**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF LOUISIANA**

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| **HELEN PITTS, KENNETH ROMAN, DENISE HODGES, and RICKII AINEY, on behalf of themselves and all others similarly situated,** | **Civil Action No. 3:10-cv-00635-JJB-SCR** |
| **Plaintiffs** | **Judge James J. Brady** |
| **v.** | **Magistrate Judge Stephen C. Riedlinger** |
| **BRUCE GREENSTEIN, in his official capacity as Secretary of the Louisiana Department of Health and Hospitals, and LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS,** | **CLASS ACTION** |
| **Defendants.** | |

# DEFENDANTS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT


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Dated: March 30, 2011

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## LEGEND

For the purposes of Defendants' Statement of Undisputed Facts in Support of the Motion for Summary Judgment, the following abbreviations shall be used:

- "ADHC" means Adult Day Health Care
- "CMS" means the Centers for Medicare & Medicaid Services
- "DHH" means the Department of Health and Hospitals of the State of Louisiana
- "EDA" means Elderly and Disabled Adults
- "HCBS" means home- and community-based services
- "LT-PCS" means Long-Term Personal Care Services
- "OAAS" means the Office of Aging and Adult Services
- "PACE" means the Program of All-Inclusive Care for the Elderly
- "SFY" means state fiscal year. SFY 2011 began July 1, 2010 and ends June 30, 2011.
- "Nursing facility" means private nursing facility.*
- "First Eley Decl." refers to the declaration of Hugh R. Eley, dated October 21, 2010 and docketed at ECF No. 11-2.
- "Second Eley Decl." refers to the declaration of Hugh R. Eley, dated March 30, 2011 and filed herewith.
- "Eley Tr." refers to the transcript of the deposition of Hugh R. Eley, taken by Plaintiffs' counsel on February 23, 2011.
- "Opp'n at __" refers to a page number in Plaintiffs' Memorandum in Opposition to the Motion for Summary Judgment, which is docketed at ECF No. 38.
- "Abadie Decl." refers to the declaration of Jeanne Abadie, dated January 25, 2011, and docketed at ECF No. 33-7.
- "Kaye Decl." refers to Plaintiffs' Exhibit 25, Declaration of H. Stephen Kaye, docketed at ECF No. 38-3.

* Although the State operates two public nursing facilities serving approximately 250 individuals, those homes tend to serve very high needs patients who are hard to place in a private facility and whose needs likely could not be met in an HCBS option. Second Eley Decl. ¶30. Therefore, they are not included in the data below.

Pursuant to Local Rule of Civil Procedure 56.1, Defendants Bruce Greenstein and the Department of Health and Hospitals submit the following Statement of Undisputed Facts in Support of the Motion for Summary Judgment.

## UNDISPUTED FACTS

### I. Background

| Undisputed Fact | Evidence |
|---|---|
| 1. The Department of Health and Hospitals ("DHH") is the state agency responsible for the development and provision of health and medical services for the citizens of Louisiana, and it provides health and medical services for the uninsured and medically indigent citizens of the State. | La. Rev. Stat. Ann. § 36:251(B) (2010). |
| 2. The Office of Aging and Adult Services ("OAAS") is the agency within DHH responsible for programs related to the long-term care of the elderly and the protection and long-term care of persons with adult-onset disabilities. | La. Rev. Stat. Ann. § 36:258(F) (2010). |
| 3. OAAS maintains several programs that serve recipients outside of institutional settings by providing home- and community-based services ("HCBS") funded through the Medicaid program. | First Eley Decl. ¶7. |
| 4. Louisiana currently makes personal care services available to individuals with adult-onset disabilities through four HCBS programs: the Elderly and Disabled Adult ("EDA") waiver; the Adult Day Health Care ("ADHC") waiver; the Long-Term Personal Care Services ("LT-PCS") program; and the Program of All-Inclusive Care for the Elderly ("PACE"). | First Eley Decl. ¶7. |
| 5. Pursuant to the Medicaid statute, Louisiana limits the number of recipients that can be served through the EDA and ADHC waivers at any given time, and these limits are approved by the federal Centers for Medicare & Medicaid Services ("CMS"). | First Eley Decl. ¶¶18, 25. |
| 6. Because LT-PCS is a Medicaid state plan service, rather than a waiver, the State cannot cap the number of recipients. | First Eley Decl. ¶33. |

