IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PEDIATRIC SPECIALTY CARE, INC.; CHILD & YOUTH PEDIATRIC DAY CLINICS, INC.; TOMORROW'S CHILD LEARNING CENTER, LLC; JAMES AND STACEY SWINDLE, AS PARENTS AND NEXT FRIENDS OF JACOB AND NOAH SWINDLE, MINORS; AND SUSANN CRESPINO, AS PARENT AND NEXT FRIEND OF MICHAEL CRESPINO, A MINOR — PLAINTIFFS

VS. — CASE NO. 4:01CV00830 WRW

ARKANSAS DEPARTMENT OF HUMAN SERVICES; KURT KNICKREHM, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE ARKANSAS DEPARTMENT OF HUMAN SERVICES; RAY HANLEY, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE DIVISION OF MEDICAL SERVICES OF THE ARKANSAS DEPARTMENT OF HUMAN SERVICES; AND ARKANSAS FOUNDATION FOR MEDICAL CARE, INC. — DEFENDANTS

SECOND AMENDED COMPLAINT

The plaintiffs, Pediatric Specialty Care, Inc., Child & Youth Pediatric Day Clinics, Inc., Tomorrow's Child Learning Center, LLC, James and Stacey Swindle, as Parents and Next Friends of Jacob and Noah Swindle, Minors, and Susann Crespino, as Parent and Next Friend of Michael Crespino, a Minor, respectfully come before this Court, by and through their attorneys,

Kaplan, Brewer, Maxey & Haralson, P.A., and Armstrong Allen, PLLC, and for their Second Amended Complaint against the defendants, Arkansas Department of Human Services, Kurt Knickrehm, in his individual capacity and in his official capacity as Director of the Arkansas Department of Human Services, Ray Hanley, in his individual capacity and in his official capacity as Director of the Division of Medical Services of the Arkansas Department of Human Services, and Arkansas Foundation for Medical Care, Inc., state:

STATEMENT OF JURISDICTION AND VENUE

1. Plaintiff Pediatric Specialty Care, Inc. is an Arkansas corporation, has its principal place of business in Pulaski County, Arkansas, and is a qualified provider of services under the Child Health Management Services ("CHMS").

2. Plaintiff Child & Youth Pediatric Day Clinics, Inc. is an Arkansas corporation, has its principal place of business in Craighead County, Arkansas, and is a qualified provider of CHMS services under the Arkansas Medicaid plan.

3. Plaintiff Tomorrow's Child Learning Center, LLC is an Arkansas corporation, has its principal place of business in Mississippi County, Arkansas, and is a qualified provider of CHMS services under the Arkansas Medicaid plan.

4. Plaintiffs James and Stacey Swindle are the parents of Jacob and Noah Swindle, minors and qualified recipients of therapy services under the CHMS program, and reside in Pulaski County, Arkansas.

5. Plaintiff Susann Crespino is the mother of Michael Crespino, a minor and qualified recipient under the CHMS program, and resides in Marion County, Arkansas.

6. Defendant Arkansas Department of Human Services ("ADHS") is an agency of the State of Arkansas.

7. Defendant Kurt Knickrehm is Director of the Arkansas Department of Human Services and, based on information and reasonable belief, is a resident of Pulaski County, Arkansas.

8. Defendant Ray Hanley is Director of the Division of Medical Services of the Arkansas Department of Human Services and, based on information and reasonable belief, is a resident of Pulaski County, Arkansas.

9. Defendant Arkansas Foundation for Medical Care, Inc. ("AFMC") is an Arkansas corporation and has its principal place of business in Sebastian County, Arkansas.

10. Pursuant to 42 U.S.C. § 1983, the plaintiffs seek declaratory and injunctive relief against the defendants, and contend that the defendants, while acting under color of state law, have violated, and continue to violate, their federal constitutional and statutory rights by the manner in which they use the process of prior authorization to: (1) reduce payments for CHMS services without considering the factors of economy, efficiency, quality of care, and equal access; (2) deprive children of their right to CHMS services that, if provided, would result in the maximum reduction of their physical and mental disabilities and restore them to their best-possible functional level; and (3) deny payment to CHMS providers for services provided to children in an effort to make sure that they achieve the maximum reduction of their physical and mental disabilities and are restored to their best-possible functional level.

