IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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<tr><td>CLINTON L., by his guardian and next friend CLINTON L., SR., and TIMOTHY B. by his guardian and next friend ROSE B., and others similarly situated,

Plaintiffs,

v.

LANIER CANSLER, in his official capacity as Secretary of the Department of Health and Human Services, and DAN COUGHLIN, in his official capacity as CEO of the Piedmont Behavioral Healthcare Local Management Entity,

Defendants.</td><td>)
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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</td></tr>
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This is a class action suit challenging the Defendants' actions in effectively eliminating medically necessary services that the Plaintiffs have long received. In order to maintain the *status quo* and preserve the funding for their community placements, Plaintiffs seek a Temporary Restraining Order and a Preliminary Injunction. Injunctive relief is required in order to prevent the constructive elimination of the state-funded services that allow Plaintiffs to remain in the community. Defendants' proposed reduction of the reimbursement rate for Plaintiffs' state-funded services would indirectly but effectively eliminate these services in the five counties served by Piedmont Behavioral Healthcare, also known as PBH. Without these state-funded services, Plaintiffs (and all other recipients of this necessary service) are at risk of institutionalization and the simultaneous dismantling of their systems of care.

SUMMARY OF THE CASE

Plaintiffs are adults with dual diagnoses of a developmental disability and mental illness, as well as other chronic conditions. Plaintiffs require continuous supervision and support in nearly all aspects of their lives, which need is met through a combination of services. Some of these services are paid with state funds; some are federally funded through the Medicaid system.

Defendant Dan Coughlin is the CEO and Area Director of PBH, a Local Management Entity (LME) with a geographic service area encompassing Cabarrus, Davidson, Rowan, Stanly, and Union Counties. Within the Medicaid system of mental health, developmental disabilities, and substance abuse services in North Carolina, LMEs are the locus of coordination for services at the community level. N.C.G.S. §§ 122C-101, 122C-115.4. Defendant Coughlin's responsibilities include financial management and accountability for the use of state and local funds for the delivery of publicly funded services. *See* N.C.G.S. § 122C-115.4(b)(7). Defendant Coughlin also bears responsibility for the implementation and management of the Medicaid-funded Home and Community-Based Services (HCBS) Community Alternatives Program Waivers (the Innovations Waiver). *See* Social Security Act § 1915, 42 U.S.C. § 1396n (b) and (c).

Defendant Lanier Cansler is the Secretary of the North Carolina Department of Health and Human Services (DHHS). DHHS is the "single state agency" responsible for the administration and supervision of North Carolina's Medicaid program under Title XIX of the Social Security Act. 42 C.F.R. § 431.10. Defendant Cansler is also

responsible for the ultimate oversight of the LMEs to make sure that they provide publicly funded services in accordance with the law. *See* N.C.G.S. § 122C-112.1(a).

On February 15, 2010, as announced in a PBH "Communications Bulletin" dated January 11, 2010, Defendant Coughlin will implement a drastic cut to the daily rate paid by the LME for the "Supervised Living – 1 Resident" service, otherwise known as service code YM811, and "Supervised Living – 2 Resident" service, otherwise known as service code YM812. These Supervised Living services are considered to be "wrap-around" services, paid with state funds and intended to augment the residential staffing services available to participants in the Innovations Waiver program. As of the date of this filing, the current rate for the "Supervised Living – 1 Resident" service is variable. Named Plaintiff Timothy B. has been authorized to receive "Supervised Living – 1 Resident" services at a rate of $250 per day. As of the date of this filing, the current rate for the "Supervised Living – 2 Resident" service is a standard rate of $161.99 per day; Named Plaintiff Clinton L. has been authorized to receive this service at the standard rate.

The proposed reduction is substantial – from $161.99 per day and $250 per day to $116.15 per day. Providers' costs in offering Supervised Living services exceed the new daily rate for Supervised Living services effective on February 15, 2010. There is a substantial certainty that, because providers will only be able to offer Supervised Living services at a loss, they will no longer offer the services in the five counties served by PBH. Without these Supervised Living services, Plaintiffs are at a considerable risk of being forced out of their current placements into group homes or other congregate living

arrangements, which will not provide the continuous supervision and support that Plaintiffs require to live in the community.

