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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

M.R., S.J., C.B., D.W., A.B., M.B., An.B, J.B.,  
K.S., T.M., A.R., M.J.B., J.H., H.C., THE ARC  
OF WASHINGTON, SERVICE EMPLOYEES  
INTERNATIONAL UNION HEALTHCARE  
775NW and PUGET SOUND ALLIANCE  
FOR RETIRED AMERICANS,

Plaintiffs,

v.

SUSAN DREYFUS, in her professional  
capacity as Secretary of Washington State  
Department of Social and Health Services and  
WASHINGTON STATE DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES, a  
Department of the State of Washington,

Defendants.

No. [Cause Number]

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

CLASS ACTION

**I. INTRODUCTION**

1.1 Plaintiffs and members of the Plaintiff Class (“Plaintiffs” or “Beneficiary Plaintiffs”) are disabled individuals who are entitled to receive a certain number of Medicaid in-home personal care service hours each month, from approved providers, as set forth in care plans and notices derived from annual, individualized CARE assessments of each Plaintiff’s health condition, circumstances, and needs for care to enable them to remain safely and independently at home. Defendants Susan Dreyfus and the Washington State Department of Social and Health Services (“DSHS”), who administer Washington’s Medicaid program, announced that effective January 1, 2011, they are cutting the Plaintiffs’ personal care service hours by an average of 10%

1 for budgetary reasons alone, thereby reducing Plaintiffs' personal care service hours below the  
2 levels they have been individually assessed to need and to which they have agreed in their care  
3 plans. This reduction deprives Plaintiffs of the minimum Medicaid long-term care benefits to  
4 which they are entitled and need, without reassessment of their current needs, adequate notice or  
5 an opportunity for pre-deprivation hearing. This hours cut will result in plans of care that do not  
6 meet the minimum needs that Defendants have assessed Plaintiffs to have and puts Plaintiffs at  
7 risk of serious injury, health deterioration, and unnecessary institutionalization.

8 1.2 Plaintiffs qualify for Medicaid long-term care in nursing homes. All Plaintiffs  
9 who receive personal care services through programs other than Medicaid Personal Care  
10 ("MPC") have been determined to be functionally eligible for nursing facility level of care  
11 (NFLOC), or an intermediate care facility for the mentally retarded (ICF/MR). All but a few  
12 hundred Plaintiffs of the approximately 40,000 members of the class would be eligible for such  
13 care if assessed.

14 1.3 As an alternative to nursing homes or other forms of residential or nursing facility  
15 level of institutional care, and at a much lower cost than institutional care, Plaintiffs consented to  
16 and approved care plans that authorize in-home personal care assistance with their basic and  
17 fundamental activities of daily living. These include: eating, bathing, toileting, mobility, catheter  
18 and bowel care, turning and repositioning, passive range of motion, dressing, medication  
19 management, essential shopping and housework. This in-home assistance permits Plaintiffs to  
20 meet their long term care needs and remain safely in their homes, the most integrated  
21 community-based setting possible, where they enjoy maximum independence, dignity, and  
22 engagement with their neighbors and family.

23 1.4 Plaintiffs' freedom to live at home depends upon their continued access to  
24 Medicaid in-home personal care services at the level DSHS individually assessed them to need.  
25 Defendants' reduction of personal care services below their level of need will lead to  
26 unnecessary institutionalization of individuals who would otherwise remain in their own homes.  
27 This violates the integration mandate of the Americans with Disabilities Act ("ADA"), and

1 Section 504 of the Rehabilitation Act (“Section 504”), which require Defendants to administer  
2 services and programs in the most integrated setting appropriate to the needs of the individual  
3 with disabilities.

4 1.5 Currently, Plaintiffs are awarded Medicaid home care service hours as a result of  
5 individualized CARE assessments that determine unmet needs. On the basis of those CARE  
6 assessments, DSHS determines the amount of medically necessary covered services by  
7 assignment of individuals to acuity and need-based categories with allocation of base personal  
8 care hours to meet the assessed needs in each category, with additional individual adjustments  
9 and possible, but infrequent, exceptions to rules. DSHS authorized each Beneficiary Plaintiff  
10 and putative class member to receive these Medicaid services only after individualized: CARE  
11 assessment; finding of financial and functional eligibility for services; consent for services and  
12 approval of the plan of care; and selection of an Individual or Agency provider qualified for  
13 payment by DSHS. The final arrangements are summarized in a care plan and Planned Action  
14 Notice (PAN). Through the CARE assessment, the care plan, and the PAN, the amount,  
15 duration, and scope of the Medicaid medically necessary in-home personal care services are  
16 awarded to meet the individual needs of the Plaintiff Beneficiaries.

17 1.6 Reduction of those services based on an arbitrary budgetary figure violates the  
18 Medicaid Act’s requirements that reasonable standards be used to determine the extent of  
19 services, that services be sufficient in amount to accomplish the purposes of the program, that  
20 individuals with comparable needs receive comparable services, and that recipients have the  
21 freedom to choose between home and community-based services and institutional services.  
22 Reduction of these services without obtaining federal approval of a plan amendment further  
23 violates the procedural requirements of the Medicaid Act.

24 1.7 On or after December 6, 2010, Defendants notified the Plaintiffs, in writing, that  
25 their home care service hours would be reduced effective January 1, 2010. DSHS did not  
26 reassess Plaintiffs, arrange for alternative services to take the place of the lost personal care  
27 services, notify class members of the mandatory Medicaid services that are available to them as

1 replacement services, or provide notice and an opportunity for an administrative hearing to  
2 challenge the reduction in services, all in violation of the Due Process Clause of the United  
3 States Constitution.

4 1.8 Defendants' conduct has thus violated and will violate Plaintiffs' constitutionally  
5 protected right to due process guaranteed under the Fourteenth Amendment to the U.S.  
6 Constitution, the Medicaid Act, the Americans with Disabilities Act, Section 504 of the  
7 Rehabilitation Act, 42 U.S.C. §1983, and the Supremacy Clause of the U.S. Constitution.

8 1.9 As a result of this reduction in services, Plaintiffs will experience immediate harm  
9 and ongoing deterioration of their health, functional capacities, and independence. This  
10 reduction of necessary personal care services will cause immediate and irreparable harm.

11 1.10 In addition, Defendants' precipitous and arbitrary cuts in home care services will  
12 weaken the existing infrastructure and home-based service model for the provision of these  
13 Medicaid services. The loss in hours will require some current and long-serving personal care  
14 providers to stop working for their Plaintiff clients, leaving Plaintiffs without the care they need  
15 or the staff to provide that care. Many Plaintiffs will be unable to secure adequate replacement  
16 caregivers available to do the work at the lower assessment of hours. The loss in hours will  
17 require some Plaintiffs to be unattended and make do with inadequate support and an unsafe  
18 level of care. Some Plaintiffs will be forced from their homes to seek the long-term care they  
19 need in institutional facilities, or residential facilities in the community.

20 1.11 Plaintiffs seek declaratory and injunctive relief to prohibit the reduction of  
21 Plaintiffs' personal care hours set to take effect on January 1, 2011. In the alternative, Plaintiffs  
22 seek an injunction to prohibit such reduction in in-home care hours until such time as Defendants  
23 can demonstrate that the assessed level of services is not necessary or until Defendants can  
24 demonstrate that alternative services are in place in the most integrated setting appropriate to  
25 their needs and conditions (which has been shown to be at home), and all class members whose  
26 personal care services are set to be reduced are able to pursue pre-termination administrative fair  
27 hearings.

**II. PARTIES**

**2.1 Named Beneficiary Plaintiffs**

2.1.1 Plaintiff M.R. is a resident of King County, Washington who receives Medicaid personal care services through a Division of Developmental Disabilities (“DDD”) waiver.

2.1.2 Plaintiff S.J. is a resident of Grays Harbor County, Washington who receives Medicaid personal care services through the MPC program.

2.1.3 Plaintiff C.B. is a resident of King County, Washington who receives Medicaid personal care services through the Community Options Program Entry System (“COPES”) program.

2.1.4 Plaintiff D.W. is a resident of Pierce County, Washington who receives Medicaid personal care services through the MPC program.

2.1.5 Plaintiffs A.B., M.B, An.B, and J.B. are residents of Clark County, Washington who receive Medicaid personal care services through the MPC program.

2.1.6 Plaintiff K.S. is a resident of Spokane County, Washington who receives Medicaid personal care services through the COPES program.

2.1.7 Plaintiff T.M. is a resident of Benton County, Washington and receives Medicaid personal care services through a DDD waiver.

2.1.8 Plaintiff A.R. is a resident of King County, Washington who receives Medicaid personal care services through the COPES program.

2.1.9 Plaintiff M.J.B. is a resident of Columbia County, Washington who receives Medicaid personal care services through the COPES program.

2.1.10 Plaintiff J.H. is a resident of Thurston County, Washington who receives Medicaid personal care services through the COPES program.

2.1.11 Plaintiff H.C. is a resident of King County, Washington who receives Medicaid personal care services through the COPES program.

1           **2.2     Organizational Plaintiffs**

2           2.2.1   Plaintiff **The Arc of Washington** (“The Arc”) is a non-profit association  
3 with a principal office in Thurston County, Washington.

4           2.2.2   Plaintiff **Service Employees International Union Healthcare 775NW**  
5 (“SEIU”) is an unincorporated association with a principal office in King County, Washington  
6 and brings this suit on behalf of its members that include approximately 39,000 Independent  
7 Providers and Agency Providers in Washington State who provide in-home personal care  
8 services through the MPC, COPES, and/or other programs.

9           2.2.3   Plaintiff **Puget Sound Alliance for Retired Americans** (“PSARA”) is a  
10 nonprofit association and an affiliate of the national Alliance for Retired Americans and the  
11 Washington Alliance for Retired Americans with a principal office in King County, Washington.

12           **2.3     Defendants**

13           2.3.1   Defendant Dreyfus is Secretary of the State of Washington’s Department  
14 of Social and Health Services (DSHS), a department of the State of Washington, a public entity  
15 as defined under 42 U.S.C. § 12131 (1), and a program that receives Federal financial assistance  
16 under Section 504. DSHS administers the federal Medicaid program in Washington State  
17 Secretary Dreyfus is responsible for ensuring that Washington’s Medicaid Program is  
18 administered in a manner consistent with federal law. She is sued in her official capacity only.

19           2.3.2   Defendant DSHS is a department of the State of Washington, a public  
20 entity as defined under 42 U.S.C. § 12131 (1), and a program that receives Federal financial  
21 assistance under Section 504. DSHS administers the federal Medicaid program in Washington  
22 State. Plaintiffs assert only the Third Claim for Relief against Defendant DSHS.

23           2.3.3   All of the acts and omissions set forth in this matter were done by  
24 Defendants or Defendants’ employees and agents, within the scope of their employment, and  
25 under the color of state law. They were official acts of Defendants undertaken directly by policy  
26 makers, were actions caused by the policies, procedures, practices and customs of State of  
27 Washington and Defendant DSHS, and/or were ratified by Defendants.

1 **III. JURISDICTION AND VENUE**

2 3.1 This Court has personal and subject matter jurisdiction under 28 U.S.C. § 1331,  
3 because this action arises under the laws of the United States, and 28 U.S.C. § 1343(3) and (4),  
4 which confer on the federal district courts original jurisdiction over claims asserted under 42  
5 U.S.C. § 1983 to redress deprivations of rights, privileges, or immunities guaranteed by Acts of  
6 Congress and the United States Constitution and claims that arise under the Supremacy Clause of  
7 the United States Constitution.

8 3.2 Venue is properly located in King County, Washington, because Defendants  
9 maintain a regional office in the district for the purpose of administering its long-term care  
10 programs, including the provision of home-based personal care services; Defendants’ long term  
11 care programs, including the provision of home-based personal care services, are implemented in  
12 King County, Washington; a majority of the Plaintiffs will lose their Medicaid services in King,  
13 Snohomish, Skagit, and Whatcom Counties; and the events giving rise to these claims occurred  
14 or will occur, unless enjoined, in King County, Washington.

15 3.3 Plaintiffs seek declaratory, injunctive, and other appropriate relief pursuant to 28  
16 U.S.C. §§2201 and 2202, 42 U.S.C. §1983, the Supremacy Clause of the U.S. Constitution, and  
17 Federal Rules of Civil Procedure 23, 57, and 65.

