IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

A.M.T., by his mother and next friend Karla T; J.J.M., by his mother and next friend Amy M.; and J.M.G., by his father and next friend Michael G., on their own behalf and on behalf of those similarly situated,	)	
Plaintiffs,	)	
vs.	)	No. 1:10-cv-00358-JMS-TAB
ANNE WALTERMANN MURPHY, in her official capacity as Secretary of the Indiana Family and Social Services Administration, and PATRICIA CASANOVA, in her official capacity as Director of the Office of Medicaid Policy and Planning of the Indiana Family and Social Services Administration,	)	
Defendants.	)	COMPLAINT – CLASS ACTION

FIRST AMENDED CLASS ACTION COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Introductory Statement

1. The plaintiffs in this case are all minors who are seriously disabled Medicaid recipients. In order to ensure that they obtain their best possible functional state and to prevent regression in their conditions, the plaintiffs have been receiving therapies paid for by the Indiana Family and Social Services Administration (and have been receiving these therapies for several years). These therapies, at the very least, are necessary to ensure that the plaintiffs do not lose functional abilities, and without them the plaintiffs may cease being able to walk, roll over, or stretch adequately, and they may require surgeries—likely paid for by the Medicaid agency—in the future. Notwithstanding both

the need for these therapies and the recommendation of the plaintiffs' physicians and other treatment professionals that these therapies be provided, the Medicaid agency has seized on two (2) provisions of the Indiana Administrative Code to deny these requested services. First, the Indiana Administrative Code purports to limit the provision of therapies to two (2) years unless the patient demonstrates significant progress toward a higher functional state. *See* IND. ADMIN. CODE tit. 405, r. 5-22-6(b)(6). And second, the Indiana Administrative Code contains a blanket prohibition on the provision of so-called "maintenance therapy," which is therapy designed to prevent regression rather than to enable progression. *See* IND. ADMIN. CODE tit. 405, r. 5-22-6(b)(7). These provisions, both facially and as employed by the defendants, are violative of federal Medicaid law and must be enjoined.

Jurisdiction, Venue, and Cause of Action

2. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States, and as a pre-emption claim brought pursuant to the decision of the United States Supreme Court in *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96 n.14 (1983) (holding that a plaintiff presenting a pre-emption claim "presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve" even in the absence of a cause of action under 42 U.S.C. § 1983).

Parties

6. A.M.T. are the initials of a minor resident of Johnson County, Indiana. He brings this action by his mother and next friend, Karla T., and on his own behalf and on behalf of those similarly situated.

7. J.J.M. are the initials of a minor resident of Marion County, Indiana. He brings this action by his mother and next friend, Amy M., and on his own behalf and on behalf of those similarly situated.

8. J.M.G. are the initials of a minor resident of Hamilton County, Indiana. He brings this action by his father and next friend, Michael G., and on his own behalf and on behalf of those similarly situated.

9. Anne Waltermann Murphy is the duly appointed Secretary of the Indiana Family and Social Services Administration, and is sued in her official capacity.

10. Patricia Casanova is the duly appointed Director of the Office of Medicaid Policy and Planning of the Indiana Family and Social Services Administration, and is sued in her official capacity.

Class Action Allegations

11. The plaintiffs bring this action on their own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

12. The class is defined as follows:

> Any and all persons in Indiana who are or will be enrolled in the Medicaid program and who are or will be under the age of twenty-one (21) who have been or will be denied coverage for physical therapy, occupational therapy, respiratory therapy, and/or speech pathology ("therapies"), or who have had or will have coverage for these therapies otherwise limited because of 405 IAC 5-22-6(b)(6) and/or 405 IAC 5-22-6(b)(7), notwithstanding the fact that a physician or other

licensed practitioner of the healing arts acting within the scope of his or her practice under Indiana law has or will recommend and/or prescribe these therapies for the Medicaid recipient.

13. As defined, the class meets all requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

a. The class is so numerous that the joinder of all members is impracticable. While the precise size of the class is unknown, it is believed to number at least in the hundreds and possibly in the thousands.

b. There are questions of law or fact common to the class, specifically whether the defendants' practices or policies violate the rights of the class under federal Medicaid law.

c. The claims of the representative parties are typical of those of the class.

d. The representative parties will fairly and adequately protect the interests of the class.

14. The further requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met in this cause with respect to the class in that the defendants, at all times, have acted or have refused to act in a manner generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole.