## II. Louisiana's HCBS Programs Have Grown Continuously for a Decade.

### A. The Number of HCBS Recipients Has Steadily Increased While the Number of Nursing Facility Residents Has Steadily Dropped.

| Undisputed Fact | Evidence |
|---|---|
| 7. It is the policy of DHH "to serve the greatest number of people that [it] can serve given the funding that is available." | Eley Tr. 181 (line 25) to 182 (line 1). |
| 8. In SFY 2000, only 1,030 individuals received HCBS, while 34,727 individuals received nursing facility services. | Second Eley Decl. att. A. |
| 9. In SFY 2000, approximately 97% of individuals receiving Medicaid-funded long-term care obtained those services in a nursing facility, while 3% received HCBS. | First Eley Decl. ¶9; Second Eley Decl. att. A. |
| 10. In SFY 2010, State Medicaid funds paid for 18,215 individuals to receive HCBS, while they paid for 29,392 individuals to receive nursing facility services. | Second Eley Decl. att. A. |
| 11. In SFY 2010, approximately 62% of individuals receiving long-term care obtained those services in a nursing facility, while 38% received HCBS. | First Eley Decl. ¶9. |
| 12. When monthly, as opposed to annual, populations are considered, the ratio of HCBS-to-institutional recipients more strongly favors HCBS; in June 2010, for example, 42% of long-term care recipients were being served in HCBS and 58% in institutions. | First Eley Decl. ¶9. |
| 13. By SFY 2010, the HCBS population had increased by 1668% since SFY 2000 and by 224% since SFY 2005. | Second Eley Decl. att. A. |
| 14. There were approximately 15% fewer recipients of nursing facility services in SFY 2010 than in SFY 2000. | Second Eley Decl. att. A. |
| 15. The number of individuals receiving HCBS in Louisiana has increased every year since SFY 2000. | First Eley Decl. att. A; Second Eley Decl. att. A. |
| 16. The number of individuals receiving nursing facility services has decreased every year since SFY 2001 save one, following Hurricanes Katrina and Rita. | Second Eley Decl. att. A. |
| 17. Louisiana has traditionally had the highest or nearly the highest number of nursing home beds per capita in the country. | Eley Tr. 27 (lines 1-12). |
| 18. Now Louisiana has a nursing home occupancy rate lower | Eley Tr. 31 (lines 19-21). |

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| than almost any other State. | |
| 19. Individuals who receive HCBS generally receive more one-on-one care than individuals in nursing facilities. Except for a few categories of individuals, the minimum requirement for direct care in a nursing facility is 2.35 hours per resident per day. | Second Eley Decl. ¶31. |

**B. Expenditures on HCBS Have Generally Grown at a Faster Pace than Expenditures on Nursing Facilities and Other Programs.**

