. If so, describe all financial or other limitations or restrictions on participation, including a) dollar limits for care and b) geographic restrictions.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 21:

The Home and Community Based Services Waiver for Persons with Disabilities currently exists and is limited to disabled persons under the age of 60 at the time of application. To the extent Interrogatory No. 21 requests a description of all financial or other limitations or restrictions on participation, the Defendant responds to Interrogatory No. 21 by specifying the HCBS Waiver for Persons with Disabilities, Documents Bates numbered 3016 – 3142, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure. The Defendant also generally cites 89 Ill. Admin. Code, Parts 676 – 686 to the extent the regulations are applicable to the portion of the Home Services Program covered by the HCBS Waiver for Persons with Disabilities. To the extent provisions in 89 Ill. Admin. Code, Parts 676 – 686 are applicable to the portions of the Home Services Program which relate to other HCBS waivers included in the Home Services Program—the HCBS Waiver for Persons with HIV/AIDS and the HCBS Waiver for Individuals with Brain Injury—such provisions are irrelevant to the present case.

(a) To the extent Interrogatory No. 21 further seeks a response as to dollar limits for care under the HCBS Waiver for Persons with Disabilities, the waiver requires the State to refuse to offer home and community-based services to any person for whom it can be reasonably be expected that the cost of home or community-based services furnished to that individual would exceed the cost of a nursing facility level of care. The Defendant further cites 89 Ill. Admin. Code Parts 679, 682 and 684.

(b) To the extent Interrogatory No. 21 further seeks a response as to geographic restrictions for care under the HCBS Waiver for Persons with Disabilities, the State has not requested a waiver of the "statewideness" requirements set forth in Title XIX. The Defendant further cites 89 Ill. Admin. Code Parts 676, 682 and 684.

INTERROGATORY NO. 22:

State whether there is currently in existence a waiver program for adults with disabilities who have exceptional medical needs. If so, describe the application process and describe any funding or other limitations that are applicable to the program.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 22:

To the extent Interrogatory No. 22 requests the Defendant state whether any of its existing Home and Community Based Services Waivers, which have been approved by the Secretary of HHS, serve adults who have "exceptional medical needs," the Defendant objects to Interrogatory No. 22 as being vague and argumentative.

To the extent Interrogatory No. 22 requests the Defendant state whether there is an existing HCBS waiver, requiring approval by the Secretary of HHS pursuant to 42 U.S.C. § 1396n(c), specifically entitled as a "Home and Community Based Services Waiver for Adults who have Exceptional Medical Needs," no such waiver currently exists in Illinois.

However, to the extent an exceptional care rate may be utilized under the Home Services Program's implementation of the HCBS Waiver for Persons with Disabilities, the Home Services Program may be understood to serve adults with "exceptional" medical needs. The HCBS Waiver for Persons with Disabilities that governs the operation of the HSP expressly provides that the State will not expend any more money on services to individuals in the waiver than would be incurred if these persons were residing in nursing facilities. For the typical participant

in HSP, the maximum monthly benefits he or she will receive is determined by referring to the Service Cost Maximum, or SCM, that corresponds to the Determination of Need, or DON, score that applicant received as part of the HSP eligibility process. State law sets forth an SCM that corresponds to the DON score. 89 Ill.Admin.Code § 679.50. HFS recognized that individuals with certain disabling conditions, if residing in a nursing facility, would cost the facility more to treat or care for than the basic Medicaid per diem would reimburse. HFS created an Exceptional Care Program for nursing facilities. 305 ILCS 5/5-5.8a; 89 Ill.Admin.Code § 140.569. Through the Exceptional Care Program, a nursing facility may become certified to render exceptional care to persons in approximately seventeen categories, such as HIV-positive, morbidly obese, medically complex, ventilator-dependent, etc. HFS calculates and pays an exceptional care rate to the nursing facility that is above the basic Medicaid per diem to render care to those persons in the categories described in the sentence immediately preceding.

State law at 89 Ill.Admin.Code § 682.520(c), authorizes the Illinois Department of Human Services to extend a rate up to the exceptional care rate set by Defendant for the nursing facilities participating in the Exceptional Care Program, to a participant in the Home Services Program whose medical condition corresponds to one of the conditions for which HFS would pay an exceptional care rate if that person were in the nursing home. The Department of Human Services finds the nursing facility in closest proximity to the HSP applicant's residence that is qualified to render the care that the applicant would need, and extends a rate up to the rate that HFS pays to that nursing home on behalf of the similarly situated nursing home resident to the HSP applicant.

INTERROGATORY NO. 23:

State whether HFS or another agency or entity undertook any study of, or made any finding(s) or determination(s) during 2005 concerning the cost effectiveness of, or medical necessity for, the Home Services Program Service Plan for David Grooms.

