

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

O.B., by and through his parents GARLAND BURT and JULIE BURT; **C.F.**, by and through his mother, KRISTEN FISHER; **J.M.** and **S.M.**, by and through their parents, and DAN MCCULLOUGH and MICHELE MCCULLOUGH, individually and on behalf of a class,

Plaintiffs,

v.

THERESA A. EAGLESON, in her official capacity as Director of the Illinois Department of Healthcare and Family Services,

Defendant.

No. 15-CV-10463

Judge Charles P. Kocoras

Magistrate Judge Jeffrey Cummings

NOTICE PLAN ORDER

In furtherance of their agreement to seek this Court's approval of the Parties' proposed Consent Decree, Plaintiffs, on behalf of themselves and all others similarly situated (Plaintiffs), and Defendant Theresa A. Eagleson, in her official capacity (collectively, "the Parties"), propose that the notices below be approved by the Court as fully comporting with the requirements of Federal Rule 23(e) and due process.

Therefore, it is hereby ORDERED THAT:

1. The attached notices (Exhibit B-1 and Exhibit B-2) are approved and constitute notice of the Proposed Consent Decree pursuant to Fed. R. Civ. P. 23.
2. Within 15 business days from the date of preliminary approval of the Consent Decree:
 - (a) Defendant will cause the notice set forth in Exhibit B-1 to be published in the following newspapers: *Chicago Sun-Times, Chicago Defender, Daily Herald, Pioneer Press, Chicago Tribune, East St. Louis Monitor, Peoria Journal Star, Springfield State Journal Register, Tinley Park Daily Southtown, Moline Dispatch/Rock Island Argus, Belleville News- Democrat, Champaign News Gazette, Rockford Register Star, Bloomington Pantagraph, and Carbondale Southern Illinoisan*. These publications have been identified due to their broad circulation to readers throughout

Illinois. Based on available information, those publications have a combined circulation of more than one million readers.

- (b) Defendants will cause notice in the form set forth in Exhibit B-2 to be provided to the following individuals and entities that are likely to serve or interact with members of the class: Defendant will utilize the Department of Healthcare and Family Services' (HFS) electronic provider notification system to send electronic notice to providers and other individuals or entities registered to receive notifications electronically through the notification system in the following categories:

Hospitals;
Physicians;
Home Health Providers.

3. Defendant will post notice in the form set forth in Exhibit B-2 on the following website within 5 business days from the date of preliminary approval of the Consent Decree and maintain that posting through and including the date of the fairness hearing: <https://www.illinois.gov/hfs/info/legal/PublicNotices>.

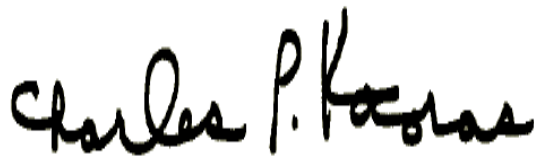
4. Plaintiffs' counsel will post notice in the form attached as Exhibit B-2 to the Motion on the following website within 5 business days from the date of preliminary approval of the Consent Decree and maintain that posting through and including the date of the fairness hearing: www.farley1.com and www.legalcouncil.org.

5. Class Members shall have 45 days from the date of the mailing of Exhibit B-1 to object to the proposed Consent Decree. In order for an objection to be valid, a written objection must be completed with the Class Member's name, signature and date, and must be postmarked by the deadline.

6. Parties may file a response to any objections no later than 7 days after the deadline for Class Members to file objections.

IT IS SO ORDERED:

Dated: 8/22/2019



The Honorable Charles P. Kocoras
United States District Court Judge

EXHIBIT B-1

EXHIBIT B-1: FORM OF SUMMARY PUBLICATION NOTICE

LEGAL NOTICE OF PROPOSED CLASS ACTION CONSENT DECREE AND HEARING

If you are a person, under the age of 21 years old, Medicaid-eligible in the State of Illinois, and receive in-home shift nursing services a class action lawsuit may affect your rights. Or, if you have a child who fits the description in the above paragraph, a class action lawsuit may affect the rights of your child.

This Notice is being published by order of the United States District Court for the Northern District of Illinois to inform you of the proposed settlement of a class action lawsuit (*O.B. v. Eagleson*, Case No. 15 C 10463) set forth in a proposed Consent Decree with the Director of the Illinois Department of Healthcare and Family Services regarding Medicaid services for children in Illinois under the age of 21 who receive in-home shift nursing. The parties to that lawsuit have agreed to the proposed Consent Decree that, if approved by the Court, would provide certain rights and benefits to eligible individuals. The Court will hold a hearing to consider whether to approve the proposed Consent Decree on November 5, 2019, at 9:30 a.m. before the Honorable Charles P. Kocoras, United States District Judge, in the Dirksen Federal Building, 219 S. Dearborn Street, Room 2325, Chicago, Illinois 60604.