18 **IV. FACTUAL ALLEGATIONS**

19 **4.1 Statutory and Regulatory Framework**

20 **4.1.1 The Americans with Disabilities Act (ADA)**

21 4.1.1.1 The ADA and its attendant regulations prevent discrimination  
22 against people with disabilities and unnecessary segregation.

23 4.1.1.2 In the ADA, Congress found that “[individuals with disabilities  
24 continually encounter various forms of discrimination, including . . . segregation. . . .” 42 U.S.C.  
25 § 12101(a)(5). It provides that “no qualified individual with a disability shall, by reason of  
26 disability, be excluded from participation in or be denied the benefits of the services, programs,  
27

1 or activities of a public entity or be subjected to discrimination by such entity.” 42 U.S.C.  
2 §12132.

3 4.1.1.3 Regulations implementing Title II of the ADA provide: “A  
4 public entity shall administer services, programs, and activities in the most integrated setting  
5 appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).

6 4.1.1.4 Regulations implementing Title II of the ADA provide: “A  
7 public entity may not, directly or through contractual or other arrangements, utilize criteria or  
8 other methods of administration: (i) that have the effect of subjecting qualified individuals with  
9 disabilities to discrimination on the basis of disability; [or] (ii) that have the purpose or effect of  
10 defeating or substantially impairing accomplishment of the objectives of the entity’s program  
11 with respect to individuals with disabilities ....” 28 C.F.R. § 35.130(b)(3).

12 **4.1.2 Section 504 of the Rehabilitation Act (Section 504)**

13 4.1.2.1 Section 504 of the Rehabilitation Act of 1973 provides, “No  
14 otherwise qualified individual with a disability in the United States . . . shall, solely by reason of  
15 her or his disability, be excluded from participation in, be denied the benefits of, or be subjected  
16 to discrimination under any program or activity receiving Federal financial assistance.” 29  
17 U.S.C. § 794.

18 4.1.2.2 Regulations implementing Section 504 require a recipient of  
19 federal financial assistance to administer its services, programs, and activities in “the most  
20 integrated setting appropriate” to the needs of qualified individuals with disabilities. 28 C.F.R. §  
21 41.51(d).

22 4.1.2.3 Regulations implementing Section 504 prohibit recipients of  
23 Federal financial assistance from “[u]tiliz[ing] criteria or methods of administration ... (i) [t]hat  
24 have the effect of subjecting qualified handicapped persons to discrimination on the basis of  
25 handicap [or] (ii) [t]hat have the ... effect of substantially impairing accomplishment of the  
26 recipients’ program with respect to handicapped persons.” 45 C.F.R. § 84.4(b)(4); 28 C.F.R. §  
27 41.51(b)(3)(i).



1                   **4.1.3 The Medicaid Program**

2                   4.1.3.1     Medicaid is a cooperative, jointly funded program between the  
3 federal and state governments that provides medical assistance to low-income individuals with  
4 disabilities. 42 U.S.C. § 1396 – 1396v.

5                   4.1.3.2     Washington has elected to participate in the Medicaid program,  
6 and so must comply with the requirements of the federal Medicaid Act and its implementing  
7 regulations, the requirements of Medicaid waivers, federal and state law.

8                   4.1.3.3     The purpose of Medicaid is to furnish, as far as practicable,  
9 “medical assistance on behalf of ... aged, blind or disabled individuals, whose income and  
10 resources are insufficient to meet the costs of necessary medical services” and “to help such  
11 families and individuals to attain or retain capability for independence or self-care ...” 42 U.S.C.  
12 § 1396.

13                   4.1.3.4     On the federal level, Medicaid is administered by the Centers  
14 for Medicare and Medicaid Services (CMS), an agency within the United States Department of  
15 Health and Human Services (HHS).

16                   4.1.3.5     States participate in Medicaid by submitting a State Medicaid  
17 Plain to CMS for approval. 42 U.S.C. §1396; 42 C.F.R. §430.12. States can make changes to  
18 their Medicaid programs by submitting state plan amendments to CMS for approval. *Id.*

19                   4.1.3.6     Washington State elects to participate in Medicaid, and,  
20 therefore, must comply with the requirements of the federal Medicaid Act, its implementing  
21 regulations, the United States Constitution, the Americans with Disabilities Act, and Section 504  
22 of the Rehabilitation Act of 1973. 42 U.S.C. § 1396, *et seq.*

23                   4.1.3.7     Coverage of certain services is mandatory under Medicaid.  
24 States that elect to participate in the Medicaid program must cover nursing facility services for  
25 individuals over 21 year of age. 42 U.S.C. §§ 1396a(a)(10), 1396d(a)(4)(A). States must also  
26 offer home health services, including skilled nursing services. 42 U.S.C. §§ 1396d (a)(7), 1396r,  
27 42 CFR 440.210(a)(1), 440.220(a)(3), 440.70, 441.15.

1                   **4.1.4 The State’s Medicaid In-Home Personal Care Services Programs**

2                   4.1.4.1 DSHS administers the Washington Medicaid program.

3 Medicaid pays for medical and personal care services, including nursing home care and in-home  
4 personal care services.

5                   4.1.4.2 Defendants have agreed to provide, and DSHS administers, in-  
6 home personal care services to eligible Medicaid recipients in its State Medicaid Plan through  
7 the Medicaid Personal Care (“MPC”) program, authorized under RCW 74.09.520.

8                   4.1.4.3 Approximately 15,000 purported class members receive MPC  
9 in-home services. Each has an unmet or partially met need with at least three of the following  
10 activities of daily living, or unmet or partially met needs resulting in the needs not occurring with  
11 at least one of the following activities of daily living: eating, toileting, bathing, dressing,  
12 transfer, bed mobility, walking or locomotion, medication management, personal hygiene, body  
13 care. WAC 388-106-0210.

14                   4.1.4.4 All but a few hundred MPC beneficiaries are so disabled that  
15 DSHS acknowledges they would meet the functional eligibility criteria entitling them to nursing  
16 facility level of care, but they have been directed toward the MPC program and have not been  
17 assessed for nursing facility or other institutional facility eligibility by DSHS.

18                   4.1.4.5 Defendants have agreed to provide, and DSHS administers, in-  
19 home personal care services to eligible Medicaid recipients through the Community Options  
20 Program Entry System (“COPES”) Medicaid waiver program (provided under a § 1915(c)  
21 waiver), authorized under RCW 74.39A.030.

22                   4.1.4.6 Approximately 18,000 purported class members receive  
23 COPES in-home personal care services.

24                   4.1.4.7 To qualify for the COPES waiver, DSHS individually assessed  
25 each beneficiary through the CARE assessment and certified that, but for the provision of such  
26 services, the individuals require nursing facility level of care, or will likely need that level of care  
27 within thirty days, as defined in 42 CFR 440.40 and 42 CFR 440.155. WAC 388-106-0310(4).

1                   4.1.4.8     Defendants have agreed to provide, and DSHS administers, in-  
2 home personal care services to eligible Medicaid recipients through the Medically Needy In-  
3 Home Waiver (“MNIW”), a Medicaid waiver program (provided under a § 1915(c) waiver),  
4 authorized under RCW 74.09.700.

5                   4.1.4.9     Approximately 60 purported class members receive MNIW in-  
6 home personal care services.

7                   4.1.4.10    To qualify for the MNIW waiver, DSHS individually assessed  
8 each beneficiary through the CARE assessment and certified that, but for the provision of such  
9 services, the individuals require nursing facility level of care, or will likely need that level of care  
10 within thirty days, as defined in 42 CFR 440.40 and 42 CFR 440.155.   WAC 388-106-0510 (4).

11                  4.1.4.11    Defendants have agreed to provide, and DSHS administers, in-  
12 home personal care services to eligible Medicaid recipients who have developmental and  
13 intellectual disabilities through four Medicaid waiver programs administered by the  
14 Department’s Division of Developmental Disabilities known as the Basic, Basic Plus, Core, and  
15 Community Protection waivers (“DDD Waivers”). The waiver programs are authorized by 42  
16 U.S.C. § 1396n(c)(1).

17                  4.1.4.12    Approximately 11,000 purported class members are served  
18 through the DDD Waivers.

19                  4.1.4.13    To qualify for the DDD waivers, DSHS individually assessed  
20 each recipient and certified that, but for the provision of such services, the individuals would  
21 require care in Intermediate Care Facility for the Mentally Retarded or the Intellectually  
22 Disabled (ICF/MR or ICF/ID), such as Rainier School, as defined in 42 CFR 440.150. These  
23 individuals are also be eligible for and, in the absence of in-home personal care services, would  
24 require nursing facility level of care as defined in 42 CFR 440.40 and 42 CFR 440.155.

25                  4.1.4.14    Defendants also have agreed to provide, and DSHS  
26 administers, in-home personal care services to eligible Medicaid recipients through a New  
27 Freedom Medicaid Waiver, a pilot program in King and Clark County.

1                   4.1.4.15 To qualify for this waiver, DSHS individually assessed each  
2 recipient and certified that, but for the provision of such services, the individuals would require  
3 nursing facility level of care as defined in 42 CFR 440.40 and 42 CFR 440.155.

4                   4.1.4.16 Defendants also have agreed to provide, and DSHS  
5 administers, in-home personal care services through state-funded in-home personal care services  
6 through its CHORE program authorized under RCW 74.39A.110.

7                   4.1.4.17 Having elected to provide those services, DSHS must follow  
8 the applicable requirements of the Medicaid Act, the Medicaid Waivers, federal and state law.

9                   4.1.4.18 In addition to in-home personal care services, the Defendant  
10 provides long-term care and personal care services in community based residential settings such  
11 as Adult Family Homes, Boarding Homes, and Assisted Living Facilities.

12                   4.1.4.19 The purpose of the State’s long-term care service options  
13 include: to “[e]stablish a balanced range of health, social and supportive services that deliver  
14 long-term care services to chronically, functionally disabled persons of all ages. RCW  
15 74.39.005(1); to “[e]nsure that services are provided in the most independent living situation  
16 consistent with individual needs;” and to “[e]nsure that long-term care service options shall be  
17 developed and made available that enable functionally disabled persons to continue to live in  
18 their homes or other community residential facilities while in the care of their families or other  
19 volunteer support persons.” RCW 74.39.005(1) (3), (4); see also RCW 74.39A.007.

20                   4.1.4.20 The legislature also directed the purpose of the long-term care  
21 service options to “[e]nsure that functional ability shall be the determining factor in defining  
22 long-term care service needs and that these needs will be determined by a uniform system for  
23 comprehensively assessing functional disability.” RCW 74.39.005(2).

24                   4.1.4.21 In or around 2003, DSHS implemented the Comprehensive  
25 Assessment Reporting Evaluation (CARE) tool and required it to be used to individually assess  
26 needs and assign in-home personal care hours to meet those individually assessed needs. DSHS  
27 also required use of the CARE tool to determine rates for community residential facilities based

1 upon individually assessed needs. In or around 2007, DSHS required the CARE tool to be used  
2 to individually assess the needs and assign in-home personal care hours to meet those  
3 individually assessed needs of individuals with developmental or intellectual disabilities and to  
4 determine rates for community residential facilities serving those with developmental or  
5 intellectual disabilities based upon individually assessed needs.

6 4.1.4.22 Washington State also uses the “Supports Intensity Scale”  
7 (“SIS”) which is a nationally normed instrument that is part of the CARE tool. It applies specific  
8 and uniform standards to determine the level of care needed for developmentally disabled  
9 individuals. Hereinafter, we use the term “CARE tool” to refer to all individualized assessments  
10 made using the CARE tool.

11 4.1.4.23 With the exception of the cuts at issue in this lawsuit, it has  
12 been the policy and practice of DSHS to provide personal care services to in-home clients served  
13 through all of its State Medicaid Plan and Waiver Programs based upon the level of individually  
14 assessed client needs, as determined through the centralized CARE assessment process.