If so, identify each individual that participated in the study or determination providing the position or title of each individual.

DEFENDANT'S ANSWER TO INTERROGATORY NO. 23:

All actions relating to the development of David Grooms's Home Services Program Service Plans during 2005 were taken by the IDHS, Division of Rehabilitation Services and the Defendant lacks specific knowledge over any such actions taken by the Division of Rehabilitation services, other that what is documented in David Grooms's DRS HSP case file. Thus, Defendant responds to Interrogatory No. 23 by specifying the documents contained in David Grooms's DRS HSP Case file, Documents Bates numbered HFS 300416 – HFS 300785, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

DATED: April 27, 2007

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

By: _____
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CHRISTOPHER GANGE #6255970
Assistant Attorneys General
160 N. LaSalle St. Suite N-1000
Chicago, IL 60601
(312) 793-2380

STATE OF ILLINOIS)
) ss
COUNTY OF SANGAMON)

VERIFICATION

I, Barbara Ginder, Chief, Bureau of Inter-Agency Coordination, Illinois Department of Healthcare and Family Services, being duly sworn upon oath, depose and state under penalty of perjury as provided by 28 U.S.C. § 1746 that I have read the Defendant's Amended Answer to Plaintiffs' First Set of Interrogatories, Amended Response to Interrogatory No. 11, parts 1 - 2(b)(ii)(A)(1-6) and affirm that said responses are true and correct to the best of my knowledge.

Barbara Ginder

Dated: April 27, 2007

STATE OF ILLINOIS)
) ss
COUNTY OF SANGAMON)

VERIFICATION

I, Matthew Werner, the Director's Advisor on Healthcare Finance, Illinois Department of Healthcare and Family Services, being duly sworn upon oath, depose and state under penalty of perjury as provided by 28 U.S.C. § 1746 that I have read the Defendant's Amended Answer to Plaintiff's First Set of Interrogatories, Amended Response to Interrogatory No. 11, parts 2(b)(ii)(B)(2-8) and 2(b)(ii)(C) and affirm that said responses are true and correct to the best of my knowledge.

Matthew W. Werner

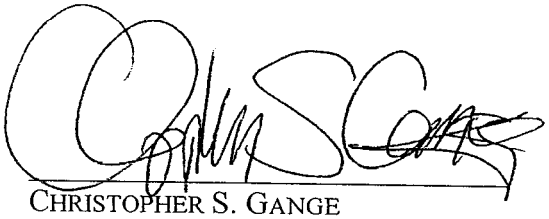
Dated: 4-27-2007

CERTIFICATE OF SERVICE

Christopher S. Gange, an Assistant Attorney General, hereby certifies that on April 27, 2007, he caused a copy of the **DEFENDANT'S AMENDED ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT** to be served on the Plaintiff's counsel of record at the following address:

Byron L. Mason
Karen I. Ward
EQUIP FOR EQUALITY, INC.
20 North Michigan Ave., Suite 300
Chicago, Illinois 60602

By hand-delivery, before the hour of 5:00 P.M.



CHRISTOPHER S. GANGE
Assistant Attorney General

EXHIBIT B

Analysis for Grooms vs. Maram

Prepared by Matthew Werner, Director's Advisor on Healthcare Finance

Purpose of Analysis:
This analysis is intended to illustrate the potential maximum impact if individuals who require some level of nursing care had access, without restriction, to individual personal nursing care equivalent to that which David Grooms received under the Medically Fragile / Technology Dependent waiver (MFTD waiver).

Description of Analysis:
The medical care at issue in this case is direct nursing care also referred to as private duty nursing. This analysis takes the amount of private duty nursing care that David Grooms received in State Fiscal year (SFY) 2005 (the last full year David was in the MFTD waiver) and compares it to the average SFY cost for people in nursing homes and the Home Services Program (HSP). Since it is unclear exactly how many individuals would eventually receive services at David's level, this analysis reviewed the costs at several levels. I believe it is highly unlikely that more than 30% of individuals would ever fall into this category so the levels modeled are 1%, 10%, 20%, and 30%. By modeling a level of 1% the analysis has the flexibility to test any level by multiplying the level of 1% by the level to model. For example, to model a 5% shift one would multiply the value of 1% by 5.

HFS is frequently asked to analyze proposed legislative initiatives and policy changes without complete information in a very short time frame. Without the luxury of time or complete information, such analyses usually take the form of modeling the maximum or minimum potential impacts of a change. This analysis follows that approach, since there are many interdependent variables that affect whether or not an individual can move out of a nursing home.