Who is Included? You are a Class Member whose rights may be affected by the proposed Consent Decree if you are a Medicaid-eligible child under the age of 21 years old in the State of Illinois who receives in-home shift nursing.

What Does the Proposed Settlement Provide? The parties have asked the Court to approve a Consent Decree that, if approved, would provide certain rights and benefits (as more fully described in the proposed Consent Decree) to eligible Class Members.

How Can I Get More Information? A detailed Notice describing the proposed Consent Decree, the rights of class members, and a copy of the proposed Consent Decree itself are available on the website of the Illinois Department of Healthcare and Family Services, www.illinois.gov/hfs/info/legal/PublicNotices, and also at and www.legalcouncil.org. If you have any questions for plaintiffs' lawyers, you may contact Attorney Thomas Yates at tyates@legalcouncil.org or 312-605-1958

EXHIBIT B-2

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

O.B., by and through his parents GARLAND BURT and JULIE BURT; **C.F.**, by and through his mother, KRISTEN FISHER; **J.M.** and **S.M.**, by and through their parents, and DAN MCCULLOUGH and MICHELE MCCULLOUGH, individually and on behalf of a class,

Plaintiffs,

v.

THERESA A. EAGLESON, in her official capacity as Director of the Illinois Department of Healthcare and Family Services,

Defendant.

No. 15-CV-10463

Judge Charles P. Kocoras

Magistrate Judge Jeffrey Cummings

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
HEARING**
PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY

A SETTLEMENT HAS BEEN PROPOSED THAT MAY AFFECT THE RIGHTS OF MEDICAID- ELIGIBLE PERSONS IN THE STATE OF ILLINOIS WHO ARE UNDER THE AGE OF 21 AND RECEIVE IN-HOME SHIFT NURSING SERVICES.

A Consent Decree has been proposed in this case, which may affect the rights of persons who are under the age of 21, Medicaid-eligible in the State of Illinois, and receive in-home shift nursing services.

This Notice explains the lawsuit and the key terms of the Consent Decree, tells you how to obtain more information, explains how to determine whether an individual is a Class Member in the lawsuit, and explains how Class Members (and/or their legal representatives) can tell the Court whether they disagree with the Consent Decree or some part of it.

The Consent Decree described in this Notice is subject to Court approval, and thus has not yet been made final. The Court has scheduled a hearing to determine the fairness, adequacy and reasonableness of the Consent Decree and to consider any objections Class Members may have to the Consent Decree.

1. WHAT IS THIS LAWSUIT ABOUT?

The Court in charge of the lawsuit is the United States District Court for the Northern District of Illinois, and the case is known as *O.B. v. Eagleson*, Case No. 15 C 10463. The

people who sued are called the Plaintiffs, and the individual they sued is called the Defendant.

Plaintiffs filed this lawsuit on November 20, 2015, seeking to compel the State to comply with due process requirements under the federal Medicaid Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. The named Plaintiffs are children who receive or applied for in-home shift nursing services. The named Defendant is: Theresa A. Eagleson, Director of the Illinois Department of Healthcare and Family Services. The Defendant is responsible for administering the State of Illinois' Medicaid Program. The lawsuit seeks to compel the State of Illinois (through the Defendant) to comply with federal law.

2. WHAT IS A CONSENT DECREE AND WHY IS IT BEING PROPOSED HERE?

The Court in this case did not decide in favor of either Plaintiffs or Defendant. There was no trial or dispositive court ruling in the case. Instead, the Plaintiffs and Defendant negotiated a settlement of this dispute that is set out in the Consent Decree. Plaintiffs and Defendant have asked the Court to approve the Consent Decree. By settling this lawsuit, the parties avoid having to face the uncertainty of the outcome of a trial as well as the substantial cost of a trial. In addition, children who need in-home shift nursing will get relief from Defendant much sooner than if they had to wait for the resolution of the lawsuit through a trial and expected appeals. That process could take many years. The Plaintiffs who filed the lawsuit and their attorneys think the Consent Decree is the best outcome for the people who are Class Members.

3. WHO IS A CLASS MEMBER?

The Court has certified the lawsuit as a class action and decided that everyone who fits this description is a Class Member: All Medicaid-enrolled children under the age of 21 in the State of Illinois who have been approved for in-home shift nursing services by the Defendant, but who are not receiving in-home shift nursing services at the level approved by the Defendant, including children who are enrolled in a Medicaid waiver program, such as the Medically Fragile Technology Dependent (MFTD) Waiver program, and children enrolled in the nonwaiver Medicaid program, commonly known as the Nursing and Personal Care Services (NPCS) program.