11. In addition, pursuant to 42 U.S.C. § 1983, the plaintiffs seek money damages against defendants Kurt Knickrehm, Ran Hanley, and AFMC, in their individual capacities, and

contend that these defendants, while acting under color of state law, have violated, and continue to violate, their federal constitutional and statutory rights by the manner in which they use the process of prior authorization to: (1) reduce payments for CHMS services without considering the factors of economy, efficiency, quality of care, and equal access; (2) deprive children of their right to CHMS services that, if provided, would result in the maximum reduction of their physical and mental disabilities and restore them to their best-possible functional level; and (3) deny payment to CHMS providers for services provided to children in an effort to make sure that they achieve the maximum reduction of their physical and mental disabilities and are restored to their best-possible functional level.

12. The Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

13. The Court has civil rights jurisdiction pursuant to 28 U.S.C. § 1343.

14. The Court has venue pursuant to 28 U.S.C. § 1391.

STATEMENT OF FACTS

15. Title XIX of the Social Security Act, 42 U.S.C. § 1396, et seq. (1992 & Supp. 2000), commonly referred to as the Medicaid Act, is a joint federal and state program designed to provide "medical assistance" to qualified persons.

16. Under the Medicaid Act, if a state agrees to establish a Medicaid plan ("State plan") that satisfies the requirements of Title XIX, the federal government will pay a specified percentage of the total amount expended as "medical assistance" under the plan.

17. Participation in the Medicaid program is voluntary, but if a state elects to participate, it must do so in accordance with federal statutes and regulations.

18. The federal Department of Health and Human Services is charged with administration of the Medicaid program, and has delegated much of its responsibility to Centers for Medicare & Medicaid Services ("CMS").

19. Arkansas participates in the Medicaid program, and Arkansas Department of Human Services ("ADHS") is the state agency charged with administration of the Medicaid program in Arkansas.

20. The Medicaid Act defines "medical assistance" as "payment of part or all of the cost of [enumerated] care and services".

21. Some services are mandatory and must be provided under the State plan.

22. Mandatory services include those provided under the early and periodic screening, diagnostic, and treatment services ("EPSDT") provisions of the Medicaid Act.

23. EPSDT services include those provided under the CHMS program.

24. The CHMS program comprises an array of clinic services that are intended to provide full medical multi-discipline diagnosis, evaluation, and treatment for the purpose of intervention, treatment, and prevention of long-term disability for eligible children.

25. Generally stated, services under the CHMS program can be broken down into three broad categories: (1) diagnosis and evaluation services, (2) therapy services, and (3) early intervention day treatment services.

26. CHMS therapy services include physical therapy, speech therapy, occupational therapy, and psychotherapy.

27. CHMS early intervention day treatment services include cognitive development services, developmental motor activity services, and self-care and social/emotional developmental services.

28. When the CHMS program first went into effect, a child could enter the program based on a referral from his or her physician (referred to in Medicaid terms as the Primary Care Physician or "PCP").

29. Diagnostic and evaluation services were provided by CHMS staff, and, as required by EPSDT, individualized treatment plans were developed for the treatment of all developmental disabilities that were discovered during the screening process.

30. Treatment plans generally included the various CHMS therapy and early intervention day treatment services requested by clinic staff, consistent with applicable standards of medical practice.

31. After a treatment plan was developed for a particular child, it was submitted to the CHMS clinic's Medical Director for approval.

32. To the extent a treatment plan included physical therapy, speech therapy, or occupational therapy, the CHMS clinic was required to obtain a prescription from the PCP.

33. If the Medical Director approved the treatment plan, CHMS services were provided in accordance with the plan, the CHMS provider billed ADHS for the services it provided, and ADHS paid the bill.

34. Initially, payment for CHMS services was fairly straightforward: for each service provided under the treatment plan, payment was determined by multiplying the number of units of service actually provided by the rate for that service as published by ADHS in the State plan.

35. Given the nature of this fee-for-service formula, ADHS could reduce payment for CHMS services by either reducing the rates for those services, or the number of units of service that could be provided over a certain period of time.

36. When the CHMS program first went into effect, CHMS clinics provided, on average, six hours of early intervention day treatment services (referred to in Medicaid terms as "core services ") per child per day, five days a week.

