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

ILLINOIS LEAGUE OF ADV OCATES FOR THE DE VELOPMENTALLY DISABLED; *and* **MURRAY PARENTS ASSOCIATION, INC.;** *and* ***INDIVIDUALLY AND ON BEHALF O F ALL PERSONS SIMILARLY SITUATED:*** **RITA WINKELER,** *as Guardian for Mark Shomatier and Mark Winkeler;* **KAREN KELLY,** *as Guardian for Eric Schutzenhofer* ; **LAUREN STENGLER,** *as Guardian for Wayne Alan Stengler* ; **STAN KRAINSKI,** *as Guardian for Steven Edward Krainski* ; **ELIZABETH GERSBACHER,** *as Guardian for Charlie Washingto n and Linda Faye Higgins*; **BARBARA COZZONE-ACHINO,** *as Guardian for Robert Metullo* ; **ROBYN PANNIER,** *as Guardian for Benjamin Pannier*; **JEANINE L. WILLIAMS,** *as Guardian for John L. Fuller, Jr.;* **DAVID IACONO-HARRIS,** *as Guardian for Jonathon P. Iacono-Harris*; **DR. ROBERT POKORNY,** *as Guardi an for Robert James Pokorny*; and **GAIL K. MYERS**, *as Guardian for Mark Andrew Wymore.* **Plaintiffs,** vs. **ILLINOIS DEPARTMENT OF HUMA N SERVICES** and **KEVIN CASEY**, *in his official capacity as Di rector of Developmental Disabilities*; and **COMMUNITY RESOURCE ALLIANCE,** **Defendants.**	Case No. JURY DEMAND

COMPLAINT FOR DECLARATORY, INJUNCTIVE & OTHER RELIEF

Plaintiffs, the ILLINOIS LEA GUE OF ADVOCATES FOR T HE DEVELOPMENTALLY DISABLED; MURRAY PARENTS ASSOCIATION ("MPA"); and individually and on behalf of all pers ons similarly situated, RITA WINKELER, *as Guardian for*

Mark Shomatier and Mark Winkeler; KAREN KELLY, *as Guardian for Eric Schutzenhofer* ; LAUREN STENGLER, *as Guardian for Wayne Alan Stengler and Linda Faye Higgins* ; STAN KRAINSKI, *as Guardian for Steven Edward Krainski* ; ELIZABETH GERSBACHER, *as Guardian for Charlie Washington*; BARBARA COZZONE-ACHINO, *as Guardian for Robert Metullo*; ROBYN PANNIER, *as Guardian for Benjamin Pannier*; JEANINE L. WILLIAMS, *as Guardian for John L. F uller, Jr.;* DAVID IACONO-HARRIS, *as Guardian for Jonathon P. Iacono-Harris*; DR. ROBERT POKORNY*, as Guardian for R obert James Pokorny*; and GAIL K. MYERS*, as Guardian for Mark Andrew Wymore,* by their undersigned attorneys, state as follows for their Complain t for Declaratory, Injunctive & Other Relie f against Defendants, Illinois Department of Human Services and Kevin Casey, in his official capacity as Director of Developmental Disability; and Community Resources Alternatives, Inc. ("CRA"):

I. INTRODUCTION & OVERVIEW

1. The individual Plaintiffs are the leg al guardians of adult in dividuals who qualify under state and Federal laws as persons deemed unable to care and provide for them selves including, but not limited to, the ability to live independently due to severe and profound mental and/or physical disabilities (hereinafter, the "Individual Plaintiffs"). The Individual Plaintiffs sue as legal guardians on behalf of their disabled charges and on behalf of all disabled persons similarly situated.

2. Additionally included as a Plaintiff in this action are two Illinois non-profit advocacy organizations, the Illino is League of Advocates for the Developm entally Disabled, Inc., and the Murray Parents Association. These organizations support indi viduals with severe and profound m ental and/or physical disabilities, and also oppose the Stat e's plan (the "Plan") under which the Defendants' seek to close all State Operated Developm ental Centers for the

Developmentally Disabled ("SODCs") and, to that end, have already removed all the residents of one such facility (the Jacksonville Developmental Center) and are imminently prepared to close another (the Murray Developmental Center), with more to follow shortly thereafter. A true and accurate copy of the State Plan is attached hereto and incorporated herein by reference as Exhibit A.[1]

3. Collectively, the Individual Plaintiffs and Plaintiff-Class Members oppose the Plan because it is being undertaken against the legal guardians' will and against the will of the guardian-charges' current caretakers. The State's Plan is an ill-conceived and predetermined "cookie-cutter" outcome process that results in the profoundly disabled Individual Plaintiffs' and Plaintiff-Class Members' eviction from their safe and secure homes of many years at SODCs, such as Murray Developmental Center, and thrusts them into unsupervised, and in many cases, unlicensed community placements where they have and will continue to suffer irreparable harms, including but not limited to risk of abuse and neglect, serious injury, and even death.

4. The Individual Plaintiffs and Plaintiff-Class Members thus respectfully seek relief from this Court to issue the declaratory relief detailed below, and to immediately and permanently enjoin the Defendants from completing the unilateral and imminent closure of all SODCs across Illinois, including but not limited to those SODCs in which each of the named Individual Plaintiffs has resided and received medically necessary services for all or most of their lives. Among other relevant factors, the Individual Plaintiffs and Plaintiff-Class members have not ever agreed to relocate from the SODCs to the designated residential settings.

5. As further detailed herein, Federal and Illinois State laws including, but not limited to, the Americans with Disabilities Act of 1990, as amended, the Rehabilitation Act, and

[1] Exhibit A is a version of the State's Plan, date February 2012, which currently appears on the State's public website. To the extent that there are alleged to have been changes, updates or other modifications to this Plan, they are not available to Plaintiffs.

Medicaid Program regulations, require the State of Illinois to continuously provide adequate levels of medically necessary services for disabled individuals regardless of residential setting transitions from an institutional setting to a community residence.

6. In contravention of these laws, the Defendants have commenced to systematically shut down the SODCs and to limit State-provided residences and medically necessary services to the Individual Plaintiffs and to the Plaintiff-Class Members. The systematically planned SODC closings and the transition of the Individual Plaintiffs and Plaintiff-Class Members to scattered one and two bedroom community residences, which are neither licensed medical facilities nor locations operated or staffed with on-site and licensed medical professionals, have resulted in irreparable and continuing harms to the Individual Plaintiffs and Plaintiff-Class members

7. The significant and irreparable harms suffered to date by each of the severe and profound medically disabled Individual Plaintiffs and Plaintiff-Class members will continue with the ongoing SODC closings. Those harms include, but are not limited to, the State's complete elimination, without informed consent to parents or guardians, of certain categories of medically necessary services and/or providing woefully inadequate levels of medically necessary services to the Individual Plaintiffs and Plaintiff-Class Members in the community residential settings. While cuts in the State's budget may require fiscal austerity, forcing closure of all SODCs is the wrong priority and, as further detailed herein, Federal and Illinois State laws warrant the fashioning of immediate and permanent equitable relief for the Individual Plaintiffs and Plaintiff-Class Members.