If Plaintiffs are no longer able to access Supervised Living services, the only remaining source of funding available to them would be the Innovations Waiver. However, the limitations in the service definitions and utilization guidelines governing the Innovations Waiver prohibit Plaintiffs from benefitting from the full array of services to which Plaintiffs should otherwise be entitled. Without the required supervision, it is likely that Plaintiffs would be forced into an institution, in violation of the Americans with Disabilities Act and the Rehabilitation Act of 1973. *See* 42 U.S.C. § 12101 *et seq.*; 29 U.S.C. § 794.

Defendant Coughlin has failed to properly exercise his discretion to assess Plaintiff's individual needs and maintain their state-funded services and permit them to remain in their long-time community placements. Defendant Cansler, who bears the ultimate responsibility for the administration of mental health services in the state, has failed to exercise his authority and direct Defendant Coughlin to maintain state-funded services for Plaintiffs.

Plaintiffs request a temporary restraining order and preliminary injunction directing Defendants to maintain Plaintiffs' Supervised Living rates at their current level ($161.99 per day and $250 per day) pending a final resolution of Plaintiffs' claims by this Court.

STATEMENT OF FACTS

Timothy B. and Clinton L. are adults with dual diagnoses of mental retardation and mental illness (MR/MI) and other chronic and disabling conditions that require twenty-four hours of care and supervision. Plaintiffs receive health care and other federally-funded services through the PBH Medicaid Plan (the "Cardinal Health Plan"), as well as services through the Innovations Waiver. Plaintiffs are also eligible for and receive state-funded mental health, developmental disabilities, and substance abuse services in addition to Medicaid services.

Plaintiffs rely on a combination of Medicaid, Innovations Waiver, and state-funded services to live successfully in their own home and to participate in family and community life. Plaintiffs especially depend on the state-funded Supervised Living service to supplement the limited hours of residential staffing services available through the Innovations Waiver. Supervised Living is a "residential service which includes room and support care for one individual who needs 24-hour supervision; and for whom care in a more intensive treatment setting is considered unnecessary on a daily basis." North Carolina's Department of Health and Human Services Division of Mental Health/Developmental Disabilities/Substance Abuse Services MH/DD/SA Service Definitions 164 (January 1, 2003). Currently, it is only through a combination of state-funded Supervised Living services and federally-funded Innovations Waiver services that Plaintiffs can access the twenty-four hours of care and supervision they require to live in their own homes.

Clinton L.'s diagnoses include Schizoaffective Disorder, Bipolar Disorder, Intermittent Explosive Disorder, and Moderate Mental Retardation. Lockhart Declaration ¶ 4. Clinton L.'s community placement is his own apartment in Lexington, North Carolina. This apartment has been modified by the addition of a system of alarms and sensors, due to Clinton L.'s tendency to wander at night. Clinton L. lives independently in his apartment with a rotating schedule of residential workers twenty-four hours a day. *Id.* at ¶ 5.

Timothy B.'s diagnoses include Intermittent Explosive Disorder, Major Depressive Disorder, Epilepsy, Deafness, and Severe Mental Retardation. Bryan Declaration ¶ 4. Timothy B.'s community placement is his own house in Raleigh, North Carolina, where he lives independently with a rotating schedule of residential workers twenty-four hours a day. Timothy B. also requires staff capable of communicating with him using American Sign Language. *Id.* at ¶ 6. On prior occasions when Timothy B. was unable to communicate with his supervisory staff, he often engaged in destructive outbursts. Timothy B. has a history of placements in group homes which have failed, such failures resulting in his institutionalization at the O'Berry Center in Goldsboro. *Id.* at ¶ 8. One of Timothy B.'s institutional placements was seven years in length. *Id.* Both Plaintiffs have successfully lived in their own homes for several years, Clinton L. for more than eight years and Timothy B. for more than a decade.