37. ADHS routinely reimbursed providers for this amount of core services (six hours per child per day, five days per week) at rates published by ADHS in the State plan.

38. In the fall of 1997, payment for core services was approximately $125.00 per child per day.

39. ADHS, in an effort to reduce payments under the CHMS program, asked CHMS providers if the rates for core services could be reduced or handled in such a way so as to make the program less expensive.

40. Based on this call, a work group consisting of ADHS staff and CHMS providers was created.

41. As a result of their work, an agreement was reached that limited the daily payment for core services to $95.00 per child per day.

42. This agreement went into effect on April 1, 1998, and provided as follows:

> Effective for claims with dates of service on or after April 1, 1998, the Division of Medical Services will implement a $95.00 per day rate for the CHMS-Early Intervention Services (ages 0 through 5) procedure codes. One day of care will be defined as a minimum of 6 hours of service that can include the following procedures with maximums noted below.
>
> 99211

99212
Z1570
Z1571 (Maximum 3 units)
Z1572
Z1575

43. Despite this agreement, ADHS announced in early 1999 that the daily rate for core services would be reduced from $95.00 to $75.00 per child per day.

44. ADHS, Mr. Knickrehm, and Mr. Hanley decided to reduce the rate for core services for purely budgetary reasons.

45. Prior to reducing the daily rate for core services, ADHS, Mr. Knickrehm, and Mr. Hanley failed to consider the factors of efficiency, economy, quality of care, and equal access as required by federal law.

46. ADHS, Mr. Knickrehm, and Mr. Hanley refused to conduct a study that considered those factors, and a lawsuit was filed to enjoin their decision.

47. The lawsuit was filed in the United States District Court for the Eastern District of Arkansas, Western Division, given Case No. LR-C-99-810, and assigned to the Honorable James M. Moody.

48. The plaintiff filed a motion for temporary injunctive relief along with its Complaint.

49. The Court conducted a hearing with respect to the plaintiff's motion, and ruled that the defendants failed to consider the factors of efficiency, economy, quality of care, and equal access before they reduced the daily rate for core services.

50. The Court concluded that the defendants violated the federal statutory rights of the plaintiff as provided by 42 U.S.C. § 1396a(a)(30)(A), and issued a preliminary injunction that stopped the rate reduction before it went into effect.

51. An order to that effect was filed with the Court on November 5, 1999.

52. Thereafter, ADHS, Mr. Knickrehm, and Mr. Hanley submitted an offer of judgment to the plaintiff.

53. The plaintiff accepted their offer, and a Judgment reflecting the agreement was filed on December 14, 1999.

54. In accordance with this agreement, ADHS, Mr. Knickrehm, and Mr. Hanley were permanently enjoined from implementing the $75.00 daily rate for core services. They were also ordered to not reduce rates for services under the CHMS program below the rates in effect on November 6, 1999, unless the reduction is based on an analysis of the costs incurred by efficient and economic providers of such services and are established in conformity with applicable state and federal laws.

55. During that time, ADHS, acting through Mr. Knickrehm and Mr. Hanley, developed a "utilization control" program that requires "prior authorization" of CHMS services.

56. Generally stated, the Medicaid Act recognizes prior authorization as an accepted form of utilization control that a State may use to verify a patient's need for Medicaid services before those services are provided.

57. Prior authorization is an inherent state action, which may be conducted by the State or a private contractor hired by the State.

58. According to the prior authorization program developed by Mr. Knickrehm and Mr. Hanley, there are now two "layers" of prior authorization under the CHMS program.

59. The first layer of prior authorization applies to the admission of children into the CHMS program, and went into effect on October 1, 1999.

60. The second layer of prior authorization applies to the number of units of CHMS services a child may receive over a certain period of time, and went into effect on March 1, 2000.

61. ADHS contracted with AFMC to implement the two layers of prior authorization developed by Mr. Knickrehm and Mr. Hanley.

62. The CHMS Provider Manual requires AFMC to consider requests for CHMS services within 15 business days.

63. At all times described herein, AFMC was acting as the agent of ADHS for the purpose of prior authorizing CHMS services under the State plan.

COUNT ONE: VIOLATION OF 42 U.S.C. § 1396a(a)(30)(A)
UNDER THE FIRST LAYER OF PRIOR AUTHORIZATION

64. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, while acting under color of state law, developed the first layer of prior authorization for the purpose of reducing payments under the CHMS program to a level pre-determined by them.

65. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose, directed AFMC to use the first layer of prior authorization to limit the admission of qualified children into the CHMS program so that their pre-determined cost savings can be achieved.

66. AFMC has used, and continues to use, the first layer of prior authorization to deny admission into the CHMS program to eligible children who have only one diagnosed medical, behavioral, or developmental delay, disability, or handicapping condition.

67. In accordance with EPSDT, the CHMS program was designed to provide therapy and early intervention day treatment services to all eligible children diagnosed as suffering any medical, behavioral, or developmental delay, disability, or handicapping condition, not just those with more than one diagnosis.

68. Before the first layer of prior authorization went into effect, ADHS did not limit CHMS services to children with only one diagnosed medical, behavioral, or developmental delay, disability, or handicapping condition.

69. Before the first layer of prior authorization went into effect, ADHS routinely reimbursed CHMS providers for services provided to children with only one diagnosed medical, behavioral, or developmental delay, disability, or handicapping condition.

70. Before the defendants can use the first layer of prior authorization to limit admission of qualified children into the CHMS program so that the pre-determined cost savings can be achieved, ADHS must consider the factors of economy, efficiency, quality of care, and equal access as required by 42 U.S.C. § 1396a(a)(30)(A).

71. ADHS has failed to consider these factors.

72. Mr. Knickrehm, Mr. Hanley, and AFMC understand that may not use the first layer of prior authorization to limit admission of qualified children into the CHMS program so that the pre-determined cost savings can be achieved unless ADHS considers the factors of economy, efficiency, quality of care, and equal access.

73. Mr. Knickrehm, Mr. Hanley, and AFMC understand that ADHS has failed to consider these factors.

74. Despite their understanding, AFMC continues to use the first layer of prior authorization to reduce payments under the CHMS program to the level pre-determined by Mr. Knickrehm and Mr. Hanley.

75. For these reasons, the defendants, while acting under color of state law, have violated, and continue to violate, the plaintiffs' rights under 42 U.S.C. § 1396a(a)(30)(A).

76. The conduct of the defendants has been willful and malicious, and in knowing violation of the rights of the plaintiffs.

77. For these reasons, punitive damages should be imposed against Mr. Knickrehm, Mr. Hanley, and AFMC so as to deter similar conduct in the future.

COUNT TWO: VIOLATION OF 42 U.S.C. § 1396d(a)(13)
UNDER THE FIRST LAYER OF PRIOR AUTHORIZATION

78. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, while acting under color of state law, developed the first layer of prior authorization for the purpose of reducing payments under the CHMS program to a level pre-determined by them.

79. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose, have directed AFMC to use the first layer of prior authorization to limit the admission of qualified children into the CHMS program so that their pre-determined cost savings can be achieved.

80. AFMC has used, and continues to use, the first layer of prior authorization to deny admission into the CHMS program to eligible children who have only one diagnosed medical, behavioral, or developmental delay, disability, or handicapping condition.

81. In accordance with EPSDT, the CHMS program was designed to provide therapy and early intervention day treatment services to all eligible children diagnosed as suffering any medical, behavioral, or developmental delay, disability, or handicapping condition, not just those with more than one diagnosis.

82. Before the first layer of prior authorization went into effect, ADHS did not limit CHMS services to children with more than one diagnosed medical, behavioral, or developmental delay, disability, or handicapping condition.

83. Before the first layer of prior authorization went into effect, ADHS routinely reimbursed CHMS providers for services provided to children with only one diagnosed medical, behavioral, or developmental delay, disability, or handicapping condition.

84. By using the first layer of prior authorization to deny admission into the CHMS program to children with only one diagnosed medical, behavioral, or developmental delay, disability, or handicapping condition, the defendants, while acting under color of state law, have violated, and continue to violate, the rights of these children to CHMS services mandated by 42 U.S.C. § 1396d(a)(13).

85. Mr. Knickrehm, Mr. Hanley, and AFMC understand that they are denying mandatory services to children, but continue to do so for the mere purpose of reducing payments under the CHMS program to the level pre-determined by Mr. Knickrehm and Mr. Hanley.

86. The conduct of the defendants has been willful and malicious, and in knowing violation of the rights of the plaintiffs.