II. JURISDICTION

8. The United States District Court has jurisdiction over the claims against Defendants pursuant to 28 U.S.C. § 1331 because the claims arise under federal statutes. The

Court may also exercise pendant jurisdiction over the state law claims, pursuant to 28 U.S.C. § 1367.

III. VENUE & JURY DEMAND

9. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b) because the State's plan effects guardians of developmentally disabled persons residing in the Northern District and also effects those who will be transferred to SODCs and other community settings within the Northern District and across the State of Illinois. Plaintiffs demand a jury trial of this matter.

IV. RELEVANT FEDERAL & STATE STATUTORY FRAMEWORK

Americans with Disabilities Act

10. Congress enacted the Americans with Disabilities Act ("ADA"), as amended, 42 U.S.C. §§ 12101-12181, in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." *Id.* at §12101(b)(1). Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2). For those reasons, Congress prohibited discrimination against individuals with disabilities by public entities:

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132 (emphasis provided).

As directed by Congress, the Attorney General issued regulations implementing Title II, which are based on regulations issued under section 504 of the Rehabilitation Act, 29 U.S.C. §

794(a). The ADA Title II regulations require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d) (emphasis provided).

****

Section 504 of the Rehabilitation Act

11. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (hereinafter, "Section 504"), prohibits discrimination against individuals with disabilities by any program or activity, including any department or agency of a State government, receiving Federal financial assistance. 29 U.S.C.§ 794(a) and (b). "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." 29 U.S.C. § 794; 45 C.F.R. §§ 84.4(a), 84.4(b) (1) (i), (iv) and (v99); 84.4(b) (2); 84.52(a)(1), (4) and (5).

12. Section 504 requires that state and local governments afford protected individuals with disabilities related services, programs and activities in "the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 45.51(d) (emphasis added). That is, federally funded state governments and agencies must make reasonable modifications to policies, practices and procedures to avoid discrimination on the basis of disability, including the elimination of services deemed necessary and appropriate to meet the needs of the qualified individual with disabilities. 29 U.S.C.§ 794(a).

****

The U.S. Supreme Court's "Olmstead v. L.C." Requirements for ADA Title II Covered Services to Individuals with Disabilities.

13. Fourteen years ago, the Supreme Court applied the ADA Title II mandates to hold that Title II prohibits the unjustified segregation of individuals with disabilities. *Olmstead v. L.C.*, 527 U.S. 581 (1999). Importantly, the Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Id.* at 607.

****

42 U.S.C. § 1983

14. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. "

****

The Federal Medicaid Program & State Waivers

15. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396 w-2 (herein after, Medicaid Act"), establishes the Medicaid Program. The objective of the Medicaid Act is to enable each State to furnish medical assistance to families with children and to aged, blind, or disabled individuals whose incomes and resources are insufficient to meet the costs of necessary medical services and to furnish "rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care." 42 U.S.C. § 1396.

16. The Medicaid Program typically does not directly provide health care services to eligible individuals, nor does it provide beneficiaries with money to purchase health care directly. Rather, Medicaid is a vendor payment program, wherein Medicaid participating providers are reimbursed by the Program for the services they provide to recipients.

17. Medicaid is a cooperative federal-state program designed to cover necessary medical services for poor people. Participation in the Medicaid program is not mandatory for the states, but once they choose to participate, they must operate their programs in conformity with federal statutory and regulatory requirements. 42 U.S.C. § 1396a.

18. Each state choosing to participate in the Medicaid Program must designate a single state agency which is responsible for administering the Program. 42 U.S.C. § 1396a (a)(5).

19. Medicaid law requires choice. The receipt of Medicaid funding is contingent upon a state offering choice of ICFs/MR or Home and Community Based Services ("HCBS") waivers. A Medicaid HCBS waiver shall not be granted unless the state provides satisfactory assurances that:

> [S]uch individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded are informed of the feasible

> alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital, nursing facility services or services in an intermediate care facility for the mentally retarded.

42 U.S.C. § 1396n(c)(2)(C).

20. When a recipient is determined to be likely to require the level of care provided in an ICF/MR, the recipient or his or her legal representative must be:

> (1) Informed of any feasible alternatives available under the waiver, and (2) Given the choice of either institutional or home and community-based services.

42 C.F.R. § 441.302.

21. The Plan must furnish CMS with sufficient information to support assurances required by § 441.302, including its "plan for informing eligible recipients of the feasible alternatives…institutional services or home and community-based services." 42 C.F.R. § 441.303(d).

22. Illinois has provided the required assurances to receive HBSC waivers under Medicaid in the Illinois Administrative Code:

> **Section 120.80 Program Assurances**
>
> In addition to program requirements specified in other Sections of this Part, assurances for the Medicaid home and community-based services waiver program will include:
>
> ****
>
> b) Informing individuals of choice
>
> All individuals requesting program services shall be given a choice of alternative services through the PASA RR process. The choice shall include both ICF/MR and community-based services.

59 Illinois Admin. Code § 120.80.

Additionally, the Illinois Administrative Code's eligibility determinations for its Medicare home and community-based services waiver program provides:

> **Section 120.150 Eligibility Determination**
>
> ****
>
> c) Individuals or guardians shall be given the choice of receiving State-operated developmental center, community ICF/MR or Medicaid home and community-based services.

59 Ill. Admin. Code § 120.150.

In accordance with 42 U.S.C. § 1396n(c)(2)(C) and 42 C.F.R. § 441.302, Illinois gave the required assurances to CMS in its Application for the HCBS Waiver:

> **D. Choice of Alternatives:** The State assures that when an individual is determined to be likely to require the level of care specified for this waiver and is in a target group specified in **Appendix B**, the individual (or, legal representative, if applicable) is:
>
> 1. Informed of any feasible alternatives under the waiver; and,
>
> 2. Given the choice of either institutional or home and community-based waiver services.
>
> **Appendix B** specifies the procedures that the State employs to ensure that individuals are informed of feasible alternatives under the waiver and given the choice of institutional or home and community-based waiver services.

V. THE PARTIES

Plaintiffs' Class Definition

23. All severe and profound developmentally delayed adult individuals who reside presently, or resided in the past, in a State Operated Developmental Center ("SODC") on or before January 2011 to the present date or later, and who have been advised that they will be transferred to, or have already been transferred to, a two-four bedroom residential community housing setting (hereinafter collectively referenced as the "Plaintiff-Class Members").

Institutional Plaintiffs

24. Plaintiff Illinois League of Advocates for the Developmentally Disabled (IL-ADD) is an Illinois Not For Profit Corporation, principally located in River Grove, Illinois, the mission of which is to advocate for and educate the citizens of Illinois about the needs of severely developmentally disabled persons in the State of Illinois who reside in SODCs. IL-ADD has amongst its membership persons who are guardians and next of kin of persons who reside in the SODCs located in the Northern District of Illinois and who would have the right to bring this action on their own behalf on an individual basis

25. Plaintiff Murray Parents Association (the "MPA") is an Illinois Not For Profit Corporation, principally located in Centrella, Illinois, the mission of which is to promote the general welfare of the residents of the Murray Center and foster the development of programs on their behalf. MPA has amongst its membership persons who are guardians and next of kin to persons who reside in the SODCs, are resident in the Northern District of Illinois and would have the right to bring this action on their own behalf on an individual basis.