15. Undersigned counsel is a skilled and experienced attorney in cases of this type, and should be appointed as counsel for the class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

Legal Background

Background to the Medicaid Program

16. Medicaid is a federal program of medical assistance for the poor established by Title XIX of the Social Security Act and funded by the federal government and participating states. *See* 42 U.S.C. § 1396, *et seq.*

17. Federal Medicaid appropriations to the states are designed to enable states to furnish medical assistance to those whose incomes and resources are insufficient to meet the costs of necessary medical services. *See* 42 U.S.C. § 1396-1.

18. Eligibility for Medicaid is limited to low-income people who fall into one of several categories or groups specified in federal law, which includes disabled persons. *See* 42 U.S.C. § 1396a(a)(10)(A).

19. State participation in the Medicaid program is voluntary. However, states that choose to participate in the Medicaid program must submit plans to the United States Department of Health and Human Services in order to qualify for the federal matching funds, and these plans contain the requirements that a state must meet to receive federal approval. *See* 42 U.S.C. § 1396a(a).

20. Indiana participates in the federal Medicaid program and is bound by all of its requirements. *See* IND. CODE 12-15-1-1, *et seq*.

21. Federal Medicaid law lists certain medical services that a participating state must cover in its Medicaid program (i.e., "mandatory" services), and lists certain other medical services which a state may choose to cover in its Medicaid program if it wishes (i.e., "optional" services). 42 U.S.C. §1396a.

Covered Services under Federal Medicaid Law

22. Federal law requires that states participating in the Medicaid program cover, *inter alia*, the following:

    a. Early and periodic screening, diagnostic, and treatment services ("EPSDT services") for individuals who are under the age of 21. 42 U.S.C. § 1396d(a)(4)(b).

    b. Physical therapy and related services. 42 U.S.C. § 1396d(a)(11).

c. Other diagnostic, screening, preventative, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level. 42 U.S.C. § 1396d(a)(13).

d. Respiratory care services. 42 U.S.C. § 1396d(a)(20).

23. EPSDT services are defined to include "necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of [42 U.S.C. § 1396d] to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan." 42 U.S.C. § 1396d(r)(5).

24. Federal law requires that each medical service covered by a state Medicaid plan, whether "mandatory" or "optional," must be sufficient in amount, duration and scope to reasonably achieve its purpose, although the state Medicaid agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. 42 C.F.R. § 440.230(b),(d).

25. Federal and state Medicaid law mandate Medicaid coverage of medically necessary, covered services, including "optional" services that the State chooses to cover. *Thie v. Davis*, 688 N.E.2d 182 (Ind. Ct. App. 1997), *trans. denied*; *see also Coleman v. Indiana Family & Social Servs. Admin.*, 687 N.E.2d 366 (Ind. Ct. App. 1997); *Davis v. Schrader*, 687 N.E.2d 370 (Ind. Ct. App. 1997).

26. Indiana Medicaid law defines a "medically reasonable and necessary service" as one "that is required for the care or well being of the patient and is provided in accordance with generally accepted standards of medical or professional practice." *See* IND. ADMIN. CODE tit. 405, r. 5-2-17.

Prior Authorization Requirements in Indiana

27. Pursuant to Indiana law, some services—including physical therapy, occupational therapy, respiratory therapy, and speech pathology—require pre-approval (in a process known as "prior authorization") in order for them to be covered by the Medicaid program. IND. ADMIN. CODE tit. 405, r. 5-22-6.

28. However, state regulation provides that

> [t]herapy for rehabilitative services will be covered for a recipient no longer than two (2) years from the initiation of the therapy unless there is a significant change in medical condition requiring longer therapy. Habilitative services for a recipient under eighteen (18) years of age may be prior authorized for a longer period on a case-by-case basis. Respiratory therapy services may be prior authorized for a longer period of time on a case-by-case basis.

IND. ADMIN. CODE tit. 405, r. 5-22-6(b)(6).

29. State regulation additionally provides that "[m]aintenance therapy is not a covered service" under Indiana's Medicaid program. IND. ADMIN. CODE tit. 405, r. 5-22-6(b)(7).

30. "Maintenance therapy" is defined as "therapy addressing chronic medical conditions where further progress can no longer be expected or where progress is minimal in relation to the time needed in therapy to achieve that progress." IND. ADMIN. CODE tit. 405, r. 5-22-1(5).