87. For these reasons, punitive damages should be imposed against Mr. Knickrehm, Mr. Hanley, and AFMC so as to deter similar conduct in the future.

COUNT THREE: VIOLATION OF 42 U.S.C. § 1396a(a)(30)(A) UNDER THE SECOND LAYER OF PRIOR AUTHORIZATION

88. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, while acting under color of state law, developed the second layer of prior authorization for the purpose of reducing payments under the CHMS program to a level pre-determined by them.

89. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose, directed AFMC to use the second layer of prior authorization to deny core services to children admitted into the CHMS program so that their pre-determined cost savings can be achieved.

90. AFMC has used, and continues to use, the second layer of prior authorization to cut the provision of core services from six hours per child per day to 3.5 hours per child per day, regardless of the child's medical or psychological condition.

91. Before the second layer of prior authorization went into effect, ADHS defined one day of care as a minimum of six hours of CHMS core services per child per day.

92. Before the second layer of prior authorization went into effect, ADHS routinely reimbursed CHMS providers for up to six hours of core services per child per day, depending on the amount of core services actually provided.

93. Before the defendants can use the second layer of prior authorization to deny services to children admitted into the CHMS program so that the pre-determined cost savings can be achieved, ADHS must consider the factors of economy, efficiency, quality of care, and equal access as required by 42 U.S.C. § 1396a(a)(30)(A).

94. ADHS has failed to consider these factors.

95. Mr. Knickrehm, Mr. Hanley, and AFMC understand that they may not use the second layer of prior authorization to deny services to children admitted into the CHMS program so that the pre-determined cost savings can be achieved unless ADHS considers the factors of economy, efficiency, quality of care, and equal access.

96. Mr. Knickrehm, Mr. Hanley, and AFMC understand that ADHS has failed to consider these factors.

97. Despite their understanding, AFMC continues to use the second layer of prior authorization to reduce payments under the CHMS program to a level pre-determined by Mr. Knickrehm and Mr. Hanley.

98. The conduct of the defendants has been willful and malicious, and in knowing violation of the rights of the plaintiffs.

99. For these reasons, punitive damages should be imposed against Mr. Knickrehm, Mr. Hanley, and AFMC so as to deter similar conduct in the future.

100. For these reasons, the defendants, while acting under color of state law, have violated, and continue to violate, the plaintiffs' rights under 42 U.S.C. § 1396a(a)(30)(A).

COUNT FOUR: VIOLATION OF 42 U.S.C. § 1396d(a)(13) UNDER THE SECOND LAYER OF PRIOR AUTHORIZATION

101. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, while acting under color of state law, developed the second layer of prior authorization for the purpose of reducing payments under the CHMS program to a level pre-determined by them.

102. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose, directed AFMC to use the second layer of prior authorization to deny core services to children admitted into the CHMS program so that their pre-determined cost savings can be achieved.

103. AFMC has used, and continues to use, the second layer of prior authorization to cut the provision of core services from six hours per child per day to 3.5 hours per child per day, regardless of the child's medical or psychological condition.

104. Six hours of CHMS core services per child per day results in the maximum reduction of physical and mental disabilities, and restores children to their best-possible functional level.

105. Before the second layer of prior authorization went into effect, ADHS defined one day of care as a minimum of six hours of CHMS core services per child per day.

106. Before the second layer of prior authorization went into effect, ADHS routinely reimbursed CHMS providers for six hours of core services per child per day.

107. The current level of CHMS core services approved by AFMC per child per day does not result in the maximum reduction of physical and mental disabilities, and does not restore children to their best-possible functional level.

108. Mr. Knickrehm, Mr. Hanley, and AFMC understand that the current level of CHMS core services approved by AFMC per child per day does not result in the maximum reduction of physical and mental disabilities, and does not restore children to their best-possible functional level.

109. Mr. Knickrehm, Mr. Hanley, and AFMC understand that they are denying mandatory services to eligible children, but continue to do so for the mere purpose of reducing payments under the CHMS program to a level pre-determined by Mr. Knickrehm and Mr. Hanley.

110. Despite their understanding, AFMC continues to use the second layer of prior authorization to reduce payments under the CHMS program to a level pre-determined by Mr. Knickrehm and Mr. Hanley.