Individual and Class Representative Plaintiffs

26. Rita Winkeler ("Ms. Winkeler") is a resident of Centralia, Illinois. She is a member of the board of IL-ADD and is a member and the president of the MPA. Ms. Winkeler is also the legal guardian of her brother, Mark Shomatier, and her son, Mark Winkeler. Ms. Winkeler has made her opposition known to IDHS and CRA. She, along with other MDC guardians, has been informed by IDHS and Defendant CRA that if she persists in her opposition they will evict her son from MDC against her will, that she will be responsible for finding alternative placement for him or if she cannot find alternative placement that IDHS will place him in a placement of their choosing whether she agrees or not. (*See* Affidavit of Rita Winkeler, Group Exhibit B attached hereto and incorporated in by reference)

27. Karen Kelly ("Ms. Kelly") is a resident of O'Fallon, Illinois. She is a member of MPA and is the legal guardian of her son, Eric Schutzenhofer. He is 39 years of age and has the mental age of thirty month of age. He has been a resident of MPA since 1991. Ms. Kelly opposes the placement of Eric into the community because the State cannot adequately provide medically necessary services to her son in that setting and, additionally, because Eric will be at risk for abuse and neglect given the pervasiveness of his disability. Ms. Kelly has made her opposition known to IDHS and CRA. She, along with other MDC guardians, has been informed by IDHS and Defendant CRA that if she persists in her opposition they will evict Eric from MDC against her will, that she will be responsible for finding alternative placement for him or if she cannot find alternative placement that IDHS will place him in a placement of their choosing whether she agrees or not. (See Affidavit of Karen Kelly, Group Exhibit B, attached hereto and incorporated in by reference)

28. Laureen Stengler ("Ms. Stengler") is a resident of Crete, Illinois. She is a member of MPA and is the legal guardian of Wayne Alan Stengler. He is 55 years of age and has the mental age of 9 months. He has been a resident of MPA since May of 1965. She opposes the placement of Wayne into the community because the State cannot adequately provide medically necessary services to her son in that setting and, additionally, because Wayne will be at risk for abuse and neglect given the pervasiveness of his disability. Ms. Stengler has made her opposition known to IDHS and CRA. She, along with other MDC guardians, has been informed by IDHS and Defendant CRA that if she persists in her opposition they will evict Wayne from MDC against her will, that she will be responsible for finding alternative placement for him or if she cannot find alternative placement that IDHS will place him in a placement of their choosing whether she agrees or not.

29. Stan Krainski ("Mr. Krainski") is a resident of Niles, Illinois. He is the guardian of Steven Edward Krainski. Steven is 53 years of age and has the mental age of 18 months. He has been a resident of the Anne Kiley Center since 1975. Mr. Krainski opposes the placement of Steven into the community because the State cannot adequately provide medically necessary services to his son in that setting and, additionally, because Steven will be at risk for abuse and neglect given the pervasiveness of his disability. Mr. Krainski is informed and believes that the State intends to close Anne Kiley Developmental Center. He is further informed that pursuant to the State Plain for closure, he will have to move Steven to a placement against his will or that he will be responsible for finding alternative placement for him or if he cannot find alternative placement that IDHS will place him in a placement of their choosing whether he agrees or not.

30. Elizabeth Gersbacher ("Ms. Gersbacher") is a resident of Carbondale, Illinois. She has been the legal guardian of Charlie Washington since the 1980s. He is 45 years old has an IQ under 50 and has been a resident of Choate Developmental Center (CDC) since 1996. Among other manifestations of his disability, Charlie has been diagnosed with aggressive, bipolar and manic behaviors, and has tried and failed in community placement on numerous occasions. Charlie's medical history evidences that he can only be cared for safely and properly in an SODC. Ms. Gersbacher is also the guardian for Linda Faye Higgins who is 44 years of age with an IQ of under 50 and is a resident of CDC. Ms. Gersbacher has tried the community for her wards on numerous occasions in the past and has learned they can only be cared for safely and properly in an SODC. She opposes the placement of Charlie and Linda into the community because the State cannot adequately provide medically necessary services to either of the wards in that setting and, additionally, because they will each be at risk for abuse and neglect given the pervasiveness of their respective disability. Ms. Gersbacher has made her opposition known to

IDHS and CRA. She is informed and believes that Defendant DHS and Defendant CRA will next turn the Plan to the Choate Developmental Center and that Defendants will evict Charlie and Linda from CDC against her will, that she will be responsible for finding alternative placement for him or if she cannot find alternative placement that IDHS will place him in a placement of their choosing whether she agrees or not.

31. Barbara Cozzone-Achino ("Ms. Cozzone-Achino") is a resident of Cherry Valley, Illinois and is the legal guardian of Robert Metullo, who is 40, and Michael Metullo who is 43. Both have an IQ below 50 and have been residents of Mabley Developmental Center (Mabley) since 1998. Ms. Cozzone-Achino has tried the community for her wards on numerous occasions in the past and has learned they can only be cared for safely and properly in an SODC due to the nature and extent of their respective disabilities. Ms. Cozzone-Achino opposes the placement of Robert and Michael into the community because the State cannot adequately provide medically necessary services to her wards in that setting and, additionally, because each of her wards will be at risk for abuse and neglect given the pervasiveness of their respective disability. Ms. Cozzone-Achino has made her opposition known to IDHS and CRA. She is informed and believes that Defendant IDHS and Defendant CRA will eventually turn the Plan to Mabley and that Defendants will evict Robert and Michael from Mabley against her will, that she will be responsible for finding alternative placement for them or if she cannot find alternative placement that Defendants will place them in a placement of their choosing whether she agrees or not.

32. Robyn Pannier ("Ms. Pannier") is a resident of Peoria, Illinois and the legal guardian of Benjamin Pannier, a developmentally disabled adult who was residing at the Jacksonville Developmental Center (JDC) during the time period relevant to this complaint. She was forced to transfer her ward into a community setting in spite of the fact he has not been

successful therein before. Ms. Pannier knows that the State cannot adequately provide medically necessary services to her ward in that setting and, additionally, knows that Benjamin will be at risk for abuse and neglect given the pervasiveness of his disability.

33. Jeanine L. Williams ("Ms. Williams") is a resident of St. Louis, Missouri and the legal guardian of John L. Fuller, Jr., a developmentally disabled adult who was residing at the JDC during the time period relevant to this complaint. Ms. Williams' ward was transferred away from the JDC to a CILA (Community Integrated Living Arrangement) located in Illinois, but thereafter was returned to JDC after the CILA refused to retain him following a behavioral incident (the aforementioned clients of JDC are referred to herein as the "JDC Clients"). Ms. Williams' ward subsequently has been transferred out of JDC against his will; pursuant to Defendants' plan her ward will again be forced into the community where he will be at risk for abuse and neglect.