| Undisputed Fact | Evidence |
|---|---|
| 20. In SFY 2000, expenditures for HCBS were $8,101,961, while expenditures for nursing facilities were $503,992,717. Less than 2% of expenditures were on HCBS | Second Eley Decl. ¶4. |
| 21. In SFY 2005, expenditures for HCBS were $79,613,310, while expenditures for nursing facilities were $624,081,039. About 17% of expenditures were for HCBS. | Second Eley Decl. att. C. |
| 22. In SFY 2010, expenditures for HCBS were $300,538,453, while expenditures for nursing facilities were $737,529,166. About 29% of expenditures went to HCBS. | Second Eley Decl. att. C. |
| 23. DHH expects HCBS expenditures for SFY 2011 to be $311,060,252. | Second Eley Decl. att. D. |
| 24. Once adjusted for inflation, per capita expenditures for nursing facility services have declined since SFY 2000. | Kaye Decl. at ¶12. |
| 25. Between SFYs 2005 and 2010, expenditures for HCBS increased by 277.5% while expenditures for nursing facilities increased by approximately 18%. | Second Eley Decl. att. C. |
| 26. In the five-year period between SFY 2005 and SFY 2010, LT-PCS was the second-fastest growing line item in the State's entire Medicaid budget. The only service for which expenditures grew faster—the public psychiatric free standing unit—saw all of its growth in SFY 2010, but its budget is only 25% of LT-PCS expenditures. In three of the five years, no service's budget grew faster than LT-PCS's. | Second Eley Decl. att. C. |

## III. Long-Term Personal Care Services ("LT-PCS")

### A. The LT-PCS Program Has Expanded Dramatically Since Its Inception.

| Undisputed Fact | Evidence |
|---|---|
| 27. In SFY 2005, Louisiana added the LT-PCS program to the existing array of HCBS programs providing personal care services. | Eley Tr. 62 (line 22) to 63 (line 2); First Eley Decl. ¶35. |
| 28. In SFY 2005, there were 1,402 individuals who received LT-PCS but no waiver services, and that number has increased every year since: to 2,939 in SFY 2006; to 5,421 in SFY 2007; to 7,536 in SFY 2008; to 9,216 in SFY 2009; and to 12,295 in SFY 2010. | Second Eley Decl. att. A. |
| 29. The LT-PCS population grew by 777% between SFY 2005 and SFY 2010. | Second Eley Decl. att. A. |
| 30. By the end of February 2011, the State had served 12,571 LT-PCS recipients in SFY 2011. | Second Eley Decl. ¶6. |
| 31. There is currently a net increase of approximately 130 LT-PCS recipients every month, and DHH expects significant growth in the program due to the State's aging population and changes in Medicaid's eligibility rules. | Second Eley Decl. ¶6. |
| 32. Until June 2010, participants in the EDA waiver received their personal care services through the LT-PCS program. | Eley Tr. 63 (line 19) to 66 (line 8). |
| 33. Individuals who do not also receive EDA services can supplement their LT-PCS with ADHC services. | First Eley Decl. ¶26; Second Eley Decl. ¶13. |
| 34. If individuals who also receive waiver services are included, then the LT-PCS program served 4,400 individuals in SFY 2005, 6,568 in SFY 2006, 8,625 in SFY 2007, 11,532 in SFY 2008, 14,166 in SFY 2009, and 17,533 in SFY 2010. | Second Eley Decl. att. A. |
| 35. In SFY 2005, expenditures on the LT-PCS program totaled $33,519,293. Expenditures increased by 115.48% in SFY 2006 (to $72,226,870); by 67.76% in SFY 2007 (to $121,164,204); by 60.21% in SFY 2008 (to $194,115,778); and by another 25.02% in SFY 2009 (to $242,683,496). In SFY 2010, expenditures decreased by 2.09% (to $237,616,920). | Second Eley Decl. att. C. |
| 36. DHH estimated that the 32-hour cap on LT-PCS will allow it to avoid new expenditures of $5 million annually in SFY | Eley Tr. 201 (lines 2-13). |

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| 2011 and $24 million annually in SFY 2012. | |