Factual Allegations

Factual Allegations Concerning the Defendants' Practices or Policies

31. The Indiana Family and Social Services Administration, through its Office of Medicaid Policy and Planning, is responsible for the operation of, *inter alia*, the Medicaid program in Indiana. These agencies or departments are occasionally referred to herein collectively as the "Medicaid agency."

32. A Medicaid enrollee who desires to receive Medicaid payment for certain services—including, *inter alia*, physical therapy, occupational therapy, respiratory therapy, and speech pathology (collectively, "therapies")—must obtain approval for these services from the Medicaid agency before receiving Medicaid payment for these services. This is a process known as "prior authorization."

33. A request for prior authorization is submitted on behalf of a Medicaid enrollee by the provider that will provide the services to the Medicaid enrollee. Once such a request is submitted on behalf of a Medicaid enrollee, it will be approved, denied, or modified by the Medicaid agency.

34. The Medicaid agency has contracted with two (2) companies to issue decisions on prior authorization requests. These companies are Advantage Health Solutions, Inc, and MDWise, Inc., and these companies both therefore operate as agents of the Medicaid agency.

35. The Medicaid agency and its contractors refuse to approve therapies for more than two (2) years from the initiation of the therapy, unless there is a significant change in medical condition requiring longer therapy. Although there is an exception for children under eighteen (18) years of age, this exception only applies when the agency determines that the patients are continue to experience significant progression in their functional states.

36. The Medicaid agency and its contractors also refuse to approve so-called "maintenance therapy," which is defined as "therapy addressing chronic medical conditions where further progress can no longer be expected or where progress is minimal in relation to the time needed in therapy to achieve that progress."

37. Thus, "maintenance therapy" is, in essence, therapy designed to prevent an individual from regressing to a lesser functional state rather than therapy designed to enable an individual to progress to a better functional state.

38. Although the Medicaid agency may approve therapies for longer than two (2) years for a Medicaid recipient under the age of eighteen (18) on a case-by-case basis, it will not do so if it determines that the therapies requested qualify as "maintenance therapy."

39. The Medicaid agency's practices or policies in both of these regards have been promulgated in Title 405 of the Indiana Administrative Code and have been recorded in its policy manual regarding prior authorization services. The relevant portions of the latter document are attached and incorporated herein as Exhibit 1.

40. The Medicaid agency enforces both of these policies even when the requested therapies have been recommended and/or prescribed by a Medicaid enrollee's physician or other licensed practitioner of the healing arts within the scope of their practice under Indiana law.

41. Indeed, because a prior authorization request must be submitted on a Medicaid enrollee's behalf by his or her physician or other licensed practitioner of the healing arts within the scope of their practice under Indiana law, each prior authorization request for therapies has necessarily been recommended and/or prescribed by these individuals.

42. These two (2) limitations on the approval of prior authorization for therapies in Indiana possess no relationship to medical necessity, nor do they possess any relationship to whether therapies are necessary for the maximum reduction of physical or mental disability or the restoration of a Medicaid enrollee to his or her best possible functional level.

43. Indeed, minors for whom therapies have been recommended and/or prescribed will oftentimes have chronic medical conditions and/or serious disabilities that hinder their ability to function or develop. For these individuals, because of their age it is difficult and oftentimes impossible to determine whether and when they have reached their best possible functional state.

44. However, even if they have reached their best possible functional state, therapies are generally necessary in order to prevent regression. A minor for whom therapies have been recommended and/or prescribed and who possesses a chronic medical condition and/or serious disability that hinders his or her ability to function or develop will likely lose the ability to walk, crawl, roll over, stretch, or assist their caretakers with their activities of daily living if these therapies are stopped. In many cases, if therapies are stopped the minor will require one (1) or more surgeries (which will likely be paid for by the Medicaid agency).

45. Thus, regardless of whether therapies for minors are capable of advancing an individual to a higher functional state, they are certainly preventative in nature and are necessary to prevent these individuals from regressing to a worse functional state.

Factual Allegations Concerning the Named Plaintiffs

Factual Allegations Concerning A.M.T.

46. A.M.T. are the initials of a seven (7) year old resident of Johnson County, Indiana, with a primary diagnosis of cerebral palsy.

47. A.M.T. is a juvenile Medicaid recipient who has been receiving physical therapy and occupational therapy since he was approximately four (4) months old. With very few

exceptions over the past seven (7) years, he has received one (1) hour-long session of physical therapy and one (1) hour-long session of occupational therapy each week.

48. As a result of the therapies that A.M.T. has received, he is capable of walking. He has also recently begun trying to run, although he is not yet capable of running.