15 4.1.4.24 Each Plaintiff was awarded Medicaid home care service hours  
16 as a result of individualized CARE assessments that determined unmet needs. On the basis of  
17 those CARE assessments, DSHS determined the amount of medically necessary covered services  
18 by assignment of individuals to acuity and need-based categories, with allocation of base  
19 personal care hours to meet the assessed needs in each category, with additional individual  
20 adjustments and possible, but infrequent, exceptions to rules, consistent with WAC 388-106-  
21 0055. The determination of unmet needs, and the classification/categorization, incorporates  
22 individualized assessments of each Beneficiary’s cognitive performance, clinical complexity,  
23 mood/behaviors symptoms, and Activities of Daily Living (ADL)s. WAC 388-106-0085.

24 4.1.4.25 DSHS authorized each Beneficiary Plaintiff and putative class  
25 member to receive a certain number of Medicaid in-home personal care service hours only after  
26 individualized: CARE assessment; finding of financial and functional eligibility for services;  
27

1 consent for services and approval of the plan of care; and selection of an Individual or Agency  
2 provider qualified for payment by DSHS, as required by WAC 388-106-0045.

3 4.1.4.26 In the CARE assessment process, beneficiaries are afforded the  
4 freedom of choice between types of long term care (in the home, community residential settings,  
5 or institutional settings) as well as the selection of qualified Individual Providers of Agency  
6 Providers.

7 4.1.4.27 The CARE assessment results and Medicaid authorizations are  
8 summarized in a plan of care, "care plan," or for beneficiaries with developmental or intellectual  
9 disabilities, the Individual Support Plan, "ISP." DSHS provides Beneficiaries, and/or their  
10 guardians, with a copy of the CARE assessment, care plan or ISP, and a Planned Action Notice  
11 (PAN) that summarizes the authorized hours of monthly in-home personal care. The approved  
12 Personal Care Provider also receives these notices and directives as to the tasks to perform and  
13 the amount of hours awarded to perform them. Through the CARE assessment, the care plan or  
14 ISP, and the PAN, the amount, duration, and scope of the Medicaid medically necessary in-home  
15 personal care services are awarded to meet the individual needs of the Plaintiff Beneficiaries.

16 4.1.4.28 The CARE assessment occurs annually. Changes to the care  
17 plan/ISP, including the amount of in-home personal care Medicaid benefits awarded, requires a  
18 reassessment using the CARE tool. CARE reassessments are required when there is a change in  
19 the condition of the beneficiary, a change in Care Provider, or a change in services.

20 4.1.4.29 The State's in-home personal care services programs help  
21 prevent costly and unnecessary institutionalization, save the State significant funds, and, at the  
22 same time, improve the quality of life for the individuals served.

## 23 **4.2 State's Planned Reduction of Personal Care Services Effective Jan. 1, 2011**

24 4.2.1 On September 14, 2010, Governor Christine O. Gregoire issued Executive  
25 Order 10-04, which instructed the Director of the Office of Financial Management to calculate  
26 the percentage shortfall in the current fiscal period and ordered the reduction of the amount of  
27 each appropriation by that percentage. Two days later, the Director issued a memorandum

1 instructing agency directors to submit allotment amendments reflecting a 6.287 percent  
2 reduction.

3 4.2.2 In response, Defendant DSHS submitted a plan that provided for a ten  
4 percent reduction in personal care hours for Medicaid home care recipients – a reduction far  
5 higher than the average reduction in spending required of the agency.

6 4.2.3 That plan explained that “[t]he actual reduction will vary from 6 percent to  
7 18.4 percent based upon acuity,” with lower acuity clients receiving higher percentage hours  
8 reductions, and acknowledged that this reduction would be on top of an average four percent  
9 increase that took place in FY 2010 (with actual reductions ranging from 1-10%) and some  
10 additional targeted reductions in FY 2011.

11 4.2.4 The agency plan admitted, “[w]ith reduced hours, in-home clients will  
12 need to choose which tasks their employees spend their time on and there may not be enough  
13 time to complete all tasks”; that clients with the higher percentage reductions might not be able  
14 to have some authorized tasks completed regularly; and that, “[i]f the reduction results in an  
15 unsafe plan of care, some clients may need to go to community residential or nursing facility  
16 settings.”

17 4.2.5 On November 30, 2010, the DSHS Aging and Disability Services  
18 Administration issued an HCS Management Bulletin outlining the agency’s plan for  
19 implementation of the 10% personal care services cut. That bulletin set forth the following cuts  
20 to base monthly hours for the various classification groups, ranging from 6.4 percent to 25  
21 percent.

22 4.2.6 The bulletin further explained that there would be “no appeal rights for  
23 this change . . . because this is a service change directed by the Governor and applies to the entire  
24 program,” and that a letter would be mailed the week of December 6, 2010 notifying clients of  
25 the upcoming reduction in hours.

1           4.2.7 On information and belief, on or around December 6, 2010, letters were  
2 sent to recipients of in home personal care services notifying them of the specific hours  
3 reductions that would be effective January 1, 2011.

4           4.2.8 The budget-based cuts, implemented without individual CARE  
5 assessments, undermines the integrity of the long-term care system and contradicts legal  
6 obligations DSHS has to provide these services to meet client needs. Abandoning care  
7 assessments before making hours cuts constitutes a material alteration in the policies and  
8 practices of DSHS in implementing state plan and waiver services.

9           4.2.9 On information and belief, Defendants have not sought approval of plan or  
10 waiver amendments from CMS.

11           4.2.10 The reduction of home care services below assessed need is likely to cause  
12 Plaintiffs to suffer declines in physical functioning, increased medical complications, and  
13 additional preventable accidents resulting in physical injury and hospitalizations. This will  
14 expose them to a serious risk of harm to their health and safety and cause a serious risk of  
15 unwanted out-of-home placement, including unwanted institutionalization.

16           4.2.11 The reduction of home care services below assessed need is likely to cause  
17 Plaintiffs members to suffer declines in mental functioning. This will expose them to a serious  
18 risk of harm to their health and safety and cause a serious risk of out-of-home placement,  
19 including unwanted institutionalization.

20           4.2.12 Plaintiffs whose physical or cognitive impairments are such that they  
21 cannot be left alone or whose health conditions are extremely unstable are likely to face  
22 immediate out-of-home placement in an institution.

23           4.2.13 Out-of-home placement in an institution often further destabilizes already  
24 compromised mental or physical functioning. Once placed in an institution, it is extremely  
25 difficult for individuals to move out of institutions and back into the community.



1           4.2.14 Institutional placement is more expensive than in home care, and so  
2 unnecessary entry into nursing homes and other forms of institutional care will diminish any  
3 savings the State expects to realize from these hours reductions.

4           4.2.15 Defendants have not arranged for alternative, community-based Medicaid  
5 services or alternative institutional Medicaid services to be provided to Plaintiffs. Defendant's  
6 reduction of home care hours below the assessed need will undermine the existing infrastructure  
7 and service model for the provision of Medicaid personal care services.

8           **4.3 Factual Allegations Related to Beneficiary Plaintiffs**

9           4.3.1 All Named Beneficiary Plaintiffs, including Plaintiffs M.R., S.J., C.B.,  
10 D.W., A.B., M.B., An.B, J.B., K.S., T.M., A.R., M.J.B., J.H., H.C., are qualified individuals with  
11 disabilities as defined under 42 U.S.C. § 12131(2) and Section 504 of the Rehabilitation Act and  
12 are substantially impaired in numerous major life activities.

13           4.3.2 All Beneficiary Plaintiffs, including Plaintiffs M.R., S.J., C.B., D.W.,  
14 A.B., M.B., An.B, J.B., K.S., T.M., A.R., M.J.B., J.H., H.C., are eligible for nursing facility level  
15 of care, but prefer and choose to live at home and integrated in the community.

16           4.3.3 In order to survive on a day to day level, all Beneficiary Plaintiffs,  
17 including Plaintiffs M.R., S.J., C.B., D.W., A.B., M.B., An.B, J.B., K.S., T.M., A.R., M.J.B.,  
18 J.H., H.C., require substantial assistance in activities of daily living (ADLs) and independent  
19 activities of daily living (IADLs).

20           4.3.4 Defendants, by and through DSHS case managers, have determined that  
21 all Beneficiary Plaintiffs, and Plaintiffs M.R., S.J., C.B., D.W., A.B., M.B., An.B, J.B., K.S.,  
22 T.M., A.R., M.J.B., J.H., H.C., meet the functional and financial eligibility requirements for  
23 Medicaid in-home long term care services. Defendants awarded Medicaid home care service  
24 hours to all Beneficiary Plaintiffs, including Plaintiffs M.R., S.J., C.B., D.W., A.B., M.B., An.B,  
25 J.B., K.S., T.M., A.R., M.J.B., J.H., H.C., as a result of individualized CARE assessments that  
26 determined their unmet needs and amount of medically necessary covered services, assigned  
27

1 individuals to acuity and need-based categories, and allocated base personal care hours to meet  
2 the assessed needs in each category, with individual adjustments.

3 4.3.5 DSHS authorized each Beneficiary Plaintiffs, including Plaintiffs M.R.,  
4 S.J., C.B., D.W., A.B., M.B., An.B, J.B., K.S., T.M., A.R., M.J.B., J.H., H.C., to receive these  
5 in-home personal care Medicaid services only after the individualized: CARE assessment;  
6 finding of financial and functional eligibility for services; consent for services and approval of  
7 the plan of care; and selection of an Individual or Agency provider qualified for payment by  
8 DSHS.

9 4.3.6 By providing Medicaid services at home, Defendants successfully  
10 provided Medicaid services in the most integrated setting appropriate to her needs.

11 4.3.7 On or after December 6, 2010, Defendant DSHS sent each Beneficiary  
12 Plaintiff, including Plaintiffs M.R., S.J., C.B., D.W., A.B., M.B., An.B, J.B., K.S., T.M., A.R.,  
13 M.J.B., J.H., H.C., letters notifying them that their personal home care hour benefits would be  
14 reduced effective January 1, 2011. The notice letters identified the current hours of in-home  
15 personal care services received under their care plan, and the number of hours they will receive  
16 in in-home personal care services effective January 1, 2011 after the hours cut. The letters  
17 specifically stated they have no right to appeal the reduction of in-home personal care services.

18 4.3.8 Beneficiary Plaintiffs, including Plaintiffs M.R., S.J., C.B., D.W., A.B.,  
19 M.B., An.B, J.B., K.S., T.M., A.R., M.J.B., J.H., H.C., remain eligible for Medicaid services  
20 after January 1, 2011, including 24/7 nursing facility level of care. Some Beneficiary Plaintiffs  
21 are eligible for other Medicaid services after January 1, 2011, including home health and skilled  
22 nursing.

23 4.3.9 Defendants never contacted the Beneficiary Plaintiffs, including Plaintiffs  
24 M.R., S.J., C.B., D.W., A.B., M.B., An.B, J.B., K.S., T.M., A.R., M.J.B., J.H., H.C., regarding  
25 the change in services, failed to notify them that they remain eligible for Medicaid services to  
26 meet their needs after January 1, 2011, failed to provide them options for alternative Medicaid  
27 long-term care services in community-based settings or in more institutional settings that would

1 provide the full and necessary medical care and services that will be lost when the hour cuts go  
2 into effect, failed to obtain their agreement to such replacement services, and failed to send a  
3 planned action notice re: new treatment arrangements.

4 4.3.10 Defendants reduced the Beneficiary Plaintiffs, including Plaintiff M.R.,  
5 S.J., C.B., D.W., A.B., M.B., An.B, J.B., K.S., T.M., A.R., M.J.B., J.H., H.C.'s, Medicaid  
6 services without undertaking CARE reassessments, without proper notice, and without providing  
7 any opportunity to appeal.

8 4.3.11 With January 1, 2011 hours cuts, Defendants failed to provide Beneficiary  
9 Plaintiffs, including Plaintiffs M.R., S.J., C.B., D.W., A.B., M.B., An.B, J.B., K.S., T.M., A.R.,  
10 M.J.B., J.H., H.C., with Medicaid long-term care services in the most integrated setting  
11 appropriate to Plaintiffs' needs and conditions, which has proven to be at home, where they were  
12 living prior to the hours cuts.

13 4.3.12 Defendants and their DSHS case worker effectively terminated, reduced or  
14 delayed Beneficiary Plaintiffs', including Plaintiffs M.R., S.J., C.B., D.W., A.B., M.B., An.B,  
15 J.B., K.S., T.M., A.R., M.J.B., J.H., H.C.'s, home-based Medicaid services without undertaking a  
16 CARE reassessment and without providing any opportunity to appeal.