**B. Reductions to the LT-PCS Service Cap Have Not Increased the Rate of Nursing Facility Admissions.**

| Undisputed Fact | Evidence |
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| 37. From the inception of the LT-PCS program until March 2009, recipients could receive up to 56 hours of personal care services per week. | Eley Tr. 66 (lines 5-8). |
| 38. Effective March 20, 2009, the 56-hour cap was reduced to 42 hours. Individuals who were already receiving LT-PCS before March 20 were able to continue receiving more than 42 hours per week until their next annual reassessment. | La. Admin. Code tit. 50, § 12915(A), 35 La. Reg. 401, 402 (Mar. 2009); Eley Tr. 59 (lines 5-20). |
| 39. Prior to reducing the LT-PCS cap to 42 hours, DHH discussed the issue with class counsel in the *Barthelemy* litigation, including lead counsel in the *Pitts* case. | Second Eley Decl. ¶7. |
| 40. The *Barthelemy* class counsel agreed to the reduction in the LT-PCS cap, and the change was incorporated into the Settlement Agreement. | Second Eley Decl. ¶7; Second Eley Decl. att. E. |
| 41. Prior to the implementation of the 42-hour cap on LT-PCS, 18% of recipients received at least 42 hours of services. | Second Eley Decl. ¶8. |
| 42. There were 941 individuals who received more than 42 hours of LT-PCS per week prior to March 2009 who subsequently received fewer than 42 hours. | Second Eley Decl. ¶8. |
| 43. In August 2010, OAAS reduced the service cap to 32 hours of LT-PCS per week. | La. Admin. Code tit. 50, § 12915(A), 36 La. Reg. 1749, 1752 (Aug. 2010). |
| 44. The 32-hour service limitation took effect on September 5, 2010. Individuals who were already receiving LT-PCS before September 5 may continue receiving more than 32 hours per week until their next annual reassessment. | First Eley Decl. att. E; 36 La. Reg. 1749, 1749 (Aug. 2010). |
| 45. Prior to the implementation of the new 32-hour maximum, approximately 28% of LT-PCS recipients (approximately 3300 individuals) were receiving greater than 32 hours of services every week. These individuals will have their hours reduced upon their annual reassessment. | First Eley Decl. ¶37; Eley Tr. 161 (lines 1-3). |
| 46. OAAS has collected data on the number of LT-PCS | First Eley Decl. ¶40; Second Eley Decl. ¶9. |

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| recipients who transitioned into nursing facilities since 2005. | |
| 47. The percentage of LT-PCS recipients transitioning to nursing facilities has decreased from 6% per quarter in October-December 2005, to 4% in January-March 2009, to 3% in July-September 2010. | Second Eley Decl. ¶10; Second Eley Decl. att. B. |
| 48. There has been no observable increase in the percentage of LT-PCS recipients transitioning into nursing facilities since the cap on services was reduced to 42 hours per week. | Second Eley Decl. ¶10; Second Eley Decl. att. B. |
| 49. In September-December 2010, 512 individuals who previously received greater than 32 hours of LT-PCS had their services reduced under the new rule. | Second Eley Decl. ¶11. |
| 50. Only 2% of LT-PCS recipients transitioned into nursing facilities in October-December 2010. | Second Eley Decl. ¶11; Second Eley Decl. att. B. |
| 51. Another 463 LT-PCS recipients had their services reduced pursuant to the 32-hour cap in January and February 2011. | Second Eley Decl. ¶12. |
| 52. The data on transitions of LT-PCS recipients into nursing facilities in January-March 2011 are not yet available. | Second Eley Decl. ¶12. |

## IV. Elderly and Disabled Adults ("EDA") Waiver

| Undisputed Fact | Evidence |
|---|---|
| 53. The Elderly and Disabled Adults ("EDA") waiver is another of Louisiana's HCBS programs that provides long-term care to individuals with adult-onset disabilities. | First Eley Decl. ¶14-21. |
| 54. EDA recipients are given a "budget" they can allocate toward a variety of services offered through the program. | First Eley Decl. ¶16. |
| 55. The maximum EDA budget, which is currently about $40,046 annually, represents 120% of the average cost of nursing facility care. | First Eley Decl. ¶16; Eley Tr. 72 (lines 9-13); Opp'n at 14. |
| 56. The maximum EDA budget "would certainly be adequate to maintain the Plaintiffs and others like them at home, and prevent their having to enter an institution for care." | Opp'n at 14. |
| 57. Services available to EDA recipients currently include support coordination, transition intensive support coordination, environmental accessibility adaptation, personal assistance services, transition services, and ADHC. | La. Admin. Code tit. 50, § 8301, 37 La. Reg. 18, 19-20 (Jan. 2011). |