34. David Iacono-Harris ("Mr. Iacono-Harris") is a resident of Springfield, Illinois and is the legal guardian of Jonathon P. Iacono-Harris, a developmentally disabled adult who was residing at the JDC during the time period relevant to this complaint. Mr. Iacono-Harris was forced to transfer his ward into a community setting in spite of the fact he has not been successful therein before. Mr. Iacono-Harris believes that Defendants' Plan has put his ward at risk for abuse and neglect.

35. Dr. Robert Pokorny ("Dr. Pokorny") is a resident of Aurora, Illinois and is the legal guardian of Robert James Pokorny, a developmentally disabled adult who was residing at the Jacksonville Developmental Center (JDC). He was forced to transfer his ward into a community setting in spite of the fact he has not been successful therein before and she believes that Defendants' Plan has put her ward at risk for abuse and neglect.

36. Gail K. Myers is a resident of Elburn, Illinois and is the legal guardian of her son, Mark Andrew Wymore, a 46 year old developmentally disabled adult who has resided at Fox Developmental Center (FDC) for 32 years. She has tried the community for her son on numerous occasions in the past and has learned he can only be cared for safely and properly in an SODC. She opposes the placement of Mark into the community because he will be at risk for abuse and neglect and has made her opposition known to IDHS and CRA. She is informed and believes that Defendant IDHS and Defendant CRA will eventually turn the Plan to FDC and that Defendants will evict Mark from FDC against her will, that she will be responsible for finding alternative placement for them or if she cannot find alternative placement that Defendants will place them in a placement of their choosing whether she agrees or not.

Defendants

37. Defendant Illinois Department of Human Services, Division of Developmental Disabilities ("IDHS") is a state agency organized under the laws of Illinois responsible for the provision of services to the developmentally disabled in Illinois. It must provide those services pursuant to the laws of Illinois and the United States and regulations promulgated thereunder and also pursuant to the Illinois State Medicaid Plan and the Waiver as to the provision of services for the developmentally disabled as approved by the Center for Medicare and Medicaid Services of the United States. IDHS is the agency which has created and is attempting to implement the State Plan. Attached hereto as Exhibit A is a version of the Plan dated February 12, 2012. The Plan as written and as implemented violates various Federal and Illinois State laws and regulations.

38. Defendant Community Resource Alliance is a business entity hired by Defendant IDHS to develop and implement the Plan pursuant to which Defendant IDHS seeks to close all

the SODCs in Illinois and to terminate all institutional services in provided thereby to the developmentally disabled.

39. Defendant Jacksonville Developmental Center is an Illinois State operated entity, located in Jacksonville, Illinois and is one of the first institution from which all residents have been removed pursuant to Defendants' Plan.

40. Defendant Murray Developmental Center is an Illinois State operated entity, located in Centralia, Illinois, is one of the first institution from which all residents have been removed pursuant to Defendants' Plan.

41. Defendant Choate Developmental Center, located in Anna, Illinois, is an Illinois State operated entity, and is one of the first institution from which all residents have been removed pursuant to Defendants' Plan.

42. Defendant Mabley Developmental Center is an Illinois State operated entity, located in Dixon, Illinois, is one of the first institution from which all residents have been removed pursuant to Defendants' Plan.

43. Defendant Shapiro Developmental Center is an Illinois State operated entity, located in Kankakee, Illinois, is one of the first institution from which all residents have been removed pursuant to Defendants' Plan.

44. Ludeman Developmental Center is an Illinois State operated entity, located in Park Forest, Illinois, and is one of the first institution from which all residents have been removed pursuant to Defendants' Plan.

45. Fox Developmental Center is an Illinois State operated entity, located in Dwight, Illinois, and is one of the first institution from which all residents have been removed pursuant to Defendants' Plan.

46. Kiley Developmental Center is an Illinois State operated entity, located in Waukegan, IL, and is one of the first institution from which all residents have been removed pursuant to Defendants' Plan.

VI. BACKGROUND FACTS

47. In February, 2012, as a means to contend with the State's $13 billion deficit, Governor Quinn announced his intention to close two SODCs by October 31, 2012 (the Jacksonville Developmental Center ("Jacksonville" or "JDC"), and by October 31, 2013 (Murray in Centralia, Illinois), and on information and belief, to close all remaining SODCs soon thereafter.

48. On June 14, 2012, Governor Quinn signed a package of legislation which included $1.6 billion worth of Medicaid cuts endangering the poorest and neediest of the State's residents, and in particular, individuals with severe and profound developmental disabilities.

49. The signing of the "Save Medicaid Access and Resources Together ("SMART") Act, Public Act 097-0689, slashed an annual $240 million that provided critical funding to State nursing homes and hospitals and results in the planned closure of SODCs in Illinois.

50. On October 30, 2012, the Illinois Health Facilities and Services Review Board ("IHFSRB"), over objections from the Individual Plaintiffs, and representatives of other similarly situated individuals with developmental disabilities, and against the recommendations of IHFSRB's own staff, issued its decision to close JDC.

51. In the weeks that followed the decision, IDHS first requested and received an extension of the closure date from November 21, 2012 to December 3, 2012. Unable to meet even the revised closure date (by completing all the steps in its own process), IDHS instead fast-tracked the process to relocate all of the remaining JDC residents to other locations – despite

having emphatically testified to the original November 21st closure date provided enough time and that if necessary, they were prepared to follow the IHFSRB's procedures to keep the facility open – with appropriate staff – as long as necessary to ensure the safe, sound and reasonable transitions.

52. Instead, IDHS abruptly moved 30+ residents, inclusive of the Individual Plaintiffs' and Plaintiffs' Class Members, to other SODCs in a matter of days prior to the December 3, 2012 closure, many as temporary admissions, thus ensuring continued infliction of transfer trauma in the future, when they will undoubtedly be moved again.

53. Critically, the budget cuts implemented as of July 1, 2012, have caused and will cause the eventual elimination of services for the Individual Plaintiffs and Plaintiffs' Class Members, as well as the imminent closure of all Illinois SODCs. Indeed, on information belief, it is the State's intention to close all of Illinois' SODCs despite the fact that Illinois residents now living in SODCs, inclusive of the Individual Plaintiffs' and Plaintiffs' Class Members, will have no appropriate placement.

54. In the absence of an injunction, the individual Plaintiffs and Plaintiffs' Class members will be irreparably harmed by the closure of SODCs. Many residents of SODCs, including the individual Plaintiffs and Plaintiffs' Class members, are incapable of living independently in community-based settings. *See* Affidavits, attached as Group Exhibit B and incorporated herein by reference. Additionally, documents provided by the JDC Closure Advisory Committee indicate that as of mid-September 2012, 47 individuals, inclusive of the individual Plaintiffs and Plaintiffs' Class member, had been moved out of JDC. Among those 47, over a two month period there were 4 police encounters, or 8.5%. Over a 4 month period, there were 14 hospital admissions and/or ER visits-- nearly 30% of the transitioned.