Relevant Policy Issues:
Private duty nursing is provided to children in the MFTD waiver under Early Periodic Screening, Diagnosis, and Treatment (EPSDT), mandatory services under federal Medicaid law. For adults, those age 21 and older, private duty nursing is an optional federal Medicaid service not included in the Illinois State Plan. The only way for an adult to access skilled nursing care in the home setting is to qualify for services under a Home and Community Based Service waiver (HCBS waiver). Any nursing services for adults rendered outside the federally approved HCBS waiver are not eligible for federal financial participation (FFP).

All individuals in nursing facilities and HCBS waivers must have a Determination of Need (DON) score of 29 in order for the State to reimburse for services. This is the current tool used to determine the need for these services. Therefore, by definition all groups compared in this analysis have a need to receive some level of nursing care.

Conclusion:

Providing a benefit in excess of existing home and community waiver benefit levels could require the State to extend the same benefit to other persons. Some light-need nursing home residents could easily live outside a nursing home if 16 hours per day of nursing care were provided in the home. Nursing homes provide quality care in an efficient manner by capitalizing on economies of scale. That is, one nurse can care for several patients in a centralized setting. Shifting patients from nursing home settings to home settings could have severe implications for the current medical assistance program and require a fundamental alteration of the program.

1. More nurses would be required to provide home care as the care model becomes individualized.
2. This would exacerbate the current nurse shortage. Increased demand combined with short supply would drive up wages. Wages would not stabilize until more nurses entered the market. This would likely take several years.
3. Higher wages would drive up the cost of nursing home and private duty nursing care.
4. Lower occupancy and higher wages would force some nursing homes to close. Nursing homes are the only option for some individuals. The consolidation would reduce access to this care in some areas.
5. Although it may be desirable for individuals to receive 16 hours per day of private duty nursing care in their homes, it is not cost efficient.

The current medical assistance program in Illinois serves over 2 million people each month. This consists of children, parents, pregnant women, disabled adults, and elderly. The current program operates at a cost of over $10 billion annually. Without adjusting for the upward pressure on wages, the shift of only 10% of the current nursing home population to home care receiving benefits equivalent to David Grooms during the last year in the Medically Fragile-Technology Dependent (MFTD) waiver would costs and additional $856 million. That is more than the $578 million spent on all expanded eligible populations in FY 2005. In addition, it would cost another $665 million if 10% of the individuals in the Home Services Program (HSP) were to begin receiving benefits equivalent to David Grooms during the last year in the MFTD waiver. This combined $1.52 billion shift is almost equal than the total amount of $1.8 billion spent on all children in the medical assistance program.

Such a large shift in costs would force the State to fundamentally alter the current program from one that takes care of a mix of uninsured families, disabled, and elderly to one that only takes care of the neediest families and a small population of the most severely ill.

Data Tables

Cost of Persons Shifting from Current Facilities to Community with Nursing Hours and Cost of Persons in Home Services Program (Disabled Waiver) Receiving Increased Services.

		Nursing Facility	Nursing Facility Exceptional Care Vent	Nursing Facility Exceptional Care Other	Disabled Waiver - HSP	MFTD Waiver	David Grooms
	Liability	$ 1,540,086,622	$ 15,882,898	$ 30,655,865	$ 164,757,101	$ 55,561,213	$ 176,812
	Member Months	685,579	2,045	6,365	462,326	5,322	12
	FTEs	57,132	170	530	38,527	444	1
	PMPM	$ 2,246	$ 7,767	$ 4,816	$ 356	$ 10,440	$ 14,734
	PMPD	$ 74	$ 255	$ 158	$ 12	$ 342	$ 483
Population Shift from current facility to community with nursing benefit equivalent to David Grooms or shift of current number of direct care hours to an equivalent to David Grooms.	1% Shift	$ 85,614,629	$ 142,488	$ 631,282	$ 66,473,083		
	10% Shift	$ 856,146,289	$ 1,424,881	$ 6,312,817	$ 664,730,829		
	20% Shift	$ 1,712,292,578	$ 2,849,763	$ 12,625,633	$ 1,329,461,658		
	30% Shift	$ 2,568,438,867	$ 4,274,644	$ 18,938,450	$ 1,994,192,488		

Formula:
(Member months * Percent shift * Grooms PMPM)
minus(-)
(Member months * Percent shift * Current setting PMPM)
equals(=)
Cost to shift to Grooms Benefit

Population Shift from current facility to community with nursing benefit equivalent to MFTD average or shift of current number of direct care hours to an equivalent to MFTD average.	1% Shift	$ 56,172,980	$ 54,667	$ 357,942	$ 46,618,858
	10% Shift	$ 561,729,798	$ 546,672	$ 3,579,418	$ 466,188,577
	20% Shift	$ 1,123,459,596	$ 1,093,345	$ 7,158,835	$ 932,377,154
	30% Shift	$ 1,685,189,394	$ 1,640,017	$ 10,738,253	$ 1,398,565,731