17 4.3.13 The State of Washington would be required to pay more for Beneficiary  
18 Plaintiffs' care, including the care of Plaintiffs M.R., S.J., C.B., D.W., A.B., M.B., An.B, J.B.,  
19 K.S., T.M., A.R., M.J.B., J.H., H.C., in a nursing home or other institutional or residential setting  
20 than it has paid or would be required to pay for home-based personal care services.

21 **4.4 Factual Allegations Related to Plaintiff M.R.**

22 4.4.1 Plaintiff M.R., a 37-year-old resident of King County, Washington,  
23 appears in this action through her mother, legal guardian, and next friend, Dorcas Maxson, who  
24 is also M.R.'s Individual Provider. Plaintiff M.R. is not able to appear on her own behalf in this  
25 litigation.

1           4.4.2 Plaintiff M.R. has limited cognitive abilities and has been diagnosed as  
2 having severe mental retardation, daily grand and petite mal seizures, Scoliosis, Cerebral Palsy,  
3 Hypothyroidism, and mood disorder.

4           4.4.3 Defendant DSHS deemed Plaintiff M.R. eligible for Medicaid personal  
5 care services through a DDD waiver and assessed her to have a medical necessity of 236 hours  
6 per month of personal care services. Plaintiff M.R. requires assistance with her medical  
7 conditions including administration of anti-seizure drugs through her feeding tube two times per  
8 day and other medications up to five times per day, monitoring seizures, cleaning and  
9 maintaining her feeding tube, compression stockings for her swollen legs to maintain vein  
10 functionality, and monitoring her health closely for seizures and to prevent complications of all  
11 her conditions. She also requires assistance with most of the activities of daily living, including  
12 eating, food preparation, toileting (including perineal and incontinence care), bathing, dressing,  
13 aid with braces, walking, transferring, behavior monitoring, housecleaning, and laundry. The  
14 236 hours are minimally sufficient to provide for M.R.'s extensive needs, and M.R.'s DSHS  
15 case manager has assessed that her household is "at serious risk of failure."

16           4.4.4 Until 2006, M.R. lived in an adult family home, but her mother brought  
17 M.R. home in order to improve her care after M.R. began to have frequent seizures and her  
18 doctors predicted she would not live out the year. With personal care assistance, Plaintiff M.R.  
19 is able to live in her own home, where she receives better care, more attention, and is able to  
20 choose her own activities and set her own schedule.

21           4.4.5 During the week of December 6, 2010, Defendant DSHS notified M.R.  
22 that, beginning January 1, 2011, it plans to cut her personal care service hours by 21 hours per  
23 month to 215 hours, a reduction of 8.9%. M.R.'s condition has not improved since her last  
24 assessment; it has worsened, as her mobility has decreased, and seizures and behavior problems  
25 (including refusal to eat and outbursts) have increased.

26           4.4.6 The reduction set to take effect will require M.R. to be institutionalized in  
27 a nursing home or ICF/DD, because the reduced hours will be insufficient to provide care for

1 M.R., M.R.'s mother will be forced to get another job to make ends meet, and it will be difficult  
2 to find another provider and impossible to do so before January 1. M.R. cannot be left  
3 unattended for any period of time without immediate and serious adverse consequences. If M.R.  
4 enters an institutional care facility, she will deteriorate because she will lose her close family  
5 connections, interaction in the community, independence, and choice. Her behavior problems  
6 and likely her physical condition will deteriorate seriously with potentially life threatening  
7 consequences.

#### 8 **4.5 Factual Allegations Related to Plaintiff S.J.**

9 4.5.1 Plaintiff S.J. was diagnosed with Myotonic Muscular Dystrophy at age 35  
10 and is now 58 years old. In 2002, Plaintiff S.J. lost the ability to walk, and since then, she has  
11 become increasingly disabled due to progressive deterioration from the disease. Plaintiff S.J.'s  
12 medical conditions also include weekly seizures, osteo and rheumatoid arthritis, sleep apnea,  
13 chronic obstructive pulmonary disease, emphysema, past strokes, asthma, chronic pain, a frozen  
14 shoulder, orofacial dyskinesia, Fragile X Syndrome, depression, and post-traumatic stress  
15 disorder.

16 4.5.2 Defendant DSHS deemed Plaintiff S.J. eligible for Medicaid personal care  
17 services through the MPC program. Plaintiff S.J. requires assistance with most of the activities  
18 of daily living, including mobility, use of a wheelchair, turning in bed, medication management,  
19 personal hygiene, toileting, getting dressed, cooking, and eating. Plaintiff S.J.'s Individual  
20 Provider, who is not related to her, also assists her with necessary therapies, including oxygen  
21 therapy and range of motion exercises to prevent atrophy of her muscles, ensures that she does  
22 not choke or develop pressure sores, and monitors her for seizures. With personal care  
23 assistance, Plaintiff S.J. is able to live in her own home, which enables her to maintain her sense  
24 of privacy and independence, to be part of her community, and to make her own decisions  
25 regarding matters such as her schedule.

26 4.5.3 Defendant DSHS assessed Plaintiff S.J. to have a medical necessity of 162  
27 personal care service hours per month. Nonetheless, during the week of December 6, 2010,

1 Defendant DSHS notified Plaintiff S.J. that, beginning January 1, 2011, it plans to cut her  
2 personal care service hours by 17 hours per month to 145 hours, a reduction of 11.5%. These  
3 cuts are in addition to other cuts made in November 2009, March 2010, and June 2010: Since  
4 the beginning of 2009, Plaintiff S.J.'s home care hours have been reduced from 180 hours to 145  
5 hours per month – a total reduction of 20%.

6 4.5.4 Plaintiff S.J. has no other resources or family members to make up for the  
7 reduction in needed care, and the reduction in hours will harm Plaintiff S.J.'s health and almost  
8 certainly force her to move into a nursing facility. S.J.'s Individual Provider has already notified  
9 Plaintiff S.J.'s DSHS case manager that, due to reductions in her home care hours, he will no  
10 longer be able to provide care for her as of January 3, 2011, and has asked that Plaintiff S.J. be  
11 moved into a nursing home. The reduced hours will not permit Plaintiff S.J. to receive adequate  
12 care and would endanger S.J.'s her health and life. Plaintiff S.J. would prefer to remain in her  
13 own home, and if forced to live in an institutional setting, she will experience separation from  
14 her friends and community, as well as loss of independence, autonomy, and the ability to make  
15 her own choices, which will most likely negatively impact her mental and physical health.

#### 16 4.6 Factual Allegations Related to Plaintiff C.B.

17 4.6.1 Plaintiff C.B. is 55 years old and has been physically disabled since 1988,  
18 when she contracted a flesh-eating bacteria which eventually caused an infection that spread to  
19 her vital organs. Plaintiff C.B. has also developed many other physical conditions, including  
20 spinal stenosis and shoulder problems, for which she has had surgery, congestive heart failure,  
21 emphysema, Hepatitis, and nerve damage. Plaintiff C.B. also has mental health conditions,  
22 including depression, bipolar disorder, and anxiety.

23 4.6.2 Defendant DSHS deemed Plaintiff C.B. eligible for Medicaid personal  
24 care services through the COPES program. Plaintiff C.B. requires assistance with most of the  
25 activities of daily living, including walking or use of a wheelchair, turning in bed, personal  
26 hygiene, getting dressed, cooking, essential shopping, and cleaning. Regular housecleaning is  
27 especially necessary to preserve Plaintiff C.B.'s health due to her bacterial infection and

1 emphysema. Plaintiff C.B. currently is cared for by an Agency Provider who is not related to her.  
2 With personal care assistance, Plaintiff C.B. is able to live in her own home, which enables her  
3 to maintain her relationships with friends and neighbors and preserves her sense of personal  
4 space, control, and independence.

5 4.6.3 Defendant DSHS assessed Plaintiff C.B. to have a medical necessity of  
6 133 personal care service hours per month. Nonetheless, Defendant DSHS has notified Plaintiff  
7 C.B. that, beginning January 1, 2011, it plans to cut her personal care service hours by 18 hours  
8 per month to 115 hours, a reduction of 13.5%.

9 4.6.4 Plaintiff C.B. has no other resources or family members to make up for the  
10 reduction in needed care, and the reduction in hours will harm Plaintiff C.B.'s health. There will  
11 be reductions in time spent maintaining personal hygiene and household cleanliness, which will  
12 exacerbate Plaintiff C.B.'s health conditions. Plaintiff C.B.'s provider also will be forced to  
13 cook fewer meals and may lack time to transport Plaintiff C.B. to and from doctor's visits.  
14 C.B.'s provider may also be forced to find a different job to earn sufficient income, which would  
15 cause a disruption in the continuity of care.

16 4.6.5 Plaintiff C.B. faces a serious risk that she will be unable to remain in her  
17 home if her home care hours are cut. Plaintiff C.B. has had bad experiences in nursing homes,  
18 which included unsanitary conditions, inadequate hygiene practices, unresponsiveness, and rigid  
19 meal and medication schedules. If Plaintiff C.B. is forced to return to an institutional setting,  
20 her health will also likely deteriorate due to separation from her friends and pets.

#### 21 **4.7 Factual Allegations Related to Plaintiff D.W.**

22 4.7.1 Plaintiff D.W. is 47 years old and disabled, and has been diagnosed with  
23 several physical conditions, including Acquired Immunodeficiency Syndrome (AIDS),  
24 Cytomegalovirus (CMV) retinitis and general loss of vision related to AIDS, heart failure related  
25 to an enlarged heart, osteoarthritis resulting in problems with shoulders and knees, a  
26 degenerative bone disease, testicular dysfunction, obesity, and neuropathy and edema in his feet.  
27

1 Plaintiff D.W. has also been diagnosed with several mental health conditions, including  
2 depression, frequent suicidal ideations, personality disorder, and bipolar disorder.

3 4.7.2 Defendant DSHS deemed Plaintiff D.W. eligible for Medicaid personal  
4 care services through the MPC program. Plaintiff D.W. requires assistance with most of the  
5 activities of daily living, including walking, traveling to and from doctor's appointments,  
6 personal hygiene, getting dressed, using the bathroom, medication management, cooking, eating,  
7 essential shopping, and cleaning. Plaintiff D.W. currently is cared for by an Agency Provider  
8 who is not related to him. With personal care assistance, Plaintiff D.W. is able to live in his own  
9 home, which protects his privacy, gives him the flexibility to adjust his schedule as needed, and  
10 enables him to maintain his personal relationships and the companionship of his pet dog.

11 4.7.3 Defendant DSHS assessed Plaintiff D.W. to have a medical necessity of  
12 133 personal care service hours per month. Nonetheless, Defendant DSHS has notified Plaintiff  
13 D.W. that, beginning January 1, 2011, it plans to cut his personal care service hours by 18 hours  
14 per month to 115 hours, a reduction of 13.5%.

15 4.7.4 Plaintiff D.W. has no other resources or family members to make up for  
16 the reduction in needed care, and the reduction in hours will harm Plaintiff D.W.'s health.  
17 Plaintiff D.W. is at risk of missing critical medications, falling, or choking during periods when  
18 he is alone, and he will experience greater difficulty keeping doctor's appointments and engaging  
19 in healthy activities.

20 4.7.5 Plaintiff D.W. faces a serious risk that he will be unable to remain in his  
21 home if his home care hours are cut. Plaintiff D.W. had a bad experience when he previously  
22 lived in an adult family home, due to the loss of privacy, inflexible routine, and lack of food  
23 choices. If forced to return to an institutional care facility, Plaintiff D.W. will be isolated from  
24 his friends and his pet, and the continuity of care provided by his Agency Provider will be  
25 disrupted.



1           **4.8 Factual Allegations Related to Plaintiff A.B.**

2           4.8.1 Plaintiff A.B. is 32 years old and her disabilities include Down Syndrome,  
3 Mental Retardation, Multiple Sclerosis, Autism, Depression, Echolalia, and Hypothyroidism.  
4 She is developmentally at the level of an eighteen month-old child, and appears in this action  
5 through her mother and guardian Jane Brown. Plaintiff A.B. is not able to appear on her own  
6 behalf in this litigation.