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| 58. Personal assistance services is the combination in a single service of personal care services and companion care services. | Eley Tr. 72 (lines 14-24). |
| 59. The EDA waiver is currently capped at 4,603 slots. | First Eley Decl. ¶18. |
| 60. Because the EDA waiver is full, DHH maintains a "Request for Services Registry" or "waiting list" for individuals who want EDA services. | First Eley Decl. ¶18. |
| 61. Slots in the EDA waiver are offered first to applicants in certain priority groups and then according to the date they applied for the waiver. | First Eley Decl. ¶18. |
| 62. Currently, three groups have priority for EDA slots: (1) individuals who are victims of abuse or neglect and who would require institutional placement to avoid further abuse and neglect unless they are enrolled in the waiver program; (2) individuals with Amyotrophic Lateral Sclerosis (Lou Gehrig's disease); and (3) individuals who have been in a nursing facility for 90 consecutive days. | La. Admin. Code tit. 50, § 8105(B), 37 La. Reg. 18, 19 (Jan. 2011). |
| 63. Individuals in any of the three groups with priority over LT-PCS recipients are offered slots as they become available. | First Eley Decl. ¶18. |
| 64. As of March 29, 2011, every individual on the EDA Registry who was in one of the high priority groups had already received an EDA offer. | Second Eley Decl. ¶23. |
| 65. Once an EDA offer is extended, it takes an average of 60 to 90 days for services to begin—depending on the individual circumstances of the applicant—while the support coordinator meets with the individual and completes their evaluation, determines the recipient's EDA budget, helps develop a comprehensive plan of care tailored to the individual's needs and preferences, and helps find the recipient housing (if necessary). | Eley Tr. 88 (lines 3-8); Second Eley Decl. ¶24. |
| 66. Individuals may qualify for a priority EDA offer due to a 90-day stay in a nursing facility even if they have not forfeited their residence in the community while staying in the nursing facility. | Eley Tr. 87 (lines 6-11); Second Eley Decl. ¶22. |
| 67. Individuals who have received a priority offer because they reside in a nursing facility are not be required to remain in the nursing facility if they wish to return home prior to the | Second Eley Decl. ¶22. |

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| commencement of EDA services | |
| 68. Until October 2010, EDA applicants who did not currently receive HCBS were given priority over those who were already receiving HCBS through other programs, including LT-PCS. | La. Admin. Code tit. 50, § 8105(B), 35 La. Reg. 2447, 2447 (Nov. 2009). |
| 69. In October 2010, in connection with the reduction in the maximum number of hours from 42 to 32, DHH amended its regulations so that LT-PCS recipients would no longer be in a lower priority group than individuals who do not currently receive HCBS. | 36 La. Reg. 2217, 2218 (Oct. 2010) (amending La. Admin. Code tit. 50, § 8105(B)); First Eley Decl. ¶19. |
| 70. As of October 19, 2010, DHH was offering EDA waiver slots to individuals who were not currently receiving HCBS and who applied for a waiver by April 15, 2008, while LT-PCS recipients who applied prior to that date remained on the Registry without an offer. | First Eley Decl. ¶20. |
| 71. After revising the priority groups in October 2010, DHH began offering EDA slots to LT-PCS recipients who applied for the waiver before April 15, 2008. | First Eley Decl. ¶20. |
| 72. DHH most recently offered EDA slots to LT-PCS recipients who applied for the waiver on or before November 30, 2007. | Second Eley Decl. ¶21. |
| 73. All four named plaintiffs are on the EDA Registry. Since the *Pitts* lawsuit was filed, two named plaintiffs (Helen Pitts and Denise Hodges) have been offered EDA slots, as has the only unnamed plaintiff identified in the pleadings (Cleo Lancaster). | Opp'n at 28 n.148; First Eley Decl. ¶21. |
| 74. Until October 2010, individuals who were admitted to a nursing facility were given priority EDA offers regardless of how long they had stayed there. | La. Admin. Code tit. 50, § 8105(B)(2), 35 La. Reg. 2447, 2447 (Nov. 2009). |
| 75. DHH adopted the rule limiting priority offers to individuals who have been in a nursing facility for 90 consecutive days to address a situation where some individuals were only in need of nursing home care for a short period (for example, for rehabilitation after a hospital stay), or were trying to avoid the waiting list by entering a nursing home for a brief stay and then returning home to wait for their EDA offer. | Eley Tr. 78 (line 20) to 82 (line 4); Second Eley Decl. att. G. |
| 76. DHH concluded that 90 days was an appropriate duration for the length-of-stay requirement because that is the standard used by the federal government in the Money Follows the | Eley Tr. 81 (line 12) to 83 (line 10); 42 U.S.C. § 1396a note, *as amended*, Patient |