Formula:
(Member months * Percent shift * MFTD PMPM)
minus(-)
(Member months * Percent shift * Current setting PMPM)
equals(=)
Cost to shift to MFTD Average Benefit

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Medical Claims Summary For David Grooms

CONFIDENTIAL -Protected Health Information

Category of Service	Services	Units	Liability	PMPM
SFY 2000 DOS - David was only eligible for 7 months of SFY 2000				
Nursing Services	24	3,520	$5,749	$821.33
	24	3,520	$5,749	$821.33
SFY 2001 DOS				
Physician Services	4	4	$14	$1.20
Nursing Services	77	15,696	$109,749	$9,145.78
Pharmacy Services (Drug and OTC)	36		$1,465	$122.12
Medical Equipment/Prosthetic Devices	4	6	$439	$36.55
Medical Supplies	5	293	$193	$16.05
	126	15,999	$111,860	$9,321.70
SFY 2002 DOS				
Physician Services	7	7	$147	$12.23
Nursing Services	82	12,537	$90,900	$7,574.96
Pharmacy Services (Drug and OTC)	114		$5,881	$490.06
Medical Equipment/Prosthetic Devices	15	18	$928	$77.36
Medical Supplies	14	848	$386	$32.17
	232	13,410	$98,241	$8,186.77

Medical Claims Summary For David Grooms

CONFIDENTIAL -Protected Health Information

Category of Service	Services	Units	Liability	PMPM
SFY 2003 DOS				
Physician Services	3	3	$0	$0.00
Nursing Services	75	16,015	$119,928	$9,994.03
Pharmacy Services (Drug and OTC)	95		$6,975	$581.24
Medical Equipment/Prosthetic Devices	4	4	$333	$27.74
Medical Supplies	3	202	$241	$20.09
Psychologist Encounter	1	6	$69	$5.75
	181	16,230	$127,546	$10,628.85
SFY 2004 DOS				
Physician Services	9	9	$246	$20.54
Nursing Services	163	23,232	$174,926	$14,577.17
Outpatient Services (General)	2		$354	$29.50
Clinic Services (Physical Rehabilitation)	1		$25	$2.08
Pharmacy Services (Drug and OTC)	99		$6,859	$571.58
Medical Equipment/Prosthetic Devices	21	21	$8,001	$666.75
Medical Supplies	22	773	$2,049	$170.72
	317	24,035	$192,460	$16,038.33
SFY 2005 DOS				
Physician Services	16	16	$134	$11.14
Nursing Services	147	19,917	$176,812	$14,734.33
Outpatient Services (General)	3		$97	$8.11
Clinic Services (Physical Rehabilitation)	1		$0	$0.00
Pharmacy Services (Drug and OTC)	117		$5,637	$469.79
Medical Equipment/Prosthetic Devices	87	87	$20,796	$1,733.02
Medical Supplies	88	4,225	$8,230	$685.83
	459	24,245	$211,707	$17,642.21

Medical Claims Summary For David Grooms

CONFIDENTIAL -Protected Health Information

Category of Service	Services	Units	Liability	PMPM
SFY 2006 DOS YTD				
Physician Services	29	29	$113	$9.38
Nursing Services	39	5,933	$52,893	$4,407.75
Inpatient Hospital Services (General)	2		$0	$0.00
Outpatient Services (General)	10		$38	$3.19
Clinic Services (Physical Rehabilitation)	1		$0	$0.00
Pharmacy Services (Drug and OTC)	75	5	$8,760	$729.96
Medical Equipment/Prosthetic Devices	76	77	$12,023	$1,001.94
Medical Supplies	65	1,450	$3,423	$285.23
Individual Providers PA, RN, LPN, CNA and The	80	3,135	$64,440	$5,370.02
Electronic Home Response/EHR Installation(MAI	2	2	$108	$9.00
	379	10,631	$141,798	$11,816.47
SFY 2007 DOS YTD				
Physician Services	3	3	$28	$2.36
Outpatient Services (General)	1		$11	$0.91
Individual Providers PA, RN, LPN, CNA and The	72	3,096	$58,786	$4,898.85
Electronic Home Response/EHR Installation(MAI	6	6	$198	$16.50
	82	3,105	$59,024	$4,918.63

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AABD and HCBS Waiver People - FY 2005 DOS Liablity by Care Setting