7           4.8.2 Defendant DSHS deemed Plaintiff A.B. eligible for Medicaid personal  
8 care services and in need of 185 hours per month. Plaintiff A.B. requires assistance with most of  
9 the activities of daily living, including toileting, dressing, eating, bathing, walking, and  
10 medication management. She must be monitored while eating and drinking in order to avoid  
11 choking, cannot bathe herself, needs assistance with perineal care, requires subcutaneous  
12 injections, cannot swallow pills, and when her Multiple Sclerosis flares up is unable to walk and  
13 requires use of a catheter for a period of weeks. A.B. also has behavior and mood issues that  
14 make her care difficult and make her vulnerable to exploitation.

15           4.8.3 With personal care assistance, Plaintiff A.B. is able to live in her own  
16 home, with her mother and siblings, in a familiar setting where she enjoys freedom of choice in  
17 her schedule and activities and can stay connected with her religious community. In particular,  
18 A.B. enjoys quiet time with her siblings, visits with a friend, going to the park, and swimming.

19           4.8.4 Defendant DSHS has notified Plaintiff A.B. that, beginning January 1,  
20 2011, it plans to cut her personal care service hours by 19 hours per month to 166 hours, a  
21 reduction of 10.3%.

22           4.8.5 Plaintiff A.B. has no other resources or family members that can make up  
23 for the reduction in needed care. A.B.'s mother is disabled and physically unable to cover any  
24 lost home care hours. The reduction in hours will place A.B. at great risk of declining health  
25 including skin breakdowns, illness, hospitalization, and aggravation of behavioral and mood  
26 issues, as well as institutionalization.

27

1           4.8.6 If A.B. were admitted to a nursing home, her medical condition and  
2 quality of life would deteriorate. She cannot communicate her needs to others, has a high risk of  
3 choking that requires extensive oversight while eating or drinking, and her depression and  
4 anxiety would likely be aggravated.

5           **4.9 Factual Allegations Related to Plaintiff M.B.**

6           4.9.1 Plaintiff A.B. is 28 years old and his disabilities include Down Syndrome,  
7 Insulin Dependent Diabetes, Hypothyroidism, Agoraphobia, Depression, Sleep Apnea,  
8 Oppositional Defiant Disorder, and Anxiety Disorder. He has the developmental and cognitive  
9 abilities of a two-year-old child. He appears in this action through his mother and guardian Jane  
10 Brown. Plaintiff M.B. is not able to appear on his own behalf in this litigation.

11           4.9.2 Defendant DSHS deemed Plaintiff M.B. eligible for Medicaid personal  
12 care services and in need of 146 hours per month. Plaintiff M.B. requires assistance with most of  
13 the activities of daily living, including toileting, dressing, eating, bathing, walking, blood glucose  
14 monitoring, personal hygiene, and medication management. He requires twice daily  
15 subcutaneous injections, assistance communicating, supervision to prevent him from engaging in  
16 dangerous physical activities, and monitoring while toileting and eating. M.B. also has behavior  
17 and mood issues that make his care difficult.

18           4.9.3 With personal care assistance, Plaintiff M.B. is able to live in his own  
19 home, with his mother and siblings, in a familiar setting where he enjoys freedom of choice in  
20 schedule and activities and can stay connected with his religious community. In particular, M.B.  
21 enjoys looking at comic books and swimming with his siblings, and becomes agitated and scared  
22 when family members are not around.

23           4.9.4 Defendant DSHS has notified Plaintiff M.B. that, beginning January 1,  
24 2011, it plans to cut his personal care service hours by 20 hours per month to 126 hours, a  
25 reduction of 13.7%.

26           4.9.5 Plaintiff M.B. has no other resources or family members that can make up  
27 for the reduction in needed care. M.B.'s mother is disabled and physically unable to cover any

1 lost home care hours. The reduction in hours will place M.B. at great risk of declining health  
2 including skin breakdowns, illness, hospitalization, and aggravation of behavioral and mood  
3 issues, as well as institutionalization.

4 4.9.6 If M.B. were admitted to a nursing home, his agoraphobia, depression,  
5 anxiety, and Oppositional Defiance Disorder would cause serious negative social and  
6 psychological ramifications and his quality of life would suffer.

7 **4.10 Factual Allegations Related to Plaintiff An.B.**

8 4.10.1 Plaintiff An.B. is 26 years old and his disabilities include Cerebral Palsy,  
9 Mental Retardation, Epilepsy and Enocarditis. He is developmentally and cognitively  
10 approximately 10 to 12 years old. He appears in this action through his mother and guardian  
11 Jane Brown. Plaintiff An.B. is not able to appear on his own behalf in this litigation.

12 4.10.2 Defendant DSHS deemed Plaintiff An.B. eligible for Medicaid personal  
13 care services and in need of 82 hours per month. Plaintiff An.B. requires assistance with  
14 activities of daily living including toileting, bathing, monitoring for seizures, and obtaining  
15 emergency assistance. His cognitive challenges require assistance in making decisions,  
16 navigating outside his home, and staying safe. An.B. also has behavior and mood issues that  
17 make his care difficult.

18 4.10.3 With personal care assistance, Plaintiff An.B. is able to live in his own  
19 home, with his mother and siblings, in a familiar setting where he enjoys freedom of choice in  
20 his schedule and activities and can stay connected with his religious community. In particular,  
21 An.B. enjoys being the “big brother” and helping his mother around the house, as well as taking  
22 care of the family pets.

23 4.10.4 Defendant DSHS has notified Plaintiff A.B. that, beginning January 1,  
24 2011, it plans to cut his personal care service hours by 14 hours per month to 68 hours, a  
25 reduction of 17.1%.

26 4.10.5 Plaintiff An.B. has no other resources or family members that can make up  
27 for the reduction in needed care. An.B.’s mother is disabled and physically unable to cover any

1 lost home care hours. The reduction in hours will place An.B. at great risk of declining health  
2 including skin breakdowns, illness, hospitalization, and aggravation of behavioral and mood  
3 issues, as well as institutionalization.

4 4.10.6 If An.B. were admitted to a nursing home, his condition and quality of life  
5 would deteriorate. His inability to use his arm, uncertain gait, short-term memory loss, and  
6 seizures demand constant monitoring that he would not likely obtain in a care facility, and his  
7 quality of life would decline.

8 **4.11 Factual Allegations Related to Plaintiff J.B.**

9 4.11.1 Plaintiff J.B. is 24 years old and her disabilities include Down Syndrome,  
10 Sleep Apnea, Depression, Cataracts, Anxiety Disorder, and hearing loss. She is developmentally  
11 and cognitively between three and six years of age, and appears in this action through her mother  
12 and guardian Jane Brown. Plaintiff J.B. is not able to appear on her own behalf in this litigation.

13 4.11.2 Defendant DSHS deemed Plaintiff J.B. eligible for Medicaid personal care  
14 services and in need of 82 hours per month. Plaintiff J.B. requires assistance with many of the  
15 activities of daily living, including toileting, dressing, maintaining personal hygiene, eating, and  
16 bathing. She cannot bathe herself, needs assistance with perineal care and CPAP operation,  
17 needs help with medication management, and requires assistance with communication. J.B. also  
18 has behavior and mood issues that make her care difficult.

19 4.11.3 With personal care assistance, Plaintiff J.B. is able to live in her own  
20 home, with her mother and siblings, in a familiar setting where she enjoys freedom of choice in  
21 her schedule and activities and can stay connected with her religious community. In particular,  
22 J.B. enjoys helping around the house with chores and cooking breakfast, writing from books,  
23 drawing pictures, and performing to entertain her family.

24 4.11.4 Defendant DSHS has notified Plaintiff J.B. that, beginning January 1,  
25 2011, it plans to cut her personal care service hours by 14 hours per month to 68 hours, a  
26 reduction of 17.1%.

1           4.11.5 Plaintiff J.B. has no other resources or family members that can make up  
2 for the reduction in needed care. J.B.'s mother is disabled and physically unable to cover any  
3 lost home care hours. The reduction in hours will place J.B. at great risk of declining health  
4 including skin breakdowns, illness, hospitalization, and aggravation of behavioral and mood  
5 issues, as well as institutionalization.

6           4.11.6 If J.B. were admitted to a nursing home, her medical condition and quality  
7 of life would deteriorate. The disruption would likely trigger her depression and anxiety and  
8 increase her aggressive and inappropriate behavior, and she would not likely be supervised to  
9 keep her safe.

10           **4.12 Factual Allegations Related to Plaintiff K.S.**

11           4.12.1 Plaintiff K.S. is 59 years old and disabled. K.S. has very limited mobility  
12 because she has had knee and hip replacement, and she also has several medical and psychiatric  
13 conditions including diabetes, congenital glaucoma, macular degeneration, clinical depression,  
14 schizo-effective disorder, obsessive-compulsive disorder, paranoia, and chronic insomnia.

15           4.12.2 Defendant DSHS deemed Plaintiff K.S. eligible for Medicaid personal  
16 care services through the COPES program. Plaintiff K.S. requires assistance with most of the  
17 activities of daily living, including moving about her home, personal hygiene, getting dressed,  
18 using the bathroom, medication management, meal planning and cooking, essential shopping,  
19 and cleaning.

20           4.12.3 Plaintiff Staudenmayer currently is cared for by two Agency Providers  
21 who are not related to her. With personal care assistance, Plaintiff K.S. is able to live in her own  
22 apartment, which gives her a sense of independence and protects her privacy. Regular  
23 interaction with her providers also provides Plaintiff K.S. with peace of mind.

24           4.12.4 Defendant DSHS assessed Plaintiff K.S. to have a medical necessity of  
25 133 personal care service hours per month. Nonetheless, Defendant DSHS has notified Plaintiff  
26 K.S. that, beginning January 1, 2011, it plans to cut her personal care service hours by 18 hours  
27 per month to 115 hours, a reduction of 13.5%.

1           4.12.5 Plaintiff K.S. has no other resources or family members to make up for the  
2 reduction in needed care, and the reduction in hours will harm Plaintiff K.S.'s health. Plaintiff  
3 K.S. is at risk of missing critical medications and falling, and will be by herself for days in a row  
4 without any provider checking to see that she is okay.

5           4.12.6 Plaintiff K.S. faces a serious risk that she will be unable to remain in her  
6 home if her home care hours are cut. Plaintiff K.S. has had bad experiences when she previously  
7 lived in an adult group home, which made her feel that she lost her independence and dignity.  
8 Plaintiff K.S. believes that her mental health condition will deteriorate if she is forced to return to  
9 living in an adult group home.

10           **4.13 Factual Allegations Related to Plaintiff T.M.**

11           4.13.1 Plaintiff T.M., who is 38 years old, appears in this action through his  
12 mother, legal guardian, and next friend, Donna Hays, who is also T.M.'s Individual Provider.  
13 Plaintiff T.M. is not able to appear on his own behalf in this litigation.

14           4.13.2 Plaintiff T.M. has Down Syndrome; visual, speech, and hearing  
15 impairments; and Gout. He has no fine motor skills and the mental development of a seven to  
16 nine year old child.

17           4.13.3 Defendant DSHS deemed Plaintiff T.M. eligible for Medicaid personal  
18 care services and assessed him to have a medical necessity of 83 hours per month of personal  
19 care services. Plaintiff T.M. requires assistance with many of the activities of daily living,  
20 including hygiene, toileting, dressing, meal preparation, eating, medication management,  
21 transportation, shopping, and housework. With personal care assistance, Plaintiff T.M. is able to  
22 live in his own home, which enables him to maintain close relationships with his siblings and  
23 other relatives, spend time with friends and neighbors, and attend church and other community  
24 outings.

25           4.13.4 During the week of December 6, 2010, Defendant DSHS notified Plaintiff  
26 T.M. that, beginning January 1, 2011, it plans to cut his personal care service hours by 14 hours  
27

1 per month to 69 hours, a reduction of 16.8%. This reduction is in addition to 13 hours of cuts in  
2 2009.