4. WHAT DOES THE CONSENT DECREE IN THIS CASE PROVIDE?

The Consent Decree in this case, if approved by the Court, would provide certain rights and benefits to eligible Class Members as defined above. If the Consent Decree is not approved, it will be withdrawn and the lawsuit will continue. A copy of the entire Consent Decree is available on the following websites: www.illinois.gov/hfs; www.farley1.com; and www.legalcouncil.org.

Plaintiffs and Defendant in this case believe that the Consent Decree is fair, reasonable and provides adequate and appropriate relief to all eligible Class Members. The parties believe the Consent Decree provides eligible Class Members due process protections in their efforts to seek and obtain prior approval for in-home shift nursing services.

The following is a brief summary of key terms in the Consent Decree:

The Consent Decree fairly, reasonably, and adequately affords relief to Class Members. The essence of the relief sought by Plaintiffs is Defendant shall revise her processes for providing in-home nursing services sufficient to staff the in-home shift nursing services for Class Members as provided in the Consent Decree. The relief afforded under the Consent Decree addresses and substantially achieves that goal. Specifically, the Consent Decree requires that:

1. Defendant will work with the Department of Specialized Care for Children (DSCC) or any managed care organizations (MCOs) involved in providing in-home shift nursing services to Class Members to provide individualized Care Coordination for all Class Members.
 - a. In addition to the existing enrollment and care coordination services provided by DSCC, a Staffing Support Team will be established to provide additional oversight of care coordination efforts pertaining to nurse staffing.
 - b. In the event that Class Members face challenges in obtaining approved in-home shift nursing that cannot be adequately addressed by the care coordinator or the care coordinator's manager, the case may be elevated to a Staffing Support Team as provided in this Consent Decree.
 - c. The Staffing Support Team will be made up of members of the DSCC Home Care Quality Improvement Team, DSCC Regional Managers, and DSCC Senior Administration. The Staffing Support Team will review care coordination efforts that have been taken to assist the Family, consult with the Family, and consult as necessary with HFS to determine if there are additional recommendations and strategies that could be used to assist in improved staffing, and will report to HFS on the status of these cases.
 - d. Class Members and their Families will have access to the Staffing Support Team if the Class Member is (a) medically ready for discharge from a hospital, respite care facility, or other institutional setting but are unable to be discharged because of insufficient in-home shift nursing; or (b) if the Family is unable to obtain approved in-home shift nursing for reasons not related to Family choice, and the Class Member's in-home shift nursing needs have not been adequately addressed by the care coordinator or the care coordinator's manager.
 - e. Class Members will receive information orally and in writing about the availability of Care Coordination and the Staffing Support Team within 30 days of entry of this Consent Decree, upon their eligibility for in-home nursing services, at each annual eligibility redetermination, and as needed by any entity providing care coordination services to Class Members.
2. Except as otherwise provided in this Decree, Defendant shall replace existing reimbursement rates paid to nursing agencies for in-home shift nursing with the following new reimbursement rates for registered nurses (RN), licensed practical nurses (LPN), and certified nursing assistants (CNA):

		Current Rate	Rate Under This Decree
Hourly RN Enhanced	Tier I	\$35.03	\$45.00
Hourly RN Regular	Tier II	\$28.75	\$45.00
Hourly LPN Enhanced	Tier I	\$31.14	\$37.50
Hourly LPN Regular	Tier II	\$24.78	\$37.50
Hourly CNA		\$20.00	\$25.00

3. If Defendant utilizes or contracts with MCOs or any other entities to provide in-home shift nursing services, Defendant shall ensure that any such entity substantially complies with the terms of this Consent Decree and that this Consent Decree will be included as an attachment to the contract or other engagement document and that the terms of the Consent Decree will be incorporate into the contract or other agreement; provided, however, that the inclusion of other State agencies or government entities in this paragraph neither binds those agencies to this Consent Decree’s obligations nor relieves Defendant of her obligations under this Consent Decree.

4. Two times per year the Department shall provide a report to Class Counsel that identifies:

- a. the number of in-home shift hours per week allocated to each Class Member under the Class Member’s Care Plan;
- b. the number or percentage of in-home hours per week provided to each Class Member;
- c. the Nursing Agency or Agencies assigned to each Class Member;
- d. the reasons for any shortfall in hours provided; and
- e. the actions taken to obtain in-home shift nursing, including any referral to the Staffing Support Team;
- f. for cases referred to the Staffing Support Team, the report shall describe the challenges faced and the result achieved.

5. In full settlement of the litigation, attorneys’ fees and costs incurred with this litigation, Defendant will pay \$650,000 to Class Counsel. Class Members will not pay anything to Class Counsel.