	Nursing Facility	Nursing Facility Exceptional Care Vent	Nursing Facility Exceptional Care Other	SLF	DD Facility	Community Settings: CCP Waiver	DD Waiver	Disabled Waiver	AIDS Waiver	TBI Waiver	MFTD Waiver	Non-Waiver	Total AABD & HCBS Waiver
HFS Spending													
Aux	$ 8,336,103	$ 1,049,778	$ 1,078,629	$ 577,633	$ 1,308,776	$ 13,380,781	$ 3,699,302	$ 28,151,859	$ 1,110,888	$ 1,961,290	$ 6,687,031	$ 34,060,590	$ 101,402,658
Clinic	$ 912,109	$ 1,987	$ 24,544	$ 13,268	$ 221,132	$ 648,214	$ 461,679	$ 2,940,426	$ 140,507	$ 426,116	$ 13,256	$ 13,725,743	$ 19,528,979
Inpatient Hospital	$ 74,612,091	$ 4,193,299	$ 10,085,727	$ 634,788	$ 7,623,426	$ 39,642,243	$ 3,303,273	$ 98,643,837	$ 6,155,888	$ 15,189,452	$ 7,128,567	$ 432,875,106	$ 700,087,698
Home Health/Hospic	$ 34,992,698	$ -	$ 184	$ 22,325	$ 640,042	$ 2,416,259	$ 124,749	$ 7,946,956	$ 440,787	$ 812,952	$ 55,561,213	$ 9,420,886	$ 112,379,051
LTC	$ 1,539,840,191	$ 1,461,254	$ 1,977,687	$ 260,468	$ 197,225	$ 1,781	$ 335	$ 928	$ -	$ -	$ -	$ 9,808	$ 1,543,749,677
Exceptional Care	$ 246,431	$ 14,421,644	$ 28,678,178	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 891	$ 43,347,145
Outpatient Hospital	$ 11,105,549	$ 129,489	$ 689,570	$ 196,903	$ 730,240	$ 6,405,619	$ 1,014,763	$ 25,384,581	$ 1,237,374	$ 1,546,015	$ 368,713	$ 89,377,188	$ 138,186,004
Pharmacy	$ 299,623,241	$ 2,295,761	$ 5,143,926	$ 7,332,012	$ 29,077,412	$ 92,637,362	$ 42,290,658	$ 143,074,382	$ 32,996,429	$ 8,858,479	$ 3,722,410	$ 606,795,996	$ 1,273,848,068
Physician	$ 31,939,945	$ 392,702	$ 929,256	$ 245,792	$ 1,936,574	$ 8,529,214	$ 2,347,033	$ 27,220,723	$ 1,585,093	$ 2,516,450	$ 864,810	$ 128,898,177	$ 207,405,770
Phy Aux	$ 5,560,926	$ 55,583	$ 156,352	$ 64,495	$ 503,416	$ 1,759,662	$ 667,519	$ 3,406,630	$ 247,524	$ 348,846	$ 119,268	$ 21,722,157	$ 34,612,377
Practitioner	$ 826,066	$ 3,717	$ 14,488	$ 11,241	$ 140,520	$ 204,088	$ 122,965	$ 322,391	$ 9,690	$ 25,890	$ 501	$ 1,670,222	$ 3,351,779
Psych Clinic	$ 1,103,220	$ -	$ 869	$ 340	$ 4,852	$ 15,200	$ 35,931	$ 425,923	$ 14,327	$ 21,732	$ 3,128	$ 3,829,120	$ 5,454,642
Psych Inpatient	$ 26,285,154	$ -	$ 34,999	$ 13,972	$ 652,666	$ 399,938	$ 2,667,304	$ 7,356,360	$ 536,330	$ 518,047	$ -	$ 72,534,193	$ 110,998,962
Therapies	$ 202,073	$ 53	$ 703	$ 27,877	$ 168,544	$ 183,489	$ 219,203	$ 1,257,035	$ 27,906	$ 319,101	$ 179,162	$ 3,809,503	$ 6,394,649
Transportation	$ 34,214,756	$ 179,590	$ 807,888	$ 325,513	$ 808,369	$ 5,374,860	$ 587,324	$ 8,467,105	$ 326,227	$ 824,420	$ 334,713	$ 19,252,363	$ 71,503,128
Other	$ 1,215,177	$ -	$ 36,450	$ -	$ 4,051	$ 323,243	$ 28,302	$ 525,514	$ 32,479	$ 65,816	$ 376,411	$ 4,984,476	$ 7,591,921
Medicare Premiums	$ 25,774,730	$ 69,238	$ 175,370	$ 1,006,038	$ 5,125,483	$ 27,160,999	$ 6,314,980	$ 11,340,306	$ 707,606	$ 975,493	$ 3,345	$ 110,137,797	$ 188,791,385