55. The harm in this instance is particularly irreparable and imminent. On information and belief, the closure of JDC and the imminent closure of Murray show that Defendants plan is to push ahead to close all Illinois SODCs without adequate replacement services.

56. Services offered by the SODCs are necessary and critical to the residents' physical well-being. An interruption in care, even if temporary, is more likely than not to have serious consequences on the health and well-being of the profoundly disabled. While alternative services may be available to replace the SODC services at issue, Defendants have admitted that if their community-based placement fails, residents may have to seek services in other states and they (the Defendants), can only speculate about whether that State will be able to provide equivalent services as mandated by federal laws.

57. Defendants have not met their legal burden under applicable federal and state laws, as further detailed below, to ensure that more than a theoretical availability of replacement services will exist if they eliminate all SODC services. While Defendants' plan may provide some alternative services, CRA has not demonstrated that its community-based setting approach will be adequate for the severely and profoundly disabled in the following ways:

(a) Defendants have not demonstrated any assurance of an adequate transition of available and necessary services to Plaintiffs and others similarly situated, by transitioning to properly staffed and licensed homes;

(b) Defendants have not demonstrated that the State is able to, and will, provide equivalent or adequate local licensed providers in transitioning from SODCs to community settings;

(c) Defendants have not demonstrated that the State is able to, and will, inform Plaintiffs' guardians in advance of transition and, afterwards, provide Plaintiffs with a coordinated program of supervision in its plan for community placement. At best, Defendants have vaguely alluded to Plaintiffs' guardians that licensed and/or unlicensed providers will "come and go" as needed, not taking into account for the almost certain level of emergencies that will arise when individuals used to very strict regiments are placed in a freer less supervised setting;

(d) Defendants have not demonstrated that the State is able to, and will, accommodate Plaintiffs and others similarly situated with placement in an ICFDD, where following transition it is evident that they cannot survive and thrive in a community-based setting.

(e) Defendant has not demonstrated that the State is able to, and will, ensure that individuals who cannot survive and thrive in a community-based setting will have a safety net option to return to a facility with equivalent services in Illinois.

(f) Finally, Defendants have not demonstrated that the State is able to and will ensure that money will be available for the payment of the providers of such services in the community beyond one year after placement.

VII. PLAINTIFFS' CLAIMS

COUNT I:
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990, as amended
(Against all Defendants)

58. The Individual Plaintiffs and Plaintiff-Class members incorporate by reference the allegations in paragraphs 1-49 of the Complaint, above, as if set forth in Count I.

59. The ADA was enacted in 1990 to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." (42 U.S.C. § 12101(b)(I)). Title II of the ADA prohibits discrimination in access to public services by requiring that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C. § 12132).

60. The Defendants' plan violates the Title II of the ADA as follows: (1) Defendants are discriminating against the Individual Plaintiffs, as well as the Plaintiff-Class Members, as illustrated in the attached Plaintiffs' Affidavits attached as Group Exhibit B and incorporated herein by reference, by targeting developmental disabilities for greater reductions in funding than other disabilities; (2) Defendants are preventing the Individual Plaintiffs, as well as the Plaintiff-Class Members, as illustrated in the attached Plaintiffs' Affidavits attached as Group Exhibit B and incorporated herein by reference from receiving services that are as effective as those provided to individuals with other disabilities; (3) Defendants' reduced funding creates a substantial risk that the Individual Plaintiffs, as well as the Plaintiff-Class Members, as illustrated in the attached Plaintiffs' Affidavits attached as Group Exhibit B and incorporated herein by reference, will not be able to live safely in "the most integrated setting;" and (4) Defendants are limiting the number of accessible community residential settings available to the non-ambulatory Individual Plaintiffs and the Plaintiff-Class Members.

61. Defendants' closure of the SODCs leaves Plaintiffs with no comparable and appropriate choice for the safety-net services provided by SODCs. Indeed, the complete closure of all SODCs evidences the Defendants illegal intent and practice to presumptively and unilaterally conclude that all of the Individual Plaintiffs and Plaintiff-Class Members are eligible for community-based placement, rather than services that may only be offered adequately for each individually assessed Plaintiff through an SODC setting.

62. To that end, the Defendants have already closed SODCs in which some of the Individual Plaintiffs and Plaintiff-Class Members previously resided, and continue to do so pursuant to the State's Plan, currently focused on closing MDC, without the construct or

implementation of any meaningful and effective process consideration of individualized assessments of their individual service needs.

63. Defendants have proposed, and are currently utilizing at MDC, a purported "assessment process," which on its face is entirely inadequate and incapable of a meaningful and effective implementation with respect to the Individual Plaintiffs and the Plaintiff-Class Members, all of whom are adults with profound developmental disabilities that render them cognitively in the age-range of infant-toddlers or, at best, a young children.

64. The inherent flaw in Defendants' purported assessment process is illustrated as follows: A January 3, 2012 e mail communication from Mark Doyle ("Doyle"), Transition of Care Project Manager, Office of the Governor, JRTC, to Plaintiff-guardian, Rita Winkeler, described the State's purported assessment process as designed to gain an "understanding of individuals' strengths, desires, hopes and aspirations" and to "maximiz[e] opportunities for individuals to function with as much independence and self-determination as possible." Email dated January 3, 2012, from M. Doyle to R. Winkeler, Attached at Exhibit C hereto and incorporated herein by reference.

65. Further, the January 3, 2012 Doyle email communication from Doyle to Plaintiff-guardian Rita Winkeler provided that the Defendants' assessment process envisions communications with the disabled individual to "learn about their fears, successes and failures. What works and does not work for the persons. Their preference and interest or what excites them." *Id.* The Doyle email also described the goal of the assessment process as "designing the appropriate supports they will need to be successful and have a fulfilling life in the community." *Id.* This boilerplate descriptive language describing the State's purported assessment process is completely antithetical to the characteristics of profound developmental disabilities with which

the Individual Plaintiffs and the Plaintiff-Class Members present. Importantly, by direct result of the specific services rendered through the State-operated SODCs, the Defendants know of, and have known for some time pre-dating creation of the assessment process, the overall severe and profound diminished cognitive capacity of the Individual Plaintiffs and Plaintiff-Class Members.

66. Notably, a majority of the Individual Plaintiffs and Plaintiff-Class Members are non-communicative verbally, and/or in some cases non-verbally, as well as immobile in some cases, and are far from having the cognitive abilities it would take to live independently (or even semi-independently) or to progress through "self-determination" to have a "fulfilling life in the community." Defendants' proposed closure of SODCs without a meaningful and effective assessment process, or appropriate replacement services, is poorly conceived, reckless and violates Title II of the ADA (42 U.S.C. § 12132) by placing individuals with severe and profound developmental disabilities at unnecessary risk of hospitalization, injury or death.