49. A.M.T. has not yet reached his best possible functional state. However, even if he has neared this state, both physical therapy and occupational therapy are necessary in order to keep him from regressing.

50. Thus, if A.M.T. stops receiving these therapies, his muscles will become tighter and he will begin having trouble walking and otherwise functioning. It is extremely likely that he will need one (1) or more surgeries if his therapies are stopped.

51. In early 2010, the Children's Theraplay Foundation, Inc., and a physician or other licensed practitioner of the healing arts submitted a request for prior authorization of Medicaid services on behalf of A.M.T. These services were thus recommended and/or prescribed by a physician and/or other licensed practitioner of the healing arts acting within the scope of his or her practice under Indiana law.

52. On March 5, 2010, the prior authorization request submitted on behalf of A.M.T. was denied in substantial part. According to the denial notice, the Medicaid agency would approve only six (6) more weeks of therapies for A.M.T. This decision was "based on the information provided and Indiana Administrative Code guidelines 405 IAC 5-22-6. The patient has had therapies since 8/2004. The requested services would not [b]e restorative of an im[p]airment in function caused by an acute change in the pati[en]t's medical condition, and maintenance therapy is noncoverable per IAC guidelines." A true

and correct copy of this notice is attached and incorporated herein as Exhibit 2 (identifying information has been redacted).

53. Continued therapies have been recommended and/or prescribed by A.M.T.'s physician or other licensed practitioner of the healing arts within the scope of their practice under Indiana law. At least one (1) hour a week each of physical therapy and occupational therapy is medically necessary for A.M.T. At least this amount of therapy is necessary for the maximum reduction of physical or mental disability and the restoration of A.M.T. to the best possible functional level.

54. This amount of therapies will correct or ameliorate A.M.T.'s defects and physical and mental illnesses and conditions discovered by EPSDT screening services, whether or not such services are covered under the State Medicaid plan.

Factual Allegations Concerning J.J.M.

55. J.J.M. are the initials of a nine (9) year old resident of Marion County, Indiana, with a primary diagnosis of Pyruvate Carboxylase Deficiency Type II ("PCD Type II"), which is a type of mitochondrial metabolic myopathy.

56. PCD Type II is a condition that hinders J.J.M.'s ability to develop and to function, and that results in his being medically fragile. J.J.M. is the only known individual with PCD Type II who has lived beyond the age of two (2) or three (3). As a result of this condition, J.J.M. cannot walk. However, he does have the ability to roll around and to stretch his legs.

57. J.J.M. is a juvenile Medicaid recipient who has been receiving physical therapy and occupational therapy since he was an infant. Since he was approximately three (3) years

old, he has received three (3) hour-long sessions of physical therapy and one (1) hour-long session of occupational therapy each week.

58. As a result of the therapies that J.J.M. has received, he is capable of rolling over, stretching his legs, and engaging in other movements that would be considered rudimentary for a child without disabling conditions.

59. J.J.M. has not yet reached his best possible functional state. However, even if he has neared this state, both physical therapy and occupational therapy are necessary in order to keep him from regressing.

60. Thus, if J.J.M. stops receiving these therapies, he will lose strength throughout his body, his muscles will become tighter and he will begin having trouble rolling over, stretching on his own, participating in his educational activities, and otherwise functioning. His overall quality of life will, in this vein, be detrimentally affected. It is extremely likely that he will need one (1) or more surgeries if his therapies are stopped.

61. In late 2009 or early 2010, the Children's Theraplay Foundation, Inc., and Dr. Paul Jarvis, M.D., submitted a request for prior authorization of Medicaid services on behalf of J.J.M. This request sought to continue J.J.M.'s therapies at their current level for an additional six (6) months, and was substantially similar to the prior authorization requests submitted on J.J.M.'s behalf and approved by the Medicaid agency for several years.

62. On or about December 9, 2009, the prior authorization request submitted on behalf of J.J.M. was denied in substantial part. According to the denial notice, the Medicaid agency would approve only two (2) sessions of therapies each month for J.J.M. for four (4) months. This decision was because, according to the Medicaid agency, "[r]ehabilitative therapies will be covered for no longer then [*sic*] two (2) years except

when there is a significant change in the recipient's condition necessitating additional therapies" and that the therapies had already "been provided for at least two (2) years with minimal documented change in [J.J.M.'s] condition." This decision was made following a "[r]eview of the criteria set out in [405 IAC 5] for the service requested." A true and correct copy of this notice is attached and incorporated herein as Exhibit 3 (identifying information has been redacted).