111. By using the second layer of prior authorization to cut the provision of core services to all children from six hours per child per day to 3.5 hours per child per day, the defendants, while acting under color of state law, have violated the rights of these children to CHMS services mandated by 42 U.S.C. § 1396d(a)(13).

112. To ensure that the children treated by the plaintiff providers receive the maximum reduction of their physical and mental disabilities, and are restored to their best-possible functional level, they have continued to provide up to six hours of core services per child per day.

113. The provider plaintiffs are entitled to payment for the provision of such services.

114. The conduct of the defendants has been willful and malicious, and in knowing violation of the rights of the plaintiffs.

115. For these reasons, punitive damages should be imposed against Mr. Knickrehm, Mr. Hanley, and AFMC so as to deter similar conduct in the future.

COUNT FIVE: VIOLATION OF SUBSTANTIVE DUE PROCESS

116. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, while acting under color of state law, developed the process of prior authorization for the purpose of reducing payments under the CHMS program to a level pre-determined by them.

117. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose, directed AFMC to not publish regulations that govern the prior authorization of CHMS services so that it can create new rules, without notice to recipients or providers, and use those rules to deny CHMS services to eligible children so that their pre-determined cost savings can be achieved.

118. AFMC has refused, and continues to refuse, to publish regulations that govern the prior authorization of CHMS services so that it can create new rules, without notice to recipients or providers, and use those rules to deny services to children admitted into the CHMS program.

119. For example, AFMC has refused to publish regulations that define:

a. The information needed by AFMC to determine whether a child may be admitted into the CHMS program;

b. The medical standards used by AFMC to determine whether a child may be admitted into the CHMS program;

c. The information needed by AFMC to determine whether a child may receive the CHMS services set forth in the child's treatment plan;

d. The medical standards used by AFMC to determine whether a child may receive the CHMS services set forth in the child's treatment plan;

e. The information needed by AFMC to determine whether a child may receive the amounts of CHMS services set forth in the child's treatment plan; and

f. The medical standards used by AFMC to determine whether a child may receive the amount of CHMS services set forth in the child's treatment plan.

120. By refusing to publish regulations that govern the information needed by AFMC to determine whether a child may be admitted into the CHMS program, AFMC has on many occasions refused to admit children because their CHMS providers failed to submit information they were never told to provide.

121. By refusing to publish the medical standards used by AFMC to determine whether a child may be admitted into the CHMS program, AFMC has on many occasions taken advantage of the lack of published standards to refuse admission to children based on standards of its own making and clearly inconsistent with accepted medical practice.

122. By refusing to publish regulations that govern the information needed by AFMC to determine whether a child may receive the CHMS services set forth in the child's treatment plan, AFMC has on many occasions denied services to children because their CHMS providers failed to submit information they were never told to provide.

123. By refusing to publish the medical standards used by AFMC to determine whether a child may receive the CHMS services set forth in the child's treatment plan, AFMC has on many occasions taken advantage of the lack of published standards to refuse services to children based on standards of its own making and clearly inconsistent with accepted medical practice.

124. By refusing to publish regulations that govern the information needed by AFMC to determine whether a child may receive the amounts of CHMS services set forth in the child's treatment plan, AFMC has on many occasions denied services to children because their CHMS providers failed to submit information they were never told to provide.

125. By refusing to publish the medical standards used by AFMC to determine whether a child may receive the amount of CHMS services set forth in the child's treatment plan, AFMC has on many occasions taken advantage of the lack of published standards to refuse services to children based on standards of its own making and clearly inconsistent with accepted medical practice.

126. Such conduct is arbitrary, capricious, truly irrational, conscious shocking, and offensive to traditional notions of fairness.

127. Mr. Knickrehm, Mr. Hanley, and AFMC understand that such conduct is arbitrary, capricious, truly irrational, conscious shocking, and offensive to traditional notions of fairness, but continue to engage in such conduct for the mere purpose of reducing payments under the CHMS program to a level pre-determined by Mr. Knickrehm and Mr. Hanley.

128. By such conduct, the defendants, while acting under color of state law, have violated, and continue to violate, the plaintiffs' rights to substantive due process under the Fourteenth Amendment to the Constitution of the United States.

129. The conduct of the defendants has been willful and malicious, and in knowing violation of the rights of the plaintiffs.