67. Moreover, closure of SODCs without the development of a meaningful and effective quality of services assessment or process for appeal additionally violates the ADA Title II. The Defendants cannot demonstrate by any objective measure that the Individual Plaintiffs or Plaintiff-Class Members who were or are residents of SODCs will receive equivalent services in the proposed community based placements. The Defendants' plan as carried out by CRA does not guarantee equivalent services or adequate replacement services for the severely and profoundly developmentally disabled because its core strategic priority is flawed – that an integrated setting (community-based placement) is appropriate regardless of the intensity of the individual's disabilities or the severity of his or her needs. Across-the-board reduction in services attendant to the closure of the SODCs, without provision for adequate replacement services, will unlawfully and irreparably harm the Individual Plaintiffs and Plaintiff-Class

Members. Moreover, the Individual Plaintiffs' and Plaintiff-Class Members' severe and profound developmental and related medical conditions, even temporary gaps in service could present serious consequences for them and place them at great risk of hospitalization, injury or death.

68. Additionally, the Defendants have not specified to the Individual Plaintiffs' guardians, despite inquiries, or to the guardians of Plaintiff-Class Members, what services will remain available to them upon transfer from SODCs should the community-based setting approach not work. In fact, there has been no informed choice or consent to any transfer or revision of services to the Individual Plaintiffs or Plaintiff-Class Members in regard to closing the SODCs and the transition to community care based settings. Instead, Defendants have pressured Plaintiffs' guardians to sign consents allowing for hurried, secretive and perfunctory evaluations for placement in the community. In cases where the guardian has refused such a questionable evaluation process and protocol, the Defendants have indicated that CRA will choose the placement, completely taking the parent or guardian out of the process, in violation of federal law which guarantees that the parent or guardian must approve the choice of placement. *See* Affidavits, attached as Group Exhibit B and incorporated herein by reference.

69. For example, despite legal requirements that the State inform guardians about the adequacy of the disabled Individual Plaintiffs' and Plaintiff-Class Members' service options in the community setting, their respective guardians have been told by Defendant CRA that they cannot choose another SODC in lieu of transition to the community setting. *See* Affidavits, attached as Group Exhibit B and incorporated herein by reference. Moreover, Plaintiffs' guardians have received little assistance, if any, if they choose a private ICF/DD setting. *Id.* Those guardians have had to find an ICF/DD on their own, which is almost impossible because

ICF/DDs cannot, or will not, admit individuals with severe and profound disabilities who are currently being treated in SODCs in Illinois. Guardians have received documents from the PAS agency for their signature where the "choice" box is pre-checked for "community." *Id.* Some guardians have been told that SODC or ICF/DD placement may be provided somewhere a great distance away from their family. *Id.*

WHEREFORE, the Individual Plaintiffs and Plaintiff-Class Members respectfully request that this Court, in due course, issue orders of declaratory relief, as well as preliminary and permanent injunctive relief, in favor of the Plaintiffs as follows:

(a) Declaration that the Defendants collectively violated the Americans with Disabilities Act of 1990, as amended, in the manner by which they have commenced to implement the State's Plan to transition the profoundly disabled Plaintiffs from SODCs to community based residential settings without ensuring the adequacy of transitioned medically necessary services;

(b) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, shall be enjoined and restrained from implementing or enforcing the closure of SODCs, or reducing, terminating or modifying SODC services, unless or until equivalent, appropriate replacement services are provided to prevent inappropriate hospitalization, injury or death to residents in violation of the developmentally disabled residents' rights under federal and state laws.

(c) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, be ordered to:

(i) Take all actions necessary within the scope of their authority to implement the preliminary and permanent Injunctive orders;

(ii) Provide prompt notice to all SODCs of the terms of the preliminary and permanent injunctive orders;

(iii) Provide prompt notice to all residents of SODCs, their families and guardians, of the terms of the preliminary and permanent injunctive orders; and

(iv) For attorneys' fees and costs, as well as such other relief as this Court deems just and proper.

COUNT II:
VIOLATION OF SECTION 504 OF THE REHABILITATION ACT, 29 U.S.C. § 794
(Against all Defendants)

70. The Individual Plaintiffs and Plaintiff-Class Members incorporate by reference the allegations in paragraphs 1-69 of the Complaint, above, as if set forth in Count I.

71. Section 504 prohibits discrimination against individuals with disabilities by any program or activity, including any department or agency of a State government, receiving Federal financial assistance. 29 U.S.C.§ 794(a) and (b). "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." 29 U.S.C. § 794; 45 C.F.R. §§ 84.4(a), 84.4(b) (1) (i), (iv) and (v99); 84.4(b) (2); 84.52(a)(1), (4) and (5).

72. Section 504 requires that state and local governments afford protected individuals with disabilities related services, programs and activities in "the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 45.51(d) (emphasis added). That is, federally funded state governments and agencies must make reasonable modifications to policies, practices and procedures to avoid discrimination on the basis of disability, including the elimination of services deemed necessary and appropriate to meet the needs of the qualified individual with disabilities. 29 U.S.C.§ 794(a).

73. Similar to violations under the ADA, as set forth above, the Defendants' plan violates Section 504 of the Rehabilitation Act: (1) Defendants are discriminating against the

Individual Plaintiffs, as well as the Plaintiff-Class Members, as illustrated in the attached Plaintiffs' Affidavits, attached as Group Exhibit B and incorporated herein by reference, by targeting developmental disabilities for greater reductions in funding than other disabilities; (2) Defendants are preventing the Individual Plaintiffs, as well as the Plaintiff-Class Members, as illustrated in the attached Plaintiffs' Affidavits attached as Group Exhibit B and incorporated herein by reference, from receiving services that are as effective as those provided to individuals with other disabilities; (3) Defendants' reduced funding creates a substantial risk that the Individual Plaintiffs, as well as the Plaintiff-Class Members, as illustrated in the attached Plaintiffs' Affidavits attached as Group Exhibit B and incorporated herein by reference, will not be able to live in "the most integrated setting;" and (4) Defendants are limiting the number of accessible community residential settings available to the non-ambulatory Individual Plaintiffs and the Plaintiff-Class Members.

WHEREFORE, The Individual Plaintiffs and Plaintiff-Class Members respectfully request that this Court, in due course, issue orders of declaratory relief, as well as preliminary and permanent injunctive relief, in favor of the Plaintiffs as follows:

(a) Declaration that the Defendants collectively violated Section 504 of the Rehabilitation Act, in the manner by which they have commenced to implement the State's Plan to transition the profoundly disabled Plaintiffs from SODCs to community based residential settings without ensuring the adequacy of transitioned medically necessary services;

(b) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, shall be enjoined and restrained from implementing or enforcing the closure of SODCs, or reducing, terminating or modifying SODC services, unless or until equivalent, appropriate replacement services are provided to prevent inappropriate hospitalization, injury or death to residents in violation of the developmentally disabled residents' rights under federal and state laws.

(c) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, be ordered to:

(i) Take all actions necessary within the scope of their authority to implement the preliminary and permanent Injunctive orders;

(ii) Provide prompt notice to all SODCs of the terms of the preliminary and permanent injunctive orders;

(iii) Provide prompt notice to all residents of SODCs, their families and guardians, of the terms of the preliminary and permanent injunctive orders; and

(iv) For attorneys' fees and costs, as well as such other relief as this Court deems just and proper.