63. Continued therapies at the rate of three (3) sessions of physical therapy and three (3) sessions of occupational therapy each month have been recommended and/or prescribed by J.J.M.'s physician or other licensed practitioner of the healing arts within the scope of their practice under Indiana law. At least three (3) hours a week each of physical therapy and occupational therapy are medically necessary for J.J.M. At least this amount of therapy is necessary for the maximum reduction of physical or mental disability and the restoration of J.J.M. to the best possible functional level.

64. This amount of therapies will correct or ameliorate J.J.M.'s defects and physical and mental illnesses and conditions discovered by EPSDT screening services, whether or not such services are covered under the State Medicaid plan.

Factual Allegations Concerning J.M.G.

65. J.M.G. are the initials of a twelve (12) year old resident of Hamilton County, Indiana, with a primary diagnosis of cerebral palsy.

66. As a result of his condition, J.M.G. cannot walk or ambulate by himself. His cerebral palsy is considered the worst of the three (3) categories of cerebral palsy, and it is unlikely that he will ever be able to walk or live by himself. He can stretch out, assist his

parents or caretakers somewhat with transfers, but cannot so much as crawl short distances.

67. J.M.G. is a juvenile Medicaid recipient who has been receiving physical therapy and occupational therapy for most of his life. For several years, he has received two (2) hour-long sessions of physical therapy and one (1) hour-long session of occupational therapy each week.

68. As a result of the therapies that J.M.G. has received, he is capable of rolling over, stretching his legs, sitting independently on a chair or bench with supervision, assisting his parents or caretakers somewhat with transfers, and engaging in other movements that would be considered rudimentary for a child without disabling conditions.

69. J.M.G. has not yet reached his best possible functional state. However, even if he has neared this state, both physical therapy and occupational therapy are necessary in order to keep him from regressing.

70. Thus, if J.M.G. stops receiving these therapies, his tendons will shorten, his muscles will become tighter, and he will begin having trouble stretching on his own, assisting his parents and caregivers in his daily care, and otherwise functioning. His parents and caretakers will have more difficulty transferring him or assisting him with bathing or showers, and moving and caring for J.M.G. (who is presently 126 pounds) will become incredibly hard on their backs. It is extremely likely that he will need one (1) or more surgeries if his therapies are stopped or decreased.

71. In late 2009, Homefront Learning Center, submitted a request for prior authorization of Medicaid services on behalf of J.M.G. This request sought to continue J.M.G.'s physical therapy at their current level for an additional six (6) months, and was substantially

similar to the prior authorization requests submitted on J.M.G.'s behalf and approved by the Medicaid agency for several years. The previously approved prior authorization request for J.M.G.'s occupational therapy has recently expired, although future services have been suspended pending consultant review, and therefore no new request for J.M.G.'s occupational therapy has been submitted.

72. On or about December 9, 2009, the prior authorization request submitted on behalf of J.M.G. was denied in substantial part. According to the denial notice, the Medicaid agency determined that J.M.G.'s requested services should be denied as a result of 405 IAC 5-22-6(b)(6) and 405 IAC 5-22-6(b)(7). A true and correct copy of this notice is attached and incorporated herein as Exhibit 4 (identifying information has been redacted).

73. Based on this denial, and the reasons stated therefore, J.M.G. and his parents believe and are understandably concerned that a request to continue his occupational therapy at its current level will be denied for the same reasons as soon as it becomes time for J.M.G. to request renewed authorization for these services.

74. J.M.G. filed an administrative appeal of the denial of the request for physical therapy submitted on his behalf, and an administrative fair hearing was scheduled on that appeal. Shortly before the date on which the hearing was scheduled, a manager from Advantage Healthcare contacted J.M.G.'s parents and informed them that, if they withdrew the administrative appeal filed on J.M.G.'s behalf they would approve one (1) session of physical therapy each week for four (4) months.

75. Because J.M.G. and his parents were concerned that if they did not agree to this they would not receive any physical therapy, they agreed to withdraw their appeal on these terms. However, both J.M.G.'s parents and his providers believe that two (2) sessions of

physical therapy each week are medically necessary for J.M.G. and are necessary to ensure that he reaches his best possible functional state and to prevent him from regressing.

76. Based on the denial of his prior authorization request, and the reasons stated therefore, J.M.G. and his parents believe and are understandably concerned that a request for any amount of physical therapy after four (4) months will be denied for the same reasons as soon as it becomes time for J.M.G. to request renewed authorization for these services.