Plaintiffs require twenty-four hour care because of their disabilities. Plaintiff Clinton L. requires one-on-one staffing due to his mental illness and developmental disabilities. Plaintiff Timothy B. requires one-on-one staffing due to his erratic

behaviors, epilepsy, communication difficulties and mental retardation. Other available services, such as Day Supports, that do not provide the individualized care and attention provided by residential staffing are not appropriate to meet Plaintiffs' needs and will jeopardize the independence and community living that Plaintiffs have long enjoyed.

Plaintiffs' successful community placements are threatened by the Supervised Living rate cuts to be effective on February 15, 2010. If implemented, there exists a considerable risk that providers of Supervised Living services will discontinue these services because they will suffer a financial loss if they continue to offer them. Plaintiffs would be constructively denied access to a service that has been deemed necessary for their care. Plaintiffs would then be forced to find other, more congregate placements due to the loss of state funds and concurrent inability to fully meet their staffing needs. Because both Plaintiffs have previously failed at similar placements, it can be reasonably predicted that these congregate placements will likewise fail, at which time they will then be forced into an institution placement.

Defendant Dan Coughlin is the Area Director of PBH. PBH operates under a contract with DHHS and its agent, the Division of Medical Assistance (DMA). Both DHHS and DMA are overseen by Defendant Cansler. The current Memorandum of Agreement (MOA) between PBH and DHHS/DMA obligates PBH to provide a comprehensive system of mental health, developmental disability, and substance abuse services within the geographic area served by PBH.[1] "Covered Services" under the PBH

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[1] The Memorandum of Agreement between PBH and the DHHS/DMA can be found at http://www.pbhcare.org/b3_services/PBH-DMA%20contract%2008%20FINAL%20APPROVED.pdf

plan are "defined in the State's Medicaid Provider manuals, Bulletins, and Clinical Coverage Policies." PBH serves Cabarrus, Davidson, Rowan, Stanly, and Union Counties in North Carolina.

According to the MOA, PBH cannot "arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of diagnosis, type of illness, or condition." Additionally, PBH must "establish and maintain a Provider Network with a sufficient number, mix, and geographic distribution of Providers to ensure that medically necessary Covered Services are delivered in a timely and appropriate manner." PBH's obligations under the MOA reflect the "access to care" and "quality of care" provisions in the federal Medicaid statute and regulations. 42 U.S.C. § 1396a(a)(30)(A). *See Orthopaedic Hosp. v. Belshe*, 103 F.3d 1491, 1496 (9th Cir. 1997) ("a state plan must establish reimbursement rates for health care providers that are both consistent with high-quality medical care…and sufficient to enlist enough providers to ensure that medical services are generally available to Medicaid recipients").

In a "Communication Bulletin" dated January 11, 2010, PBH announced that the rate for Supervised Living services, also known by their service codes YM811 and YM812, would both decrease to $116.15 per day. The new rates would take effect on February 15, 2010. For Named Plaintiff Clinton L., the new rate represents a cut of nearly 30%. For Named Plaintiff Timothy B., the new rate represents a cut of nearly 55%. The costs incurred by providers in the delivery of Supervised Living services exceed the new proposed rate. Given the gap between costs and reimbursement rate, providers can no longer be expected to offer the Supervised Living services in the five

counties served by PBH. Easter Seals UCP, the provider of Clinton L.'s Supervised Living services, has stated that it cannot offer the service at the new rate announced by PBH. Sovierno Declaration at ¶ 7; Lockhart Declaration ¶ 11. The provider of Timothy B.'s Supervised Living services has already informed his guardian that he will lose that service (and his current placement) in April 2010. Bryan Declaration ¶ 17.

Meanwhile, Plaintiffs continue to meet medical necessity criteria justifying their need for the Supervised Living service. Plaintiffs' current Individual Support Plans (ISPs), drafted by their treatment teams and approved by PBH, reflect a need to continue Supervised Living services. Supervised Living has appeared on Named Plaintiff Clinton L.'s ISPs for more than eight years, and has appeared on Named Plaintiff Timothy B.'s ISPs for more than a decade. The effect of the newly announced rates would be to eliminate Plaintiffs' access to a service that is currently approved and has been approved for their care in past years.