COUNT III:
VIOLATION OF FEDERALLY RECOGNIZED OLMSTEAD PROVISIONS FOR INTEGRATED COMMUNITY SERVICES
(Against all Defendants)

74. The Individual Plaintiffs and Plaintiff-Class Members incorporate by reference the allegations in paragraphs 1-73 of the Complaint, above, as if set forth in Count III.

75. The United States Supreme Court held in *Olmstead v. L.C.*, 527 U.S. 581 (1999) that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity.

76. Defendants have not demonstrated through an informed consent to the guardians of the Individual Plaintiffs or the Plaintiff-Class Members, that the State's community-based setting approach will be adequate or appropriate for the Individual Plaintiffs or Plaintiff-Class Members who are severely and profoundly developmentally disabled. That is:

(a) Defendants have not demonstrated any assurance of an adequate transition of available and necessary services to the Individual Plaintiffs' or Plaintiff-Class Members' by transitioning to properly staffed and licensed homes;

(b) Defendants have not demonstrated that the State it is able to, and will, provide equivalent or adequate local licensed providers in transitioning from SODCs to community settings;

(c) Defendants have not demonstrated that the State is able to, and will, inform the guardians of the Individual Plaintiffs or Plaintiff-Class Members' in advance of transition and, afterwards, provide them with a coordinated program of supervision in its plan for community placement. At best, Defendants have vaguely alluded to the guardians that licensed and/or unlicensed providers will "come and go" as needed, not taking into account for the almost certain level of emergencies that will arise when individuals used to very strict regiments are placed in a freer less supervised setting;

(d) Defendants have not demonstrated that the State is able to, and will, accommodate the Individual Plaintiffs or Plaintiff-Class Members with placements in an ICFDD, where following transition it is evident that they cannot survive and thrive in a community-based setting.

(e) Defendants have not demonstrated that the State is able to, and will, ensure that Individual Plaintiffs of Plaintiff-Class Members who cannot survive and thrive in a community-based setting will have a safety net option to return to a facility with equivalent services in Illinois.

(f) Defendants have not demonstrated that the State is able to and will ensure that money will be available for the payment of the providers of such services in the community beyond one year after placement.

(g) Defendants also have not, and cannot, demonstrate that the profoundly disabled Individual Plaintiffs or Plaintiff-Class Members, by and through their respective parents or guardians, do not oppose community-based treatment. Indeed, some or all of the guardians were not afforded a meaningful or fully informed opportunity for choice. *See* Affidavits, attached as Group Exhibit B and incorporated herein by reference.

(h) Defendants have not, and cannot, demonstrate that medically necessary services for the profoundly disabled Plaintiffs, and others similarly situated, may be transitioned or otherwise reasonably accommodated in transition from the SODCs to community settings, taking into account the resources available to the State and the needs of others who are receiving disability services from the State.

WHEREFORE, the Individual Plaintiffs and the Plaintiff-Class Members respectfully requests that this Court, in due course, issue orders of declaratory relief, as well as preliminary and permanent injunctive relief, in favor of the Plaintiffs as follows:

(a) Declaration that the Defendants collectively violated the mandate set forth by the United States Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), that public entities are required to demonstrate compliance with the following prerequisites before a disabled individual may be transitioned from an institutionalized residential setting to a community-based setting for services: (i) informing the disabled person or the guardian that such services are appropriate; (ii) affording the disabled person or the guardian a choice of whether to accept or oppose community-based treatment; and (iii) evidencing that community-based services can be reasonably accommodated, taking into account the resources available and the needs of others who are receiving disability services from the public entity.

(b) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, shall be enjoined and restrained from implementing or enforcing the closure of SODCs, or reducing, terminating or modifying SODC services, unless or until equivalent, appropriate informed consent as to replacement services are provided to the Individual Plaintiffs' and Plaintiff-Class Members' guardians to prevent inappropriate hospitalization, injury or death to residents in violation of the developmentally disabled residents' rights under federal and state laws.

(c) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, be ordered to:

(i) Take all actions necessary within the scope of their authority to implement the preliminary and permanent Injunctive orders;

(ii) Provide prompt notice to all SODCs of the terms of the preliminary and permanent injunctive orders;

(iii) Provide prompt notice to all residents of SODCs, their families and guardians, of the terms of the preliminary and permanent injunctive orders; and

(iv) For such other relief as this Court deems just and proper.

COUNT IV:
42 U.S.C. §1983-DEPRIVATION OF EQUAL PROTECTION
(Against All; Defendants)

77. The Individual Plaintiffs and Plaintiff-Class Members incorporate by reference the allegations in paragraphs 1-76 of the Complaint, above, as if set forth in Count IV.

78. Individual Plaintiffs, as the representatives of Plaintiffs' Class Members, are entitled to assert the individual constitutional and statutory rights of Plaintiffs' Class Members with respect to the harm and injuries suffered as a result of Defendants' actions.

79. At all times relevant, Defendants were acting under color of state law.

80. Defendants' discriminatory actions, against the Individual Plaintiffs and the Plaintiffs' Class Members, were taken pursuant to Defendants' custom, policy or practice.

81. By virtue of the actions set forth above, in implementing the closure of SODCs and the transfer of Individual Plaintiffs and Plaintiffs' Class Members to residential community settings, the Defendants have acted under color of law to deprive the Individual Plaintiffs and the Plaintiffs' Class Members of their civil rights to receive equal medical services in a manner consistent with the equal protection clause of fourteenth amendment in violation of 42 U.S.C. § 1983.

82. By depriving the Individual Plaintiffs and the Plaintiff-Class Members of their rights to equal protection and treating them differently than others who receive medical services from and through the State of Illinois funding, the Defendants have deliberately and intentionally violated the Individual Plaintiffs' and the Plaintiff-Class Members' rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

83. The Individual Plaintiffs and the Plaintiff-Class Members have suffered damages as a result of Defendants' discriminatory actions, including but not limited to loss of medically necessary services in a facility (SODC) that is adequately equipped and staffed to provide the necessary services.

84. The Defendants will continue such unlawful deprivation of equal rights in the future unless and until restrained by this Court.

WHEREFORE, the Individual Plaintiffs and Plaintiff-Class Members respectfully request that this Court issue orders of declaratory relief, as well as preliminary and permanent injunctive relief, in favor of the Plaintiffs as follows:

(a) Declaration that the Defendants collectively violated the rights of the Individual Plaintiffs and Plaintiff-Class Members under 42 U.S.C. § 1983 in the manner by which they have commenced to implement the State's Plan to transition the profoundly disabled Individual Plaintiffs and Plaintiff-Class Members from SODCs to community based residential settings without ensuring the adequacy of transitioned medically necessary services;

(b) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, shall be enjoined and restrained from implementing or enforcing the closure of SODCs, or reducing, terminating or modifying SODC services, unless or until equivalent, appropriate replacement services are provided to prevent inappropriate hospitalization, injury or death to residents in violation of the developmentally disabled residents' rights under federal and state laws.