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| Person Program to determine who is at risk of being a long-term resident of a nursing facility. | Protection and Affordable Care Act, Pub. L. 111-148, § 2403, 124 Stat. 119, 304-05 (Mar. 23, 2010). |
| 77. Before adopting the 90-day waiting period, DHH engaged in several discussions about a length-of-stay requirement with the HCBS Redesign Workgroup. | Eley Tr. 78 (line 20) to 82 (line 4); Second Eley Decl. att. F; Second Eley Decl. att. G; Second Eley Decl. att. H. |
| 78. The HCBS Redesign Workgroup included officials from OAAS and several stakeholder advocacy groups—including the Advocacy Center—and was intended to solicit these groups' input on changes to the State's HCBS offerings. | Decl. of Jeanne Abadie, at ¶2. |
| 79. The consensus of the Workgroup was that DHH should revise its policy to adopt a length-of-stay requirement. | Eley Tr. 81 (lines 20-25); Second Eley Decl. att. F; Second Eley Decl. att. H. |
| 80. The Workgroup also reached a consensus that 90 days was an appropriate duration for the length-of-stay requirement. | Eley Tr. 81 (line 16) to 82 (line 4). |
| 81. The number of EDA recipients grew steadily from 552 in SFY 2000 to 4,870 in SFY 2010. | Second Eley Decl. att. A. |
| 82. Expenditures on the EDA waiver increased by 43% between SFY 2005 and SFY 2010. | Second Eley Decl. att. C. |

## V. Adult Day Health Care ("ADHC") Waiver

| Undisputed Fact | Evidence |
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| 83. ADHC services are a planned, diverse daily program of individual services and group activities structured to enhance the recipient's physical functioning and to provide mental stimulation. | First Eley Decl. ¶22. |
| 84. ADHC services are provided at licensed facilities that are operational at least five hours per day on a regularly scheduled basis or as specified in the recipient's plan of care. | First Eley Decl. ¶22. |
| 85. ADHC facilities are required to provide recipients with transportation to and from the facility. | First Eley Decl. ¶22. |
| 86. Helen Pitts lives 2.6 miles away from the ADHC of Livingston Parish, within the transportation range of an ADHC facility that accepts Medicaid. | Second Eley Decl. ¶17. |
| 87. Denise Hodges lives 7.7 miles away from Christus | Second Eley Decl. ¶18. |