130. For these reasons, punitive damages should be imposed against Mr. Knickrehm, Mr. Hanley, and AFMC so as to deter similar conduct in the future.

COUNT SIX: VIOLATION OF 42 U.S.C. § 1396a(a)(8)

131. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, while acting under color of state law, developed the process of prior authorization for the purpose of reducing payments under the CHMS program to a level pre-determined by them.

132. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose, have authorized AFMC to not consider requests for services with reasonable promptness so that their pre-determined cost savings can be achieved.

133. AFMC often refuses to follow the regulation set forth in the CHMS Provider Manual that requires it to process requests for services within 15 business days.

134. AFMC often takes at least a month, and sometimes as long as five months, to process requests for services.

135. Pursuant to 42 U.S.C. § 1396a(a)(8), the State Plan "must . . . provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals".

136. Mr. Knickrehm, Mr. Hanley, and AFMC understand that they must consider requests for CHMS services with reasonable promptness.

137. Mr. Knickrehm, Mr. Hanley, and AFMC understand that they must consider requests for CHMS services within 15 business days.

138. Despite their understanding, AFMC often refuses to consider requests for CHMS services with reasonable promptness to reduce payments under the CHMS program to the level pre-determined by Mr. Knickrehm and Mr. Hanley.

139. For these reasons, the defendants, while acting under color of state law, have violated, and continue to violate, the plaintiffs' rights under 42 U.S.C. § 1396a(a)(8).

140. The conduct of the defendants has been willful and malicious, and in knowing violation of the rights of the plaintiffs.

141. For these reasons, punitive damages should be imposed against Mr. Knickrehm, Mr. Hanley, and AFMC so as to deter similar conduct in the future.

COUNT SEVEN: VIOLATION OF 42 U.S.C. § 1396a(a)(3)

142. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, while acting under color of state law, developed the process of prior authorization for the purpose of reducing payments under the CHMS program to a level pre-determined by them.

143. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose, have refused to provide a fair hearing to children who are denied admission into the CHMS program under the first layer of prior authorization.

144. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose, have refused to provide a fair hearing to children who have CHMS services denied to them under the second layer of prior authorization.

145. Although ADHS provides an appeal to CHMS recipients, it does not provide an appeal to CHMS providers.

146. When an appeal is filed, ADHS refuses to tell the CHMS recipient the name of the nurses and doctors employed by AFMC who made the adverse decisions against them.

147. Without such information, it is impossible for the CHMS recipient to determine the opinions formed by the nurses and doctors who will be called to testify against the child.

148. Without such information, it is impossible for the CHMS recipient to determine the basis of the opinions formed by the nurses and doctors who will be called to testify against the child.

149. Without such information, it is impossible for the CHMS recipient to determine the information upon which the nurses and doctors relied in forming their opinions.

150. Without such information, it is impossible for the CHMS recipient to receive a fair hearing.

151. Several months ago, plaintiffs Pediatric Specialty Care, Inc. and Child & Youth Pediatric Day Clinics, Inc. submitted a request to ADHS pursuant to the Arkansas Freedom of Information Act in which they requested the names of the nurses and doctors employed by AFMC who make these decisions.

152. ADHS refused to provide the requested information, and referred the plaintiffs to AFMC.

153. The plaintiffs requested the same information from AFMC, and it refused to provide the information as well.

154. In order to get this information, the plaintiffs filed a lawsuit against AFMC under the Arkansas Freedom of Information Act.

155. On January 15, 2003, Pulaski County Circuit Judge John Ward ordered AFMC to produce the requested information.

156. AFMC filed a motion to reconsider, and Pulaski County Circuit Judge Jay Moody affirmed Judge Ward's decision in all respects.

157. AFMC did not appeal that decision, and the time has run for filing an appeal.

158. Since that time, a CHMS recipient suffered an adverse decision at the hands of AFMC.

159. The CHMS recipient filed an appeal, and asked AFMC to identify the nurses and doctors who issued the adverse decision.

160. Although Judge Ward and Judge Moody previously rejected AFMC's legal argument that such information was protected from disclosure under federal law, AFMC refused to tell the CHMS recipient the names of the doctors and nurses who issued the adverse decision against her.

161. As the basis for refusing to give such information to the CHMS recipient, AFMC relied on the same argument previously rejected by Judge Ward and Judge Moody.