77. Following the termination of J.M.G.'s prescribed therapies, he experienced significant regression in his physical state and in his functional abilities. Once this regression occurred, it became necessary for J.M.G. to receive three (3) sessions of physical therapy each week in order to make up these losses in functional ability.

78. Continued therapies at the rate of three (3) sessions of physical therapy and one (1) session of occupational therapy each week have been recommended and/or prescribed by J.M.G.'s physician or other licensed practitioner of the healing arts within the scope of their practice under Indiana law. At least three (3) hours a week of physical therapy and one (1) hour a week of occupational therapy are medically necessary for J.M.G. At least this amount of therapy is necessary for the maximum reduction of physical or mental disability and the restoration of J.M.G. to the best possible functional level.

79. This amount of therapies will correct or ameliorate J.M.G.'s defects and physical and mental illnesses and conditions discovered by EPSDT screening services, whether or not such services are covered under the State Medicaid plan.

Concluding Factual Assertions

80. As a result of the practices or policies of the defendants, the plaintiffs and the members of the putative class are suffering irreparable harm for which there is no adequate remedy at law.

81. At all relevant times, the defendants have acted or refused to act under color of state law.

Legal Claims

82. The defendants' practice or policy whereby it denies and/or limits Medicaid coverage for the plaintiffs and the members of the class for physical therapy, occupational therapy, respiratory therapy, and/or speech pathology notwithstanding the fact that these services have been recommended and/or prescribed by a Medicaid recipient's physician or other licensed practitioner of the healing arts acting within the scope of his or her practice under Indiana law violates and is preempted by the following provisions of federal Medicaid law: 42 U.S.C. § 1396a(a)(8); 42 U.S.C. § 1396a(a)(10); 42 U.S.C. § 1396a(a)(17); and 42 C.F.R. § 440.230.

83. The defendants' practice or policy whereby it refuses to cover "maintenance therapy" for the plaintiffs and the members of the class violates and is preempted by the following provisions of federal Medicaid law: 42 U.S.C. § 1396a(a)(8); 42 U.S.C. § 1396a(a)(10); 42 U.S.C. § 1396a(a)(17); and 42 C.F.R. § 440.230.

84. The defendants' practice or policy whereby it refuses to cover therapies for more than two (2) years for the plaintiffs and the members of the class without a significant change in medical condition requiring longer therapy violates and is preempted by the following provisions of federal Medicaid law: 42 U.S.C. § 1396a(a)(8); 42 U.S.C. § 1396a(a)(10); 42 U.S.C. § 1396a(a)(17); and 42 C.F.R. § 440.230.

Request for Relief

WHEREFORE, the plaintiffs respectfully request that this Court:

1. Accept jurisdiction of this cause and set it for hearing.

2. Certify this cause as a class action with the class and sub-class as defined above.

3. Declare that the defendants have violated the rights of the plaintiffs and the class and sub-class for the reasons specified in paragraphs 81 through 83, above.

4. Issue a preliminary injunction[1], later to be made permanent, enjoining the defendants from refusing or limiting Medicaid coverage for therapies recommended and/or prescribed by a Medicaid recipient's physician or other licensed practitioner of the healing arts acting within the scope of his or her practice under Indiana law.

5. Issue a preliminary injunction, later to be made permanent, enjoining the defendants from enforcing either Title 405, Rule 5-22-6(b)(6), or Title 405, Rule 5-22-6(b)(7), of the Indiana Administrative Code.

6. Award the plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and all other applicable statutes.

7. Issue all other proper relief.

[1] In lieu of proceeding with the preliminary injunction hearing that was originally scheduled in this cause for May 28, 2010, the parties agreed that the named plaintiffs would be provided with Medicaid payment for the therapies identified herein (and in the plaintiffs' initial complaint) pending the final disposition of this case. *See* Second Stipulation (R. Doc. 55). The plaintiffs' Motion for Preliminary Injunction (R. Doc. 12) was therefore withdrawn. *See* Entry Following Oral Argument (R. Doc. 56). Nonetheless, the plaintiffs have reserved their right to renew their preliminary injunction motion should circumstances warrant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby verify that on this 11th day of October, 2010, a copy of the foregoing was filed electronically with the Clerk of this Court. This filing may be accessed through the Court's electronic system. This filing was served on the following parties by operation of the Court's electronic system:

Betsy M. Isenberg
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/s/ *Gavin M. Rose*
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