3 4.13.5 The reduction set to take effect will place T.M. at serious risk of  
4 institutionalization, because the reduced hours will be insufficient to provide care for T.M.  
5 sufficiently to control his behavioral and emotional swings, and his family does not have  
6 resources to replace these hours. If T.M. enters an institutional care facility, he will deteriorate.  
7 His speech and hearing impairment make it very difficult for him to communicate with others  
8 and for people to understand him and it is very likely that T.M. will become contrary, get  
9 confused, quit talking, sulk, and isolate himself. He will also miss being close to his family and  
10 be unable to participate in community and social activities in the outside world, resulting in  
11 serious depression.

12 **4.14 Factual Allegations Related to Plaintiff A.R.**

13 4.14.1 Plaintiff A.R., who is 63 years old, appears in this action through her  
14 mother and next friend, Lucille Frederick, who has power of attorney over her affairs.

15 4.14.2 Plaintiff A.R. is severely disabled due to several strokes. She is paralyzed  
16 on her right side and blind in her right eye, and requires total assistance with her regular daily  
17 activities (such as bathing, cooking, eating, moving, exercising, and toileting).

18 4.14.3 Plaintiff A.R. is not able to appear on her own behalf to litigate this action  
19 because she also suffers from aphasia and memory problems, which prevent her from  
20 understanding the nature of the action or communicating about it with others.

21 4.14.4 Defendant DSHS deemed Plaintiff A.R. eligible for Medicaid personal  
22 care services through the COPES program. Plaintiff A.R. receives home care services from a  
23 combination of Independent and Agency Providers.

24 4.14.5 Defendant DSHS assessed Plaintiff A.R. to have a medical necessity for  
25 323 hours of personal care services a month. Nonetheless, Defendant DSHS has notified A.R.  
26 that, effective January 1, 2011, it plans to cut her personal care service hours by 14 hours per  
27 month, a reduction of 4%.

1           4.14.6 Because Plaintiff A.R. cannot get out of bed, walk, or exercise without  
2 assistance from a home care provider, if her personal care services hours are reduced, there is a  
3 grave risk that she will be forced either to enroll in a nursing home or to go without needed  
4 services, which will result in serious health deterioration. There is also a serious risk that A.R.'s  
5 providers will have to quit in order to find employment that provides sufficient income, and that  
6 Ms. Frederick will be unable to find home care providers who are strong enough to lift A.R. and  
7 provide the mobility and exercise assistance necessary to preserve her health.

8           4.14.7 If Plaintiff A.R. is forced to enroll in a nursing home, she will be separated  
9 from her loved ones and suffer a loss of autonomy, and there is a serious risk of depression and  
10 further deterioration of her mental function.

11           **4.15 Factual Allegations Related to Plaintiff M.J.B.**

12           4.15.1 Plaintiff M.J.B. is 94 years old and appears in this action through her niece  
13 and next friend, Karen Paolino, who has power of attorney over her affairs. Plaintiff M.J.B. is  
14 not able to appear on her own behalf in this litigation.

15           4.15.2 Plaintiff M.J.B. is blind and suffers from dementia, Parkinson's disease,  
16 chronic obstructive pulmonary disease, congestive heart failure, and diabetes. Plaintiff M.J.B.  
17 cannot live independently without assistance with activities of daily living, including eating,  
18 cooking, walking, using the bathroom, and managing her medications.

19           4.15.3 Defendant DSHS deemed Plaintiff M.J.B. eligible for Medicaid personal  
20 care services through the COPES program. Ms. Paolino works as the primary personal care  
21 provider for M.J.B. seven days a week. Personal care assistance enables Plaintiff M.J.B. to stay  
22 in the home she has lived in for many years, close to her loved ones and with the company of her  
23 pet cats.

24           4.15.4 Defendant DSHS assessed Plaintiff M.J.B. to have a medical necessity for  
25 184 hours of personal care services a month. Nonetheless, Defendant DSHS has notified M.J.B.  
26 that, beginning January 1, 2011, it plans to cut her personal care service hours by 18 hours per  
27 month, a reduction of 10%.



1           4.15.5 If this reduction takes effect, Plaintiff M.J.B. will have to go into a nursing  
2 home, because M.J.B. needs more than 166 hours per month of care, Ms. Paolino will be unable  
3 to care for M.J.B. beyond the allotted hours, and Ms. Paolino will likely be forced to stop  
4 working as M.J.B.'s personal care provider because she will not earn sufficient income to  
5 support her aunt and her own household.

6           4.15.6 While moving Plaintiff M.J.B. to a nursing home may be the only option,  
7 this would have a devastating impact on M.J.B. Moving out of her home to a new location  
8 would be very difficult for her because she is blind and elderly. There is also a serious risk that  
9 M.J.B.'s mental condition will deteriorate if she is separated from her loved ones and pets, and is  
10 instead cared for by providers or nursing home staff with whom she is unfamiliar.

#### 11           **4.16 Factual Allegations Related to Plaintiff J.H.**

12           4.16.1 Plaintiff J.H. is 70 years old, and has disabilities due to a series of strokes  
13 suffered seven years ago. He appears in this action through his next friend and former  
14 Independent Provider, Donna Hayes, who has power of attorney over his affairs. Plaintiff J.H. is  
15 not able to appear on his own behalf in this litigation.

16           4.16.2 The strokes left J.H. paralyzed on his left side and unable to breathe  
17 without a breathing machine. J.H. is also a diabetic who requires frequent blood sugar  
18 monitoring, is hypertensive and has skin problems. He additionally has Alzheimer's Disease,  
19 chronic heart disease, Osteoarthritis, and cannot live independently.

20           4.16.3 Defendant DSHS deemed Plaintiff J.H. eligible for Medicaid personal care  
21 services through the COPES program. Plaintiff J.H. requires assistance with most of the  
22 activities of daily living, including meal preparation, eating (often including spoon feeding),  
23 transportation to medical appointments, housework, management, insulin injections, blood  
24 pressure monitoring, dressing, personal hygiene and bathing, range of motion exercises, getting  
25 into bed, positioning in bed, walking/locomotion within the home, application of lotion and  
26 ointment, essential shopping, and toileting including frequent clean-up from accidents.

27

1           4.16.4 Defendant DSHS assessed Plaintiff J.H. to have a medical necessity of  
2 176 personal care service hours per month. Nonetheless, during the week of December 6, 2010,  
3 Defendant DSHS notified Plaintiff J.H. that beginning January 1, 2011, it plans to cut his  
4 personal care service hours by 16 hours per month to 158 hours, a reduction of 10.3%.

5           4.16.5 Because of this impending reduction, Ms. Hayes was forced to arrange for  
6 J.H. to enter a nursing home on December 14. J.H. did not want to go into a nursing home.  
7 However, it is not possible to provide a safe level of care for J.H. in 158 hours per month, and  
8 Ms. Hayes could not afford to provide the level of unpaid care that would be necessary to keep  
9 him safe.

10           **4.17 Factual Allegations Related to Plaintiff H.C.**

11           4.17.1 Plaintiff H.C. is a 92-year-old World War II veteran who has Alzheimer's  
12 Disease, chronic heart disease, and osteoarthritis. His cognitive impairment causes short term  
13 memory problems, disorientation, and delayed recall. He appears in this action through his son  
14 and guardian Lee Chatwin. Plaintiff H.C. is not able to appear on his own behalf in this  
15 litigation.

16           4.17.2 Defendant DSHS deemed Plaintiff H.C. eligible for Medicaid personal  
17 care services through the COPES program. Plaintiff H.C. requires assistance with most of the  
18 activities of daily living, including eating, toileting (including frequent incontinence), bathing  
19 (requiring physical support as well as assistance in washing), maintaining personal hygiene,  
20 dressing, walking, and medication management. He is susceptible to falling, he requires daily  
21 and sometimes more frequent oxygen administration, and his behavior and mood issues create  
22 additional challenges in providing care

23           4.17.3 With personal care assistance, Plaintiff H.C. is able to live in his own  
24 home, which enables her to maintain his autonomy and avoid the disorientation caused by new  
25 situations and people.

26           4.17.4 Defendant DSHS assessed Plaintiff H.C. to have a medical necessity of  
27 116 personal care service hours per month. Nonetheless, Defendant DSHS has notified Plaintiff

1 H.C. that, beginning January 1, 2011, it plans to cut his personal care service hours by 16 hours  
2 per month to 100 hours, a reduction of 13.8%.

3 4.17.5 Plaintiff H.C. has no other resources or family members to make up for  
4 the reduction in needed care, and the reduction in hours will force H.C.'s son to move him into a  
5 nursing home within a matter of months. Nursing home entry will diminish H.C.'s quality of life  
6 because he will lose daily contact with the son he recognizes and loves, enjoy less autonomy and  
7 fewer choices, and experience more memory loss and disorientation when faced with new  
8 situations and changing caregivers.

9 **4.18 Factual Allegations Related to Plaintiff The Arc of Washington State**

10 4.18.1 Plaintiff The Arc is a non-profit organization with the mission of  
11 advocating for the rights of individuals with developmental disabilities.

12 4.18.2 The Arc advocates that all people with developmental disabilities have a  
13 right to live in communities of their choosing and be fully included with people who do not have  
14 disabilities, and that the Medicaid program must provide funding to ensure that such individuals  
15 have adequate supports to make that community living possible.

16 4.18.3 The members of The Arc include individuals with developmental  
17 disabilities, their families, professionals, and other members of the community concerned about  
18 protecting the rights of people with developmental disabilities. Among those members are  
19 individuals who receive Medicaid in-home personal care services and whose personal care hours  
20 will be reduced by ten percent effective January 1, 2011, as well as the parents or guardians of  
21 such individuals.

22 4.18.4 The Arc brings this suit on behalf of its members who will be injured if  
23 recipients of in-home personal care services have their hours of service reduced. These members  
24 would have standing to sue in their own right, and their personal participation in this litigation is  
25 not necessary.

1           **4.19 Factual Allegations Related to Plaintiff SEIU**

2           4.19.1 Plaintiff SEIU is an unincorporated association with members that include  
3 approximately 39,000 Independent Providers and Agency Providers in Washington State who  
4 provide in-home personal care services through the MPC, COPES, and/or other programs.

5           4.19.2 Some members of SEIU provide services for their adult children, siblings,  
6 parents, or other family members for whom they also serve as guardians.

7           4.19.3 SEIU participates at every level in policy setting around long term care in  
8 Washington State, including active work with the Legislature and as a stakeholder in Executive  
9 and Department of Social and Health Services project work.

10           4.19.4 SEIU has for decades been an advocate for increased access to and quality  
11 of in-home personal care services for all recipients, including representing the interests of its  
12 members who are guardians of in-home personal care services recipients.

13           4.19.5 It is part of SEIU's mission to advocate for the needs of home care  
14 providers and clients in the Washington State personal care services program.

15           4.19.6 SEIU brings this suit on behalf of its members who will lose income when  
16 the hours of service they provide are reduced.

17           4.19.7 SEIU also brings this suit on behalf of its members who will be injured if  
18 recipients of in-home personal care services (including recipients whose guardians are SEIU  
19 members) have their hours of service reduced. These members would have standing to sue in  
20 their own right, and their personal participation in this litigation is not necessary.

21           **4.20 Factual Allegations Related to Plaintiff PSARA**

22           4.20.1 Plaintiff PSARA is a nonprofit association and an affiliate of the national  
23 Alliance for Retired Americans and the Washington Alliance for Retired Americans.

24           4.20.2 The mission of the PSARA is to ensure social and economic justice and  
25 full civil rights for all individuals so that they may enjoy lives of dignity, personal and family  
26 fulfillment, and security. That includes promoting policies that support the availability of  
27

1 publicly funded, high quality home and community-based services, which enable aging  
2 individuals to live in dignity in their own homes and avoid unwanted nursing home entry.

3 4.20.3 PSARA has approximately 1,000 members, primarily in the Puget Sound  
4 area, who pay membership dues. Some of PSARA's members will be affected by the 10% cut to  
5 home-based personal care services that is set to take effect on January 1, 2011, because they  
6 receive such services, their hours of service will be reduced, and that reduction will have adverse  
7 effects on their physical, mental, and/or financial well being.

8 4.20.4 PSARA brings this suit on behalf of its members who will be injured if  
9 recipients of in-home personal care services (including recipients whose guardians are PSARA  
10 members) have their hours of service reduced. These members would have standing to sue in  
11 their own right, and their personal participation in this litigation is not necessary.