162. Based on information and reasonable belief, Mr. Knickrehm and Mr. Hanley, in order to accomplish their purpose of reducing payments under the CHMS program to the level pre-determined by them, instructed AFMC to not identify the doctors and nurses who issue adverse decisions against CHMS recipients.

163. By refusing to provide such information to CHMS recipients who seek to appeal adverse decisions, the defendants, while acting under color of state law, have violated, and continue to violate, their right to a fair hearing under 42 U.S.C. § 1396a(a)(3).

164. The conduct of the defendants has been willful and malicious, and in knowing violation of the rights of the plaintiffs.

165. For these reasons, punitive damages should be imposed against Mr. Knickrehm, Mr. Hanley, and AFMC so as to deter similar conduct in the future.

INCORPORATION OF ORIGINAL COMPLAINT

166. Because some of the claims set forth by the plaintiffs in their original Complaint are presently on appeal, the plaintiffs restate and incorporate by reference all allegations and claims set forth in their original Complaint as though set forth herein in their entirety, word for word.

JURY DEMAND

167. The plaintiffs demand a jury trial with regard to all issues of fact that may arise herein.

WHEREFORE, the plaintiffs, Pediatric Specialty Care, Inc., Child & Youth Pediatric Day Clinics, Inc., Tomorrow's Child Learning Center, LLC, James and Stacey Swindle, as Parents and Next Friends of Jacob and Noah Swindle, Minors, and Susann Crespino, as Parent and Next Friend of Michael Crespino, a Minor, pray for the following relief:

a. That the Court determine that the defendants have violated, and continue to violate, the plaintiffs' rights under 42 U.S.C. § 1396a(a)(30)(A), 42 U.S.C. § 1396d(a)(13), the substantive due process component of the Fourteenth Amendment to the Constitution of the United States, 42 U.S.C. § 1396a(a)(8), and 42 U.S.C. § 1396a(a)(3), as alleged herein;

b. That the Court issue an injunction that prohibits the defendants from denying admission into the CHMS program to children who have only one diagnosed medical, behavioral, or developmental delay, disability, or handicapping condition;

c. That the Court issue an injunction that prohibits the defendants from approving less than six hours of CHMS core services per child per day;

d. That the Court issue an injunction that orders the defendants to draft regulations to govern the prior authorization of CHMS services consistent with applicable standards of medical practice;

e. That the Court issue an injunction that orders the defendants to enact said regulations after providing notice and opportunity for public comment to CHMS recipients and providers;

f. That the Court issue an injunction that prohibits the defendants from denying CHMS services based on rules or medical standards not properly enacted by AFMC;

g. That the Court issue an injunction that orders the defendants to process each request for CHMS services within 15 business days after it is received by AFMC, lest all services set forth in the request be deemed approved;

h. That the Court issue an injunction that orders the defendants to notify each CHMS recipient, and the recipient's provider, of the name and address of each doctor and nurse who denies a request for admission into the CHMS program, or a request for CHMS services;

i. That the Court issue an injunction that orders the defendants to provide an opportunity for a fair hearing to each CHMS recipient, and the recipient's provider, who suffers a denial of admission into the CHMS program or a denial of CHMS services;

j. That the Court award the plaintiffs their costs herein expended;

k. That the Court award the plaintiffs reasonable attorney fees pursuant to 42 U.S.C. § 1988; and

l. That the Court award the plaintiffs all other relief to which they may be entitled.

Respectfully submitted,

PEDIATRIC SPECIALTY CARE, INC., CHILD & YOUTH PEDIATRIC DAY CLINICS, INC., TOMORROW'S CHILD LEARNING CENTER, LLC, JAMES AND STACEY SWINDLE, AS PARENTS AND NEXT BEST FRIENDS OF JACOB AND NOAH SWINDLE, MINORS, AND SUSANN CRESPINO, AS PARENT AND NEXT BEST FRIEND OF MICHAEL CRESPINO, A MINOR, Plaintiffs

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CERTIFICATE OF SERVICE

I, an attorney for the plaintiffs, certify that I have served a copy of the foregoing pleading on opposing counsel by depositing a copy thereof, postage prepaid, in the United States Mail, addressed as follows:

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this 23d day of June, 2003.

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