As a result of the announced rate cuts, Plaintiffs will be forced to vacate their current placements and move to other, inappropriate congregate placements that do not provide Plaintiffs with one-on-one supervision and care twenty-four hours a day. Without twenty-four hours of care and supervision, it is anticipated that Plaintiffs will be forced into more restrictive, segregated, institutional settings. Away from their homes and communities, Plaintiffs will face increased risk of community-acquired infections, malnutrition, and depression. They also face immediate risk of loss of the independence and dignity they have enjoyed living successfully in the community.

ARGUMENT

A. Standard of Review.

To prevail in a motion for a preliminary injunction the trial court must consider (1) whether plaintiffs are likely to succeed on the merits; (2) whether they are likely to suffer irreparable harm in the absence of the preliminary relief; (3) if the balance of hardships tips in their favor; and (4) whether the injunction is in the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. __ , 129 S.Ct. 365, 374 (2008); *The Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346 (4th Cir. 2009), *adopting Winter and overruling Blackwelder Furniture Co. v. Seilig Mfg. Co.,* 550 F.2d 189 (4th Cir. 1977) . The same standard must be met to obtain a temporary restraining order. *U.S. Dep't of Labor v. Wolf Run Mining Co.*, 452 F.3d 275, 281 n.1 (4th Cir. 2006) ("A preliminary injunction, which may be entered only after notice, is distinguished from a TRO, which may be entered without notice, only by its duration – a preliminary injunction is of indefinite duration extending during the litigation, while a TRO is limited in duration to 10 days plus one 10-day extension."). As will be discussed, Plaintiffs meet all four requirements and should be granted the requested injunctive relief.

As recently as one month ago, a district court in North Carolina decided a similar issue in *Marlo M. v. Cansler*, No. 5:09-CV-535-BO, 2010 U.S. Dist. LEXIS 3426 (E.D.N.C. Jan. 17, 2010). In that case, the Court granted a temporary restraining order and a preliminary injunction against the defendant LME and Secretary Cansler where the two plaintiffs faced a termination of the same services at issue in the present case. PBH's

drastic cuts to the Supervised Living rates in the present case would have the same effect on Plaintiffs' care as an outright termination of Plaintiffs' Supervised Living services.

B. Plaintiffs Are Likely To Succeed On The Merits.

1. The unwarranted termination of Plaintiffs' funding and services places Plaintiffs at risk of institutionalization and violates the Americans with Disabilities Act.

On February 15, 2010, Plaintiffs' ability to access state-funded Supervised Living services will be drastically reduced or eliminated, which will force Plaintiffs to transition to institutional placements, either immediately or imminently. Title II of the Americans with Disabilities Act (ADA) protects qualified individuals with disabilities from discrimination by public entities such as DHHS and PBH. "Qualified individuals with disabilities" are those who "with or without reasonable modifications to rules, policies, or practices . . . mee[t] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). Prohibited discrimination by public entities includes the failure to provide persons with disabilities a community-based placement when such placement is appropriate; the individual wishes to reside in the community; and the placement can be reasonably accommodated. *Olmstead v. L.C.*, 527 U.S 581, 587 (1999).

Plaintiffs are qualified individuals with disabilities who are being illegally discriminated against by the two defendant public entities. Defendant Cansler is the Secretary of the North Carolina Department of Health and Human Services, which is unquestionably a public entity. Defendant Coughlin is the CEO and Area Director of

PBH, a local political subdivision of the State and a public entity. *See* N.C.G.S. § 122C-116(a). As the director of PBH, Defendant Coughlin is vested with the authority to manage state-funded services in the area served by his LME and to oversee the operation of the PBH Innovations Waiver. N.C.G.S. § 122C-115.4(a). Plaintiffs are individuals with disabilities in that they are diagnosed with mental retardation and mental illness. Plaintiffs are qualified persons with disabilities in that they meet the essential eligibility requirements for and are in receipt of services from the PBH Medicaid program, the Innovations Waiver program, and State-funded mental health, developmental disabilities, and substance abuse services programs with or without reasonable modification to the rules, policies, and practices of those programs. *See* 42 U.S.C. §12131(2).