12 **4.21 Class Action Allegations**

13 4.21.1 Beneficiary Plaintiffs, including Plaintiffs M.R., S.J., C.B., D.W., A.B.,  
14 M.B., An.B, J.B., K.S., T.M., A.R., M.J.B., J.H., H.C., (hereinafter "Representative Plaintiffs")  
15 bring the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Claims for declaratory and  
16 injunctive relief on behalf of themselves and the following Plaintiff Class of all other persons  
17 similarly situated, defined as:

18 Medicaid-eligible individuals in the State of Washington living at home who were  
19 assessed to need personal care services based upon individualized CARE  
20 assessments of their needs and who received these Medicaid services in  
accordance with their assessment until DSHS reduced their services to below their  
level of need for budgetary reasons alone on January 1, 2011.

21 4.21.2 Beneficiary Plaintiffs, including Plaintiffs M.R., S.J., C.B., D.W., A.B.,  
22 M.B., An.B, J.B., K.S., T.M., A.R., M.J.B., J.H., H.C., bring the Eighth Claim for declaratory  
23 and injunctive relief on behalf of themselves and the following Plaintiff Subclass of all other  
24 persons similarly situated, defined as:

25 All recipients of home care services in the State of Washington who receive home  
26 care services through a Section 1915(c) or 1915(d) waiver program, or who  
27 receive home care services under the State Plan but are also be eligible to receive  
such services through a Section 1915(c) or (d) waiver program, including, but not  
limited to, through the Community Options Program Entry System ("COPEs"),

1 the Medically Needy In Home Waiver (“MNIH”), and various waivers operated  
2 by the Division of Developmental Disabilities (“DDD”) for individuals who  
3 qualify for care in an Intermediate Care Facility for the Mentally Retarded (“ICF-  
MR”).

4 4.21.3 This action is properly maintained as a class action under Civil Rule 23(a)  
5 and (b)(2).

6 4.21.4 There are in excess of 35,000 persons in the Class and Subclass. The  
7 Class and Subclass are so numerous that joinder of all members is impracticable.

8 4.21.5 There are questions of law and fact common to the Class and Subclass  
9 related to the termination, reduction, or delay of their Medicaid benefits, which is a system wide  
10 policy or practice that affects all Class and Subclass members. These common questions  
11 include:

12 4.21.5.1 Do Defendants’ budget-based reduction of in-home personal  
13 care Medicaid services to which Plaintiffs were individually assessed to need and qualify,  
14 effective January 1, 2011, without individualized CARE reassessments, their provision of a  
15 misleading and inaccurate notice, their failure to transition Plaintiffs to adequate replacement  
16 Medicaid services, and their failure to provide due process notice and an opportunity to pre-cut  
17 fair hearing, deny Plaintiffs their constitutionally protected right to due process guaranteed by 42  
18 U.S.C. § 1983, the Fourteenth Amendment to the Constitution, and the Medicaid program, Title  
19 XIX of the Social Security Act, Title 42 § 1396a, *et seq.*, and its implementing regulations?

20 4.21.5.2 Do Defendants’ reduction of Plaintiffs’ Medicaid long-term  
21 care services provided at home through the MPC, COPES, MNIW, DDD, and other Medicaid  
22 programs condition the receipt of required Medicaid services on segregation in a nursing home  
23 or other institutional facility and violate the Americans with Disabilities Act (“ADA”) and  
24 Section 504 of the Rehabilitation Act (“Section 504”) which prohibit discrimination on the basis  
25 of disability and unjustified institutionalization and require Defendants to administer services  
26 and programs in the most integrated setting appropriate to the needs of the individual with  
27 disabilities?

1                   4.21.5.3 Do Defendants' elimination or reduction of Plaintiffs'  
2 Medicaid long term care services provided at home through the MPC, COPES, MNIW, DDD,  
3 and other Medicaid programs to levels *below* their individually assessed need for services violate  
4 the Medicaid Act's requirements of reasonable standards, sufficiency, comparability, free choice,  
5 and CMS approval of plan and waiver amendments?

6                   4.21.6 The claims of Representative Plaintiffs are typical of the claims of the  
7 Class and Subclass. Representative Plaintiffs are Washington State residents and qualified  
8 persons with disabilities who seek to remain living in their homes and receive the Medicaid  
9 skilled nursing and rehabilitation services they require.

10                  4.21.7 Representative Plaintiffs will fairly and adequately protect the interests of  
11 all Class and Subclass members.

12                  4.21.8 Representative Plaintiffs are members of the Class and Subclass, their  
13 ability to remain in their homes, where they prefer to live, is at stake in this action, as is their  
14 ability to receive the Medicaid services they require after January 1, 2011. Their interests are  
15 coincident with, and not antagonistic to, those of the other members of the Class and Subclass.

16                  4.21.9 Representative Plaintiffs have retained counsel experienced with the  
17 relevant civil rights, disability and Medicaid law and class action litigation.

18                  4.21.10 Prosecution of separate actions by individual Class and Subclass  
19 members would create a risk of inconsistent or varying adjudications with respect to individual  
20 Class and Subclass members or could as a practical matter be dispositive of the interests of the  
21 other members or substantially impair or impede their ability to protect their interests.

22                  4.21.11 The Defendant's actions have affected and will affect the class  
23 generally, thereby making appropriate final and injunctive and declaratory relief with respect to  
24 the Class and Subclass as a whole.

25  
26  
27

V. CAUSES OF ACTION

5.1 VIOLATION OF DUE PROCESS RIGHTS (First Claim for Relief)

5.1.1 Plaintiffs are Medicaid-eligible individuals who have been found by DSHS to qualify for in-home personal care services provided under the Department's MPC, COPES, MNIW, DDD, and other Medicaid programs.

Each of the Plaintiffs have been assessed by DSHS to require nursing facility level of services, or they would qualify for nursing facility level of services, if assessed. The Plaintiffs have chosen to live at home, in the most integrated setting appropriate to their needs and circumstances, in reliance upon DSHS's award of a certain number of in-home personal care service hours a month, as generated by the individualized CARE assessment process.

5.1.2 Plaintiffs are entitled to long-term personal care Medicaid services, including nursing facility care, consistent with the requirements identified in the federal law and the State Medicaid Plan.

5.1.3 Plaintiffs, as Medicaid recipients, are entitled to continued Medicaid benefits in the amount awarded until they are found to be ineligible. 42 CFR 435.930(b). After notice, if a beneficiary requests a hearing, those benefits cannot be denied until after a fair hearing. 42 CFR 431.230.

5.1.4 Defendants issued a misleading and inaccurate notice reducing Plaintiffs' home-based personal care Medicaid services, failed to transition Plaintiffs to adequate replacement services in the community or in institutional settings, and reduced the Medicaid services for which they were assessed to qualify and received, without conducting reassessments of the Plaintiffs or their eligibility for services, without timely and adequate notice detailing the reasons for the proposed action, without continued benefits pending a pre-termination hearings, and without fair and impartial pre-termination hearings, in violation of their constitutionally protected right to due process guaranteed by 42 U.S.C. § 1983, the Fourteenth Amendment to the Constitution, and the Medicaid program, Title XIX of the Social Security Act, Title 42 § 1396a, *et seq.*, and its implementing regulations.



1           **5.2    DISCRIMINATION IN VIOLATION OF THE AMERICANS WITH**  
2           **DISABILITIES ACT (Second Claim for Relief)**

3           5.2.1   Plaintiffs are individuals with disabilities in that they have physical,  
4           mental or other impairments that substantially limit one or more of their major life activities,  
5           including, but not limited to walking, speaking, standing, and engaging in activities of daily  
6           living.

7           5.2.2   Plaintiffs are qualified persons with disabilities in that they are capable of  
8           safely living at home and in other community-based residential settings and they meet the  
9           essential eligibility requirements for the receipt of services from and participation in the State  
10          Medicaid program with reasonable modification to the rules, policies, and practices of that  
11          program. 42 U.S.C. § 12131(2).

12          5.2.3   Without reasonable modification of the rules, policies, and procedures  
13          governing the Washington Medicaid program, Plaintiffs will be forcibly isolated and segregated  
14          in harmful institutional settings against their will.

15          5.2.4   Defendants' termination or reduction of Medicaid in home personal care  
16          services deprives Plaintiffs of services that Plaintiffs require to avoid segregation in an institution  
17          and remain at home, the most integrated residential setting that appropriate to their needs, and so  
18          constitutes unlawful discrimination in violation of Title II of the ADA, 42 U.S.C. §§ 12132 *et*  
19          *seq.*, and its implementing regulation, 28 C.F.R. § 35.130(d).

20          5.2.5   By failing to make reasonable modifications to the policies, practices, or  
21          procedures governing the provision of Medicaid services in Washington State to ensure they are  
22          provided in the most integrated setting appropriate to the needs of disabled people, Defendants  
23          discriminated against the Plaintiffs because of their disability, in violation of Section II of the  
24          Americans with Disabilities Act, 42 U.S.C. §§ 12132, *et seq.*

25          5.2.6   Defendants have utilized criteria and methods of administration that  
26          subject Plaintiffs to discrimination on the basis of disability, including unnecessary  
27          institutionalization, by (1) failing to assess the services that would enable Plaintiffs to remain at

1 home or in the community, (2) failing to ensure that Plaintiffs have access to Medicaid-covered  
2 services that will meet their needs at home or in the community, and (3) compelling personal  
3 care providers to stop working through these programs designed to keep people at home or in the  
4 community, in violation of Title II of the ADA and implementing regulations.

5 **5.3 DISCRIMINATION IN VIOLATION OF SECTION 504 OF THE**  
6 **REHABILITATION ACT (Third Claim for Relief)**

7 5.3.1 Plaintiffs are “qualified person[s] with disabilities” within the meaning of  
8 Section 504 because they have physical, mental or other impairments that substantially limit one  
9 or more of their major life activities, and they meet the essential eligibility requirements for  
10 Washington’s State Medicaid program.

11 5.3.2 Defendants’ termination or reduction of Medicaid in home personal care  
12 services that Plaintiffs require to avoid segregation in an institution and remain at home, the most  
13 integrated residential setting that are appropriate to their needs, constitutes unlawful  
14 discrimination in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) and its  
15 implementing regulation, 28 C.F.R. § 41.51(d).

16 5.3.3 Defendants have utilized criteria and methods of administration that  
17 subject Plaintiffs to discrimination on the basis of disability, including unnecessary  
18 institutionalization, by (1) failing to assess the services that would enable Plaintiffs to remain at  
19 home or in the community, (2) failing to ensure that Plaintiffs have access to Medicaid-covered  
20 services that will meet their needs at home or in the community, and (3) compelling personal  
21 care providers to stop working for programs designed to keep people at home or in the  
22 community, in violation of Section 504 and its implementing regulations.

23 **5.4 VIOLATION OF MEDICAID SUFFICIENCY REQUIREMENT (Fourth**  
24 **Claim for Relief)**

25 5.4.1 Under federal Medicaid requirements, states must provide “sufficient”  
26 benefits. That is, “[e]ach service must be sufficient in amount, duration, and scope to reasonably  
27 achieve its purpose.” 42 C.F.R. § 440.230(b).

1           5.4.2 By reducing home care services to individuals for whom such services  
2 have been deemed necessary pursuant to an individual care plan approved by the state,  
3 Defendants have caused these Medicaid services to be insufficient to fulfill the purpose of the  
4 Medicaid benefit.

5           5.4.3 The reduction in home care services is inconsistent with the federal law  
6 and preempted by the Supremacy Clause of the U.S. CONST., art. IV.

7           **5.5 VIOLATION OF MEDICAID REASONABLE STANDARDS**  
8           **REQUIREMENT (Fifth Claim for Relief)**

9           5.5.1 Federal Medicaid law requires participating states to establish reasonable  
10 standards, consistent with the objectives of the Medicaid Act, for determining the extent of  
11 covered services. See 42 U.S.C. § 1396a(a)(17).

12           5.5.2 Defendants' reduction of in home personal care services is arbitrary, based  
13 on budgetary needs rather than the needs of the individual recipients, and will result in  
14 authorized hours that are less than those set forth in the individual care plans approved by  
15 Defendants.