5. WILL CLASS MEMBERS RECEIVE MONEY FROM THE CONSENT DECREE?

No. There is no money awarded to any Class Member as part of the Consent Decree.

6. HOW DO YOU TELL THE COURT THAT YOU AGREE OR DISAGREE WITH ALL OR PART OF THE CONSENT DECREE?

All Class Members have the right to state any objection they may have to the Consent Decree and to give reasons why they believe the Court should not approve it. All Class Members have the right to state their approval of the Consent Decree, although they are under no obligation to do so.

The Court and the Parties will consider those opinions submitted by Class Members in the following manner:

- The statement must include the name and number of the case (*O.B. v. Eagleson*, Case No. 15 C 10463);
- The statement must include a statement of the reasons why the Court should or should not approve the Consent Decree;
- The statement must be no longer than 15 pages in length;
- The statement must include the name, address, telephone number, and signature of the individual submitting it; and
- The statement must be submitted by U.S. Mail and postmarked no later than xxx, to

Thomas Yates
 Legal Council for Health Justice
 17 N. State Street, Suite 900
 Chicago, IL 60602

Attorney Thomas Yates, co-counsel for the Class, will provide the Court and other counsel for the Plaintiffs and Defendant with the statements that he receives and that Class Members want presented to the Court. Please note that it is not sufficient to simply state that you object. Objections must state the reasons why the Consent Decree should not be approved.

7. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE CONSENT DECREE?

The Fairness Hearing will be held before the Honorable Charles P. Kocoras, United States District Judge, in the Dirksen Federal Building, 219 S. Dearborn Street, Room 2325, Chicago, Illinois 60604, on November 5, 2019, at 9:30 a.m. At this hearing, the Court will consider whether the Consent Decree is fair, reasonable, and adequate. The Court will consider any objections made according to the procedures described above.

8. DO YOU HAVE TO COME TO THE HEARING?

All Class Members are welcome to attend the Fairness Hearing if they choose to do so, but no one is required to attend the Fairness Hearing. Plaintiffs' and Defendant's lawyers will be available to answer questions Judge Kocoras may have. If you submit a statement or objection in accordance with the procedures described in paragraph 7 above, you are not required to come to Court to talk about it. As long as you mailed your written statement or objection in accordance with the procedures described in paragraph 7 above, the Court will consider it.

9. WHO CAN SPEAK AT THE FAIRNESS HEARING?

You may ask the Court for permission to speak at the Fairness Hearing. The Judge will decide whether you are permitted to do so. To request permission to speak at the Fairness Hearing, you must send a request to Class Counsel as directed below. Class Counsel will provide the necessary documents to the Court.

- The request must be entitled: “Notice of Intention to Appear in *O.B. v. Eagleson*, Case No. 15 C 10463”
- You must send one copy of your “Notice of Intention to Appear” to the attorney listed below via U.S. mail, postmarked no later than xx:

Thomas Yates
Legal Council for Health Justice
17 N. State Street, Suite 900
Chicago, IL 60602

- Be sure to include your name, address, telephone number, and your signature on your “Notice of Intention to Appear.”
- If you file a statement or objection and also want to ask for permission to speak at the Fairness Hearing, you can include the “Notice of Intention to Appear” in the same document as the statement/objection that is sent to Mr. Yates. Mr. Yates will provide copies of these “Notices of Intention to Appear” to the Court and to other counsel for the parties.

10. WHO ARE THE CLASS MEMBERS’ LAWYERS IN THE CASE?

The Court ordered that the following attorneys represent the Class Members. These lawyers are called “Class Counsel.”

Robert H. Farley, Jr.
Robert H. Farley, Jr. Ltd.
1155 S. Washington St., Suite 201
Naperville, IL 60540
Tel: 630-369-0103
Email: faleylaw@aol.com

Thomas Yates
Caroline Chapman
Legal Council for Health Justice
17 N. State Street, Suite 900
Chicago, IL 60602
Tel: 312-605-1958
Email: tyates@legalcouncil.org

Jane Perkins
Sarah Grusin
National Health Law Program
200 N. Greensboro Street
Suite D-13
Carrboro, NC 27510
919-968-6308
perkins@healthlaw.org

Class Members will not be charged for these lawyers' fees or expenses.

11. HOW DO YOU GET MORE INFORMATION ABOUT THE CONSENT DECREE?

A copy of the entire Consent Decree is available on the following websites: <https://www.illinois.gov/hfs/info/legal/PublicNotices>; and www.legalcouncil.org.

If you have any questions for Plaintiffs' lawyers or want to request that a copy of the Consent Decree be mailed to you, you may contact Attorney Thomas Yates at Thomas tyates@legalcouncil.org or 312-605-1958.