Defendants' actions constitute illegal discrimination under *Olmstead*. The community-based placements for both Clinton L. and Timothy B. have been deemed to be appropriate as demonstrated by their long history of living safely and successfully in their own homes – Clinton L. for eight years and Timothy B. for over a decade. Community-based treatment is especially appropriate for Plaintiffs as it guarantees them the required level of one-on-one attention that is otherwise unavailable in any congregate or institutional setting. Plaintiffs' continued residential placement can be reasonably accommodated through continuation of their state-funded services or, alternatively, through modifications to the Innovations Waiver service definitions. However, despite Plaintiffs' successful integration into their communities and their continued eligibility for the Innovations Waiver and state-funded Supervised Living services, Plaintiffs could be forced to leave their homes after the new rate structure is implemented on February 15,

2010. Defendant Coughlin's threatened abolition of Plaintiffs' Supervised Living services violates Plaintiffs' rights to be free from discrimination based on their disability under the ADA, as recognized in *Olmstead*.

2. Defendants' reduction of Plaintiffs' funding and services will result in Plaintiffs' unnecessary institutionalization in violation of Section 504 of the Rehabilitation Act of 1973.

The reduction of Plaintiffs' access to state-funded Supervised Living services places them at immediate risk of unnecessary institutionalization in violation of the Rehabilitation Act of 1973. In the Rehabilitation Act of 1973, Congress stated that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a), *referencing* 29 U.S.C. § 705(2). "Program or activity" includes a department, agency, special purpose district, or other instrumentality of a State or of a local government. 29 U.S.C. § 794(b)(1)(A). The Rehabilitation Act defines disability as a physical or mental impairment that substantially limits one or more major life activities. 29 U.S.C. § 705(20)(B), *referencing* 42 U.S.C. § 12102(1). Prohibited discrimination includes denial of the opportunity to participate in or benefit from an aid, benefit, or service. 28 C.F.R. § 41.51(b). Moreover, a recipient of federal funds must administer its services, programs, and activities in the "most integrated setting appropriate" to the needs of the qualified individual. 28 C.F.R. § 41.51(d).

Plaintiffs are qualified persons with disabilities in that they meet the essential eligibility requirements for and are in receipt of services from the PBH Medicaid program, the Innovations Waiver program, and state-funded mental health, developmental disabilities, and substance abuse services programs with or without reasonable modification to the rules, policies, and practices of those programs. *See* 42 U.S.C. §12131(2); 29 U.S.C. § 794(a). Defendant Cansler is the Secretary of the North Carolina Department of Health and Human Services, a state agency receiving federal financial assistance. Defendant Coughlin is the CEO and Area Director of PBH, an instrumentality of the State of North Carolina receiving federal financial assistance.

Defendant Coughlin has failed to properly exercise his authority and discretion by reducing the rate for Supervised Living services so drastically that the network of providers that currently offer these services will terminate the service rather than operate at a substantial loss. Sovierno Declaration ¶ 7. Defendant Coughlin's constructive termination of all Supervised Living services substantially increases Plaintiffs' risk of institutionalization or other placement in a segregated setting. Year after year, by its approval of Plaintiffs' plans of care, PBH had determined that the state-funded services used to augment the core Medicaid services were medically necessary for both Clinton L. and Timothy B. Now, owing to budgetary pressures alone, PBH proposes to effectively abolish a service that is essential for Plaintiffs' continued community placement – an action that constitutes unlawful discrimination in violation of Section 504 of the Rehabilitation Act. 29 U.S.C. § 794.