16           5.5.3 These reductions are inconsistent and in conflict with the reasonable  
17 standards requirements of the federal Medicaid Act, 42 U.S.C. §1396a(a)(17), and interpretive  
18 federal guidelines, and are thus preempted by the Supremacy Clause of the United States  
19 Constitution, art. IV.

20           **5.6 VIOLATION OF MEDICAID COMPARABILITY REQUIREMENT (Sixth**  
21           **Claim for Relief)**

22           5.6.1 Under federal Medicaid requirements, states must provide comparable  
23 benefits, i.e., benefits that are equal in "amount, duration and scope," to all categorically needy  
24 Medicaid beneficiaries. 42 U.S.C. § 1396a (a)(10)(B)(ii); 42 C.F.R. § 440.240(a), (b)(1).  
25 Categorically needy Medicaid beneficiaries are beneficiaries who, in most cases, receive cash  
26 public assistance to meet basic needs.

1           5.6.2 The Medicaid Act also requires states to provide comparable benefits to  
2 all medically needy Medicaid beneficiaries. 42 U.S.C. § 1396a (a)(10)(B)(ii); 42 C.F.R. §§  
3 440.240 (b)(1). Medically needy Medicaid beneficiaries are beneficiaries who do not receive  
4 cash public assistance because they have income or resources in excess of the requirements for  
5 receipt of such assistance, but who nevertheless meet categorical requirements for such  
6 assistance, e.g., they are over age 65, blind, or disabled.

7           5.6.3 States may provide benefits to the medically needy that are less in amount,  
8 duration and scope than benefits to the categorically needy, but Washington has not elected to do  
9 so.

10           5.6.4 Therefore (with certain exceptions for some groups not relevant here),  
11 Defendants must provide benefits under the State Medicaid program that are equal in amount,  
12 duration and scope to all eligible beneficiaries. The only permissible basis for distinguishing  
13 among such beneficiaries is differing levels of need.

14           5.6.5 The in home personal care services reductions are across-the-board hours  
15 cuts that are not based on, and in fact are contrary to, individual needs assessments as embodied  
16 in the individual care plans approved by Defendants.

17           5.6.6 These reductions violate Medicaid's comparability requirement, 42 U.S.C.  
18 § 1396a(a)(10)(B)(i).

19           5.6.7 Defendants' actions deprive Plaintiffs and members of the Plaintiff Class  
20 of rights, privileges or immunities secured to them by the Constitution of the United States, in  
21 violation of 42 U.S.C. § 1983, and are preempted by the Supremacy Clause of the U.S. CONST.,  
22 art. IV.

23           **5.7 VIOLATION OF MEDICAID REQUIREMENT OF CMS APPROVAL**  
24           **(Seventh Claim for Relief)**

25           5.7.1 When a State makes material changes in its operation of the Medicaid  
26 program, it must submit a plan amendment to CMS for approval and may not implement that  
27 amendment until it is approved. 42 CFR §§ 430.12, 430.20, 447.256.

1           5.7.2 Whenever the State applies for a Medicaid waiver, it certifies that it will  
2 submit “[a]ny proposed changes” to the waiver program to CMS for approval as “waiver  
3 amendments.” *See, e.g.*, “Application for a §1915(c) Home and Community-Based Services  
4 Waiver” submitted by State of Washington, April 1, 2009 for “Copes Renewal 2009,” Section 8.

5           5.7.3 In the State Plan and each home care waiver program, Defendants certify  
6 that Washington uses either the CARE tool or the SIS tool. The CARE and SIS tools apply  
7 specific and uniform standards and algorithms to determine each recipient’s home care hours  
8 based on individualized assessments of need. The functions, elements and scoring mechanisms  
9 of the CARE tool are provided for with specificity in the Washington State Administrative Code  
10 (WAC). WAC 388-106-0130, 388-106-0135, 388-106-0140, 388-440-0001. The WACs  
11 governing the CARE tool do not permit Defendants to change a recipient’s home care hours  
12 based for purely budgetary reasons.

13           5.7.4 By introducing budget cuts as a basis for determining each recipient’s  
14 home care hours, as opposed to using the needs-based CARE or SIS tool assessments, the State  
15 has made a significant change that is not reflected in the State Plan or its waivers.

16           5.7.5 Defendants’ reduction of in home personal care services below assessed  
17 need materially modifies the provisions of the State Plan which, among other things, set forth  
18 that an “individualized plan of care” for home and community based services consumers is  
19 established based on an “independent assessment” that is “developed by a person-centered  
20 process in consultation with the individual” and “other appropriate individuals,” and that this  
21 plan of care “[i]dentifies the State plan HCBS necessary for the individual, and furnishes . . . all  
22 HCBS which the individual needs.” Washington State Medicaid Plan, Supplement 4 to  
23 Attachment 3.1-A, at 11.

24           5.7.6 Defendants have not submitted plan or waiver amendments regarding the  
25 reduction of in home personal care services to CMS, and have not awaited CMS approval before  
26 implementing that reduction.

27

1           5.7.7 Defendants' implementation of personal care hours reductions violate the  
2 requirement that the State submit material plan and waiver changes to CMS and refrain from  
3 implementing such changes before CMS approval, and are thus preempted by the Supremacy  
4 Clause of the United States Constitution, art. IV.

5           **5.8 VIOLATION OF MEDICAID REQUIREMENT OF FREEDOM TO**  
6           **CHOOSE BETWEEN INSTITUTIONAL OR HOME- AND**  
7           **COMMUNITY-BASED SERVICES (Eighth Claim for Relief)**

8           5.8.1 Defendants are permitted to provide home care services to Plaintiffs who  
9 would otherwise be eligible for institutional care, through the MPC as well as Section 1915(c)  
10 and/or 1915(d) waiver programs, including, but not limited to, MNIH, and various DDD waivers.

11           5.8.2 Most, if not all, Plaintiffs who receive home care services through the  
12 State Plan are also eligible for home care services under a Section 1915(c) or (d) waiver  
13 program, and it is Defendants who elect to provide home care services to those Plaintiffs through  
14 the State Plan instead of a waiver program.

15           5.8.3 Pursuant to 42 U.S.C. §1396n(c)(2)(C), the State was required, as a  
16 condition of receiving the Section 1915(c) waivers, to assure that individuals likely to require the  
17 level of care provided in hospitals, nursing facilities, or ICF-MRs "are informed of the feasible  
18 alternatives" to institutional care that are available under the waiver "at the choice of such  
19 individual."

20           5.8.4 Pursuant to 42 C.F.R. § 441.302(d), each individual who is determined to  
21 be likely to require the level of care provided in a hospital, nursing facility, or ICF-MR must be  
22 "(1) informed of any feasible alternatives available under the waiver; and (2) given the choice of  
23 either institutional or home and community based services." 42 C.F.R. §441.302(d).

24           5.8.5 Pursuant to 42 U.S.C. § 1396n(d)(2)(C), the State was required, as a  
25 condition of receiving the Section 1915(d) waivers, to assure that individuals 65 years of age or  
26 older who are likely to require the level of care provided in skilled nursing facilities or  
27

1 intermediate care facilities (“ICFs”) “are informed of the feasible alternatives” to institutional  
2 care, “which such individuals may choose if available under the waiver.”

3 5.8.6 Pursuant to 42 C.F.R. § 441.353(d), each individual who is determined to  
4 be likely to require the level of care provided in a skilled nursing facility or ICF must be  
5 informed “of the feasible alternatives available under the waiver and allow[ed] . . . to choose  
6 either institutional or home and community-based services.”

7 5.8.7 Defendants’ planned reduction of hours below those set forth in recipients’  
8 individual CARE plans and ISPs will not be sufficient to allow recipients to live safely in their  
9 homes, and will lead to deterioration of the health and welfare of recipients.

10 5.8.8 Defendants’ planned reduction of hours below those set forth in recipients’  
11 individual CARE plans and ISPs will effectively eliminate home-based care as an option for  
12 many recipients, such that they have no freedom of choice between “institutional or home and  
13 community based services” but instead must enter institutions to receive an adequate level of  
14 care.

15 5.8.9 As such, Defendants’ actions violate Medicaid’s free choice provisions, 42  
16 U.S.C. §§ 1396n(c)(2)(C) and 1396n(d)(2)(C), and 42 C.F.R. §§ 441.302(d), 441.353(d).

17 5.8.10 Additionally, at the time that Defendants reduced recipients’ allotment of  
18 home care hours, and thereby effectively eliminated home-based care as a “feasible alternative”  
19 to institutional care, Defendants failed to inform recipients of any other feasible alternatives to  
20 institutional care available under the waiver, or of the option to obtain the necessary care in an  
21 institutional setting.

22 5.8.11 For this separate and independent reason, Defendants’ actions violate  
23 Medicaid’s notice provisions, 42 U.S.C. §§ 1396n(c)(2)(C) and 1396n(d)(2)(C), and 42 C.F.R.  
24 §§ 441.302(d), 441.353(d).

25 5.8.12 Defendants’ actions deprive Plaintiffs and members of the Plaintiff Class  
26 of rights, privileges or immunities secured to them by the Constitution of the United States, in  
27

1 violation of 42 U.S.C. § 1983, and are preempted by the Supremacy Clause of the U.S. CONST.,  
2 art. IV.

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, plaintiffs pray that the Court order the following relief and remedies:

5 6.1 Declare that Defendants' misleading and inaccurate notice of the home care hours  
6 cuts and Medicaid benefits reduction, its failure to conduct a CARE reassessment or transition  
7 Plaintiffs to adequate replacement Medicaid services or other residential nursing facility or other  
8 institutions, and its reduction of their rights to Medicaid services for which they were assessed to  
9 qualify and received until the January 1, 2010 cuts, without proper notice and opportunity for fair  
10 hearings constitutes a denial of Plaintiffs' constitutionally protected right to due process  
11 guaranteed by 42 U.S.C. §1983, the Fourteenth Amendment to the Constitution, and the  
12 Medicaid program, Title XIX of the Social Security Act, Title 42 § 1396a, et seq.

13 6.2 Declare that Defendants' reduction of Plaintiffs' Medicaid in home personal care  
14 services, which deliver services in the most integrated setting appropriate to the needs of the  
15 class, condition the receipt of required Medicaid services on segregation in a nursing home and  
16 present a serious risk of unnecessary institutionalization, in violation of the ADA and Section  
17 504, which prohibit discrimination on the basis of disability and unjustified institutionalization  
18 and require Defendant to administer its services and programs in the most integrated setting  
19 appropriate to the needs of the individual with disabilities.

20 6.3 Declare that Defendants' arbitrary reduction of Plaintiffs' Medicaid in home  
21 personal care services below their assessed need violate the reasonable standards, sufficiency,  
22 comparability and free choice provisions of the Medicaid Act, as well as the requirement that  
23 States obtain approval of plan and waiver amendments before implementing them.

24 6.4 Grant a temporary restraining order, preliminary injunction, and permanent  
25 injunction enjoining Defendants and their officers, agents, employees, attorneys, and all persons  
26 who are in active concert or participation with them from reducing Medicaid in home personal  
27 care hours as planned for January 1, 2011.



1           6.5     In the alternative, grant a temporary restraining order, preliminary injunction, and  
2 permanent injunction enjoining Defendants and their officers, agents, employees, attorneys, and  
3 all persons who are in active concert or participation with them, from terminating, reducing or  
4 suspending Plaintiffs' in-home personal care services until such time as each has an individual  
5 care assessment, notice of alternative institutional or home and community-based Medicaid  
6 services, and full due process appeal rights from the reductions of their existing Medicaid  
7 benefits.

8           6.6     Waive the requirement for the posting of a bond as security for the entry of  
9 preliminary relief.

10          6.7     Certify this action as a class action and appoint representative Plaintiffs as Class  
11 representatives;

12          6.8     Award the Plaintiffs the costs of this action and reasonable attorney's fees  
13 pursuant to 29 U.S.C. § 794a, 42 U.S.C. § 12133, 42 U.S.C. § 12205 and as otherwise may be  
14 allowed by law.

15          6.9     All such other and further relief as the Court deems to be just and equitable.

16          DATED this 21<sup>ST</sup> day of December, 2010.

17          MacDONALD HOAGUE & BAYLESS

17          ALTSHULER BERZON

18          By: Andrea Brenneke  
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21             (Application pending)