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| Schumpert ADHC, within the transportation range of an ADHC facility that accepts Medicaid. | |
| 88. Rickii Ainey lives 4.2 miles away from New Directions ADHC, within the transportation range of an ADHC facility that accepts Medicaid. | Second Eley Decl. ¶19. |
| 89. Kenneth Roman lives 34 miles from an ADHC facility that accepts Medicaid, and DHH has not determined whether a facility in his region would provide him with transportation. | Second Eley Decl. ¶20. |
| 90. In addition to transportation, ADHC facilities must provide at a minimum: individualized training and assistance with activities of daily living; counseling and education in the areas of health and nutrition; individualized exercise and recreation programs; nursing services; medical care management; and one hot meal and two snacks per day. | First Eley Decl. ¶22. |
| 91. There are currently 825 slots in the ADHC waiver, but the State is able to serve a higher number of people over the course of the year because of turnover. | Eley Tr. 41 (lines 16-18). |
| 92. There were 905 ADHC recipients in SFY 2010, up from 385 in SFY 2000. | Second Eley Decl. att. A. |
| 93. Currently an LT-PCS recipient waits approximately five months between applying for an ADHC slot and receiving an offer. | Eley Tr. 53 (line 25) to 54 (line 1). |
| 94. Most recently, on March 22, 2011, the State offered ADHC slots to individuals who were living in the community and who applied for the ADHC waiver on October 22, 2010. | Second Eley Decl. ¶14. |
| 95. Individuals who have had an overnight hospital stay in the last 30 days and individuals who have been in nursing facilities for at least 90 consecutive days are given priority on the ADHC Registry over other individuals living in the community, and do not face a wait before receiving an offer. | Second Eley Decl. ¶13; La. Admin. Code tit. 50, § 2107(B), 36 La. Reg. 2797, 2798 (Dec. 2010). |
| 96. Expenditures on the ADHC waiver grew by 240% between SFY 2000 and SFY 2010. | Second Eley Decl. att. C. |
| 97. According to Plaintiffs, there were 27 ADHC facilities in Louisiana that accepted Medicaid as of October 6, 2010. | Opp'n at 27 (citing First Eley Decl. att. D). |
| 98. As of March 3, 2011, there were 38 ADHC facilities in Louisiana that accepted Medicaid and 22 more facilities | Second Eley Decl. ¶15. |

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| with applications pending. | |

## VI. Recent DHH Initiatives Have Helped Individuals Leave Nursing Facilities and Have Allowed the State to Close Several Nursing Facilities Permanently.

### A. Money Follows the Person

| Undisputed Fact | Evidence |
|---|---|
| 99. In 2007, Louisiana successfully applied for a federal grant under the Money Follows the Person ("MFP") program. | Eley Tr. 89 (lines 7-10). |
| 100. Under the MFP program, States qualify for a higher percentage of federal matching dollars to help cover the costs of transitioning people out of nursing homes, and Louisiana also uses MFP grant money to engage in outreach to nursing facility residents and to hire staff who can identify those residents who want to move into the community. | Eley Tr. 84 (lines 5-18). |
| 101. The MFP program provides recipients with transition-related services including assistance in finding a residence, paying a rental deposit, and identifying an HCBS provider. | Eley Tr. 91 (lines 1-6). |
| 102. Once individuals transition to the community with MFP funding, they can receive long term care through one or more of the State's several HCBS programs | Eley Tr. 89 (line 22) to 90 (line 4). |
| 103. The MFP program successfully helped 80 individuals transition out of nursing facilities between November 2009 and February 2011, and another 100 to 120 transitions were pending. | Eley Tr. 92 (line 13) to 93 (line 5). |
| 104. Many individuals have transitioned out of nursing facilities without the assistance of the MFP grant. | Second Eley Decl. ¶26. |

### B. Community Choice Waiver

| Undisputed Fact | Evidence |
|---|---|
| 105. DHH recently received CMS's approval for a new waiver (the "Community Choice" waiver) that DHH designed to replace the EDA waiver. | First Eley Decl. ¶17; Eley Tr. 38 (lines 15-19). |
| 106. The Community Choice waiver will be more comprehensive than its predecessor and will include skilled nursing services, skilled therapy services, home-delivered | First Eley Decl. ¶17. |