SLF	$ 186,446	$ -	$ -	$ 32,723,408	$ -	$ 124	$ -	$ -	$ -	$ -	$ -	$ 113	$ 32,910,091
COP/UI	$ 5,253,759	$ 71,380	$ 710,069	$ 115,838	$ 208,791	$ 5,607,819	$ 357,471	$ 11,430,104	$ 2,980,839	$ 2,113,922	$ 279,175	$ 95,010,213	$ 124,139,380
HFS Total	$ 2,102,230,663	$ 24,325,474	$ 50,544,888	$ 43,571,912	$ 49,351,521	$ 204,690,895	$ 64,242,791	$ 377,895,060	$ 48,549,893	$ 36,524,021	$ 75,641,703	$ 1,648,114,541	$ 4,725,683,363
Member Months	685,579	2,045	6,365	22,670	118,134	385,326	150,822	462,326	25,509	42,575	5,604	5,238,019	7,144,974
FTE-Annual Persons	57,132	170	530	1,889	9,845	32,111	12,569	38,527	2,126	3,548	467	436,502	595,415
PMPM	$ 3,066.36	$ 11,895.10	$ 7,941.07	$ 1,922.01	$ 417.76	$ 531.21	$ 425.95	$ 817.38	$ 1,903.25	$ 857.87	$ 13,497.81	$ 314.64	$ 661.40
PMPY	$ 36,796	$ 142,741	$ 95,293	$ 23,064	$ 5,013	$ 6,375	$ 5,111	$ 9,809	$ 22,839	$ 10,294	$ 161,974	$ 3,776	$ 7,937
DHS & Other Agency Spending													
DD - private	$ 164,594	$ -	$ 6,787	$ -	$ 379,690,284	$ -	$ 9,202	$ -	$ -	$ -	$ -	$ 1,273	$ 379,872,140
DHS-Community MF	$ 11,000,183	$ 3,079	$ 6,920	$ 58,232	$ 573,898	$ 1,780,300	$ 4,559,705	$ 13,039,931	$ 309,990	$ 519,084	$ 2,207	$ 157,525,913	$ 189,379,441
HCBS Waiver - Other	$ 112,213	$ 63	$ 4,058	$ 357	$ 12,518	$ 126,403,504	$ 361,553,273	$ 25,797,697	$ 1,388,873	$ 4,667,571	$ 468	$ 509,250	$ 520,449,843
HCBS Waiver - RN/LPN/CNA/PA	$ 103,329	$ -	$ 5,917	$ -	$ 42,043	$ 55,188	$ 82,422	$ 164,757,101	$ 15,963,016	$ 28,479,218	$ 26,204	$ 245,587	$ 209,760,024
Other Agencies	$ 223,095	$ -	$ -	$ -	$ 14,502	$ 27,205	$ 491,715	$ 1,402,981	$ 166,731	$ 218,516	$ 746,889	$ 9,232,881	$ 12,524,516
SOF-DD	$ 99,977	$ -	$ -	$ -	$ 360,282,338	$ -	$ 69,723	$ -	$ -	$ -	$ -	$ 180,897	$ 360,632,935
SOF-MH	$ 29,789	$ -	$ -	$ -	$ 3,745,517	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 3,775,306
Other Agencies Total	$ 11,733,181	$ 3,141	$ 23,681	$ 58,589	$ 744,361,100	$ 128,266,196	$ 366,766,039	$ 204,997,711	$ 17,828,610	$ 33,884,390	$ 775,767	$ 167,695,801	$ 1,676,394,206
PMPM	$ 17.11	$ 1.54	$ 3.72	$ 2.58	$ 6,300.99	$ 332.88	$ 2,431.78	$ 443.41	$ 698.91	$ 795.88	$ 138.43	$ 32.02	$ 234.63
PMPY	$ 205	$ 18	$ 45	$ 31	$ 75,612	$ 3,995	$ 29,181	$ 5,321	$ 8,387	$ 9,551	$ 1,661	$ 384	$ 2,816
Medicaid Total	$ 2,113,963,844	$ 24,328,615	$ 50,568,570	$ 43,630,501	$ 793,712,620	$ 332,957,090	$ 431,008,831	$ 582,892,772	$ 66,378,503	$ 70,408,411	$ 76,417,470	$ 1,815,810,342	$ 6,402,077,569
PMPM	$ 3,083.47	$ 11,896.63	$ 7,944.79	$ 1,924.59	$ 6,718.75	$ 864.09	$ 2,857.73	$ 1,260.78	$ 2,602.16	$ 1,653.75	$ 13,636.24	$ 346.66	$ 896.03
PMPY	$ 37,002	$ 142,760	$ 95,337	$ 23,095	$ 80,625	$ 10,369	$ 34,293	$ 15,129	$ 31,226	$ 19,845	$ 163,635	$ 4,160	$ 10,752