In sum, plaintiffs are likely to prevail on their claim that the planned elimination of Supervised Living services, forcing Plaintiffs from their longstanding community placements and into eventual institutional settings, is a violation of the ADA and the Rehabilitation Act. As made clear by the Court in *Olmstead*, a State is required to provide community-based services for eligible persons with disabilities based upon professional assessments. *Olmstead*, 527 U.S. at 602. To ignore this "integration mandate," the Court found, constituted "unjustified institutional isolation of persons with disabilities," and thus prohibited discrimination under the ADA. *Id.*

C. Plaintiffs will Suffer Irreparable Injury without Injunctive Relief.

A temporary restraining order and preliminary injunction are necessary to prevent Plaintiffs from being institutionalized due to the drastic reduction in state-funded services, scheduled to become effective on February 15, 2010. Plaintiffs seeking preliminary relief must demonstrate that they are likely to suffer irreparable injury in the absence of an injunction. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. __ , 129 S.Ct. 365, 374 (2008); *Los Angeles* v. *Lyons*, 461 U.S. 95, 103, 103 S.Ct. 1660 (1983). Irreparable injuries are those that cannot be adequately compensated by money damages, such as emotional, psychological, and physical damage. *L.J. v. Massinga*, 838 F.2d 118, 121-22 (4th Cir. 1988) (finding that monetary costs and administrative inconvenience to city from grant of preliminary injunction was outweighed by preventing continuing harm to plaintiffs caused by defendants' mismanagement of foster care system); *see also LaForest v. Former Clean Air Holding Co., Inc.*, 376 F.3d 48, 55 (2d Cir. 2004) (stating

that reduction of medical benefits and consequent negative impacts on an individual's health is an irreparable injury).

Plaintiffs are likely to suffer irreparable injury if this Court does not grant them injunctive relief preventing the termination or reduction of their residential staffing services. If Plaintiffs lose residential staffing services, Plaintiffs will imminently face the prospect of institutionalization or forced transition to congregate placements. These placements will cause Plaintiffs emotional, psychological, and physical harm that cannot be compensated by an award of monetary damages. For Timothy B., the harm arising from the loss of his current placement would be particularly acute, as it would also mean the loss of staff capable of communicating with him using American Sign Language.

Both Plaintiffs would face a substantial risk of institutionalization without immediate injunctive relief. Both will lose their homes, their staff and an entire system of care that was crafted to meet their unique clinical needs. As a result, both will suffer irreparable injury should they be removed from their current placements.

D. The Balancing of Hardships Tips in Favor of the Plaintiffs.

The balance of hardships tips decidedly in Plaintiffs' favor. As discussed, Plaintiffs face a substantial risk of institutional placement if the injunction is denied. In contrast, the harm that may accrue to Defendants if the injunction is granted is slight. PBH will be required only to maintain funding Plaintiffs' services at a rate and in an amount that PBH has authorized and provided for years. Little harm, if any, will accrue

to DHHS – no preliminary relief is required of the Secretary in order to maintain the *status quo*.

E. The Public Interest Demands that the Injunction be Granted.

Enforcement of laws passed by Congress is in the public interest, even when that means enjoining allegedly illegal actions by another government body. *Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 372 (8th Cir. 1991). The public interest is served when laws passed by Congress are enforced and the rights of persons with disabilities are vindicated. "While achieving budgetary savings is also in the public interest of state and federal taxpayers, that interest must give way if it is in conflict with federal substantive law." *Kansas Hosp. Assn, v. Whiteman*, 835 F. Supp. 1548,1553 (D. Kan. 1993); *see also Haskins v. Stanton*, 794 F.2d 1273, 1277 (7th Cir. 1986) (where an injunction requires defendants to comply with existing law, the injunction imposes no burden but "merely seeks to prevent the defendants from shirking their responsibilities").

The interest of the citizens of North Carolina are best served by enjoining Defendants from enforcing arbitrary cuts and denials of necessary services for Plaintiffs. The ADA requires that persons with disabilities be cared for in the most integrated settings possible, a requirement that is being undermined by Defendants' actions.

F. The Court Should not Require a Bond.

In the exercise of their discretion under FRCP 65(c), federal courts frequently waive bond requirements in suits brought by citizens to enforce their important federal rights. *See, e.g., Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (noting

that "[t]he district court is in a far better position to determine the amount and appropriateness of the security required under Rule 65"); *Doctor's Associates, Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996) (affirming the district court's decision not to require bond); *Moltan Co. v. Eagle-Picher Industries, Inc*., 55 F.3d 1171, 1176 (6th Cir. 1995) (a district court has discretion to require posting of security