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| meals, assistive technology, and transportation | |
| 107. The Community Choice waiver will also allow enrollees to self-direct their services and, in many cases, purchase more services within the same budget. | First Eley Decl. ¶17. |
| 108. DHH expects the Community Choice waiver to be operational by the middle of 2011. All EDA enrollees will be transitioned to the Community Choice waiver. | First Eley Decl. ¶17; Eley Tr. 75 (lines 3-10). |

### C. Program of All-Inclusive Care for the Elderly

| Undisputed Fact | Evidence |
|---|---|
| 109. Louisiana currently has two facilities that operate as Program of All-Inclusive Care for the Elderly ("PACE") centers: one in New Orleans and one in Baton Rouge. | First Eley Decl. ¶27. |
| 110. The services provided at PACE centers include, among others: personal care and supportive services; restorative therapies; nutritional counseling; recreational therapy; meals; and primary care and medical specialty services. | La. Admin. Code tit. 50, § 303, 30 La. Reg. 244, 245-46 (Feb. 2004). |
| 111. PACE centers must provide recipients with transportation to and from the center. | First Eley Decl. ¶27. |
| 112. The PACE centers are authorized to serve up to 380 individuals (180 in Baton Rouge and 200 in New Orleans), but they currently serve a total of approximately 230 individuals and there is no wait list. | First Eley Decl. ¶27. |
| 113. Neither PACE center was providing services prior to SFY 2008. | Second Eley Decl. att. A. |

### D. 75 Newly Available Slots in the EDA Waiver

| Undisputed Fact | Evidence |
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| 114. Until recently, 150 of the slots in the EDA waiver were set aside for individuals with Lou Gehrig's disease, but only about 75 of these slots were filled. | Second Eley Decl. ¶25. |
| 115. By reducing the set-aside to 75 slots, the State made 75 previously empty slots available for use. | Second Eley Decl. ¶25. |

### E. 200 Slots in the Pending Adult Residential Care Waiver

| Undisputed Fact | Evidence |
|---|---|
| 116. Louisiana is currently awaiting federal approval of a new waiver program—the Adult Residential Care waiver—that will create 200 new waiver slots. | First Eley Decl. ¶29. |

### F. Bed Buy-back Program

| Undisputed Fact | Evidence |
|---|---|
| 117. Part of Louisiana's strategy for serving a greater percentage of individuals with adult-onset disabilities in the community involves reducing the supply of institutional services. | Eley Tr. 224 (lines 10-15). |
| 118. Louisiana recently created a "Bed Buy-back Program" intended to lead to the permanent closure of nursing facilities and the elimination of nursing home beds from the market. | Second Eley Decl. ¶28. |
| 119. Since July 2008, the Bed Buy-back Program has led to the elimination of 461 nursing home beds and the permanent closure of 4 nursing facilities. | Second Eley Decl. ¶28. |
| 120. Going forward, the State expects the Bed Buy-back Program to lead to the elimination of 2 nursing facilities per year and an average of 115 to 144 beds per facility. | Second Eley Decl. ¶28. |
| 121. For each nursing facility closed under the Bed Buy-back Program, the State expects to incur new costs for five years but then see savings of $378,706 per year thereafter. | Second Eley Decl. ¶28. |

### G. Private Room Conversion

| Undisputed Fact | Evidence |
|---|---|
| 122. In 2007, the State established a Private Room Conversion Program that gives nursing facilities a financial incentive to convert semi-private Medicaid rooms into private rooms and, in doing so, eliminate nursing home beds from the market. | Second Eley Decl. ¶29. |
| 123. Since 2007, the Private Room Conversion Program has led to the permanent closure of 310 nursing home beds. | Second Eley Decl. ¶29. |

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Respectfully submitted,

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