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DCN Liability For Base and Eligibility Expansion Programs - All Medicaid

		FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006 YTD	FY 2006 Projected
Base Medical Assistance Population											
Disabled	XIX	$2,205,521,819	$2,288,181,567	$2,443,721,340	$2,746,293,036	$2,991,757,664	$3,069,007,731	$3,470,365,722	$3,691,689,316	$3,711,539,341	$3,906,883,517
Elderly	XIX	$1,426,758,707	$1,488,015,243	$1,586,695,400	$1,711,151,039	$1,800,815,404	$1,803,528,766	$1,936,872,973	$2,013,083,724	$1,826,889,921	$1,923,042,022
Parents	XIX	$568,329,372	$564,614,569	$654,860,384	$725,080,892	$771,176,957	$809,533,276	$822,755,559	$838,778,502	$875,228,480	$921,293,137
Children	XIX	$938,125,022	$928,094,712	$1,005,616,398	$1,178,031,885	$1,200,948,936	$1,258,757,836	$1,320,381,285	$1,431,241,249	$1,477,934,632	$1,555,720,665
DCFS	XIX	$283,891,083	$265,303,246	$259,852,566	$273,079,902	$255,874,287	$252,118,109	$230,136,481	$284,092,747	$226,337,992	$238,250,517
Unborn Child SPA	XXI	$0	$0	$0	$0	$0	$3,998	$128,222,285	$202,174,365	$219,724,121	$231,288,548
Eligibility Expansions											
BCC	XIX	$0	$0	$0	$0	$1,138,780	$3,239,661	$4,577,379	$6,497,698	$7,668,045	$8,071,626
IL Healthy Women	XIX	$0	$0	$0	$0	$0	$0	$90,779	$2,335,173	$3,879,345	$4,083,521
HBWD	XIX	$0	$0	$0	$0	$0	$1,895,199	$4,211,981	$5,977,119	$5,525,123	$5,815,919
SeniorCare	XIX	$0	$0	$0	$0	$11,371,162	$201,883,779	$258,382,018	$285,777,043	$168,239,975	$88,547,356
Immigrant Kids											
Assist	NM	$0	$81,467	$701,815	$1,937,094	$3,122,433	$3,715,667	$4,911,873	$6,113,800	$6,474,187	$6,814,933
Share/Premium	NM	$0	$3,327	$60,424	$212,402	$595,902	$456,848	$467,413	$699,365	$940,973	$990,498
185% to 200% FPL	NM	$0	$0	$0	$0	$0	$0	$14,978	$67,496	$59,837	$62,986
Rebate	NM	$0	$0	$0	$0	$0	$10,944	$23,442	$22,628	$16,729	$17,610
		$0	$84,794	$762,238	$2,149,496	$3,718,335	$4,183,460	$5,417,706	$6,903,289	$7,491,726	$7,886,027
KidCare Programs											
Moms & Babies Exp	XIX	$2,576,667	$12,537,264	$19,102,162	$24,151,876	$24,738,689	$28,014,574	$21,669,906	$20,224,314	$21,698,346	$22,840,364
MCHIP - Phase I - XIX	XIX	$179,894	$816,685	$1,528,128	$2,575,037	$2,871,226	$3,236,330	$3,426,568	$4,943,108	$6,904,790	$7,268,200
MCHIP - Phase I - XXI	XXI	$5,762,419	$22,851,778	$30,984,015	$43,111,628	$39,189,600	$42,678,977	$44,781,839	$47,813,444	$62,163,274	$65,435,025
Share/Premium	XXI	$70	$788,801	$7,453,003	$13,892,246	$14,564,715	$17,665,678	$20,671,613	$26,807,420	$30,707,637	$32,323,829
Rebate opt for Share/Premium	XIX	$0	$0	$0	$0	$0	$202,672	$1,035,095	$2,145,433	$2,709,941	$2,852,569
Rebate - uninsured at app 185-200%	NM	$0	$0	$0	$0	$0	$0	$0	$7,777	$54,464	$57,330
Rebate - prev. insured	XIX	$0	$160,303	$1,192,659	$2,319,070	$2,983,530	$2,963,273	$2,774,659	$3,099,318	$2,963,905	$3,119,900
Rebate - uninsured at app.	XXI	$0	$9,541	$57,598	$89,980	$88,312	$100,995	$197,039	$300,288	$311,979	$328,399