(c) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, be ordered to:

(i) Take all actions necessary within the scope of their authority to implement the preliminary and permanent Injunctive orders;

(ii) Provide prompt notice to all SODCs of the terms of the preliminary and permanent injunctive orders;

(iii) Provide prompt notice to all residents of SODCs, their families and guardians, of the terms of the preliminary and permanent injunctive orders; and

(iv) For attorneys' fees and costs, as well as such other relief as this Court deems just and proper.

COUNT V:
VIOLATION OF FEDERAL & STATE LAWS PERTAINING TO MEDICAID
(Against All Defendants)

85. The Individual Plaintiffs and Plaintiff-Class Members incorporate by reference the allegations in paragraphs 1-84 of the Complaint, above, as if set forth in Count V.

86. Medicaid is a cooperative federal-state program designed to cover necessary medical services for poor people. Participation in the Medicaid program is not mandatory for the states, but once they choose to participate, they must operate their programs in conformity with federal statutory and regulatory requirements. 42 U.S.C. § 1396a.

87. Each state choosing to participate in the Medicaid Program must designate a single state agency which is responsible for administering the Program. 42 U.S.C. § 1396a (a)(5).

88. Medicaid law requires choice. The receipt of Medicaid funding is contingent upon a state offering choice of ICFs/MR or Home and Community Based Services ("HCBS") waivers. A Medicaid HCBS waiver shall not be granted unless the state provides satisfactory assurances that:

> [S]uch individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital, nursing facility services or services in an intermediate care facility for the mentally retarded.

42 U.S.C. § 1396n(c)(2)(C).

89. When a recipient is determined to be likely to require the level of care provided in an ICF/MR, the recipient or his or her legal representative must be:

> (1) Informed of any feasible alternatives available under the waiver, and (2) Given the choice of either institutional or home and community-based services.

42 C.F.R. § 441.302.

90. The Plan must furnish CMS with sufficient information to support assurances required by § 441.302, including its "plan for informing eligible recipients of the feasible

alternatives…institutional services or hom e and community-based services." 42 C.F.R. § 441.303(d).

91. Illinois has provided the re quired assurances to r eceive HBSC waivers under Medicaid in the Illinois Administrative Code:

> **Section 120.80 Program assurances**
>
> In addition to program requirements specified in other Sections of this Part, assurances for the Medicaid home and community-based services waiver program will include:
>
> ****
>
> b) Informing individuals of choice
>
> All individuals requesting program services shall be given a choice of alternative servi ces through the PASARR pr ocess. The choice shall include both ICF/MR and community-based services.

59 Illinois Admin. Code § 120.80.

Additionally, the Illinois Administrative Code's eligibility determinations for its Medicare home and community-based services waiver program provides:

> **Section 120.150 Eligibility determination**
>
> ****
>
> c) Individuals or guardians sh all be given the choice of receiving State-operated developmental center, community ICF/MR or Medicaid home and community-based services.

59 Ill. Admin. Code § 120.150.

In accordance with 42 U.S.C. § 1396n(c)(2)(C) and 42 C.F.R. § 441.302, Illinois gave the required assurances to CMS in its Application for the HCBS Waiver:

> **D. Choice of Alternatives:** The State assures th at when an individual is determined to be likely to require the level of care specified for this waiver and is in a target group specified in **Appendix B**, the individual (or, legal representative, if applicable) is:
>
> 1. Informed of any feasible alternatives under the waiver; and,

2. Given the choice of either institutional or home and community-based waiver services.

Appendix B specifies the procedures that the State employs to ensure that individuals are informed of feasible alternatives under the waiver and given the choice of institutional or home and community-based waiver services.

92. Here, Defendants have not demonstrated that the Plan to close all SODCs provided any informed choice whatsoever the Individual Plaintiffs' or Plaintiff-Class members' guardians.

93. The Plan, as proposed (and as implemented in the closure of JDC) does not give the Individual Plaintiffs or Plaintiff-Class Members the legally requisite choice—rather it forces all SODC residents to transfer to community-based homes. Thus, the Plan to close the SODCs without adequate information and support requirements, and without appropriate consultations and choice, directly violates Federal Medicaid Program laws and Illinois State regulatory laws related thereto.

WHEREFORE, the Individual Plaintiffs and Plaintiff-Class members respectfully request that this Court, in due course, issue orders of declaratory relief, as well as preliminary and permanent injunctive relief, in favor of the Plaintiffs as follows:

(d) Declaration that the Defendants collectively violated the aforementioned Federal Medicaid Program laws and state law requiring the demonstration of "appropriate [services] consistent with the habilitation needs" of the resident in effecting transition of services to the disabled, see 405 ILCS 5/4-702d (a); and, further, Defendants collectively violated the aforementioned Federal Medicaid Program laws and state law requiring that "[i]ndividuals or guardians shall be given the choice of receiving State-operated developmental center, community ICF/MR or Medicaid home and community-based services." 59 Ill. Adm. Code 120.150 (c).

(e) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, shall be enjoined and restrained from implementing or enforcing the closure of SODCs, or reducing, terminating or modifying SODC services, unless or until equivalent, appropriate replacement services are provided to prevent inappropriate hospitalization, injury or death to residents in violation of the developmentally disabled residents' rights under federal and state laws.

(f) Defendants, Department of Human Services, and its Director of Developmental Disabilities, Kevin Casey and CRA, including their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them, be ordered to:

(i) Take all actions necessary within the scope of their authority to implement the preliminary and permanent Injunctive orders;

(ii) Provide prompt notice to all SODCs of the terms of the preliminary and permanent injunctive orders;

(iii) Provide prompt notice to all residents of SODCs, their families and guardians, of the terms of the preliminary and permanent injunctive orders; and

(iv) For attorneys' fees and costs, as well as such other relief as this Court deems just and proper.

DATED: February 19, 2013

By: **PLAINTIFFS, ILLINOIS LEAGUE OF ADVOCATES FOR THE DEVELOPMENTALLY DISABLED; MURRAY PARENTS ASSOCIATION, INC.: INDIVIDUALLY AND ON BEHALF OF ALL PERSONS SIMILARLY SITUATED: RITA WINKELER, KAREN KELLY, LAUREN STENGLER, STAN KRAINSKI, ELIZABETH GERSBACHER, BARBARA COZZONE-ACHINO, ROBYN PANNIER, JEANNIE L. WILLIAMS, DAVID IACONO-HARRIS, DR. ROBERT POKORNY, and GAIL K. MYERS**

/s/ Judy Sherwin
One of Their Attorneys

Judy Sherwin
Sherri Thornton-Pierce
Sarah R. Burky
Kathleen F. Howlett
SHEFSKY & FROELICH LTD.
111 East Wacker Drive
Suite 2800
Chicago, Illinois 60601
jsherwin@shefskylaw.com
sthornton@shefskylaw.com
sburky@shefskylaw.com
khowlett@shefskylaw.com
Telephone: (312) 527-4000
Facsimile: (312) 527-4011
1236399_1.DOCX