KC to 200% - XIX	XIX	$0	$0	$0	$0	$0	$0	$78,110	$312,085	$363,138	$382,251
KC to 200% - XXI	XXI	$0	$0	$0	$0	$0	$0	$1,032,478	$2,739,952	$3,608,069	$3,797,968
TOTAL KIDCARE		$8,519,050	$37,164,372	$60,317,565	$86,139,838	$84,436,071	$94,862,499	$95,667,307	$108,393,136	$131,485,542	$138,405,833
TOTAL KIDCARE less Moms & Babies		$5,942,383	$24,627,108	$41,215,402	$61,987,962	$59,697,382	$66,847,925	$73,997,401	$88,168,822	$109,787,196	$115,565,470
FamilyCare											
FamilyCare I - NM	NM	$0	$0	$0	$0	$0	$77,561	$55,417	$46,285	$109,356	$115,111
FamilyCare I - XIX	XIX	$0	$0	$0	$0	$0	$235,081	$604,405	$581,265	$561,465	$591,015
FamilyCare I - XXI	XXI	$0	$0	$0	$0	$0	$13,679,721	$43,498,816	$54,759,596	$63,576,053	$66,922,161
subtotal FC to 49%		$0	$0	$0	$0	$0	$13,992,364	$44,158,638	$55,387,146	$64,246,873	$67,628,288
FamilyCare II - NM	NM	$0	$0	$0	$0	$0	$0	$10,759	$40,512	$84,852	$89,317
FamilyCare II - XIX	XIX	$0	$0	$0	$0	$0	$0	$898,836	$1,018,368	$913,754	$961,846
FamilyCare II - XXI	XXI	$0	$0	$0	$0	$0	$26	$37,129,434	$62,030,135	$68,113,676	$71,698,607
subtotal FC to 90%		$0	$0	$0	$0	$0	$26	$38,039,029	$63,089,016	$69,112,282	$72,749,770
FamilyCare III - NM	NM	$0	$0	$0	$0	$0	$0	$0	$26,317	$40,488	$42,619
FamilyCare III - XIX	XIX	$0	$0	$0	$0	$0	$0	$0	$2,338,484	$2,654,554	$2,794,267
FamilyCare III - XXI	XXI	$0	$0	$0	$0	$0	$0	$127	$41,684,557	$81,748,468	$86,051,019
subtotal FC to 133%		$0	$0	$0	$0	$0	$0	$127	$44,049,358	$84,443,510	$88,887,905
FamilyCare IV - XIX	XIX	$0	$0	$0	$0	$0	$0	$0	$0	$254,224	$267,604
FamilyCare IV - XXI	XXI	$0	$0	$0	$0	$0	$0	$0	$0	$3,038,366	$3,198,280
FamilyCare IV - Rebate - prev. insured	XIX	$0	$0	$0	$0	$0	$0	$0	$0	$157,503	$165,793
FamilyCare IV - Rebate - uninsured at app.	XXI	$0	$0	$0	$0	$0	$0	$0	$0	$113,508	$119,482
subtotal FC to 185%		$0	$0	$0	$0	$0	$0	$0	$0	$3,563,602	$3,751,160
TOTAL FAMILYCARE		$0	$0	$0	$0	$0	$13,992,390	$82,197,794	$162,525,519	$221,366,267	$233,017,123
Base Medical Assistance Total		$5,422,626,002	$5,534,209,337	$5,950,746,088	$6,633,636,753	$7,020,573,248	$7,192,949,715	$7,908,734,306	$8,461,059,903	$8,337,654,487	$8,776,478,407
Expansions Total		$8,519,050	$37,249,166	$61,079,803	$88,289,333	$100,664,348	$320,056,988	$450,544,964	$578,408,977	$545,656,023	$485,827,405
Grand Total		$5,431,145,052	$5,571,458,503	$6,011,825,891	$6,721,926,087	$7,121,237,596	$7,513,006,703	$8,359,279,270	$9,039,468,880	$8,883,310,510	$9,262,305,812
Expansions by Federal Group	NM	$0	$84,794	$762,238	$2,149,496	$3,718,335	$4,261,021	$5,483,882	$7,024,179	$7,780,885	$8,190,405
	XIX	$2,756,561	$13,514,252	$21,822,949	$29,045,983	$43,103,387	$241,670,570	$297,749,734	$335,249,407	$224,494,107	$147,328,833
	XXI	$5,762,489	$23,650,121	$38,494,616	$57,093,854	$53,842,627	$74,125,398	$147,311,347	$236,135,391	$313,381,031	$326,557,007
		$8,519,050	$37,249,166	$61,079,803	$88,289,333	$100,664,348	$320,056,988	$450,544,964	$578,408,977	$545,656,023	$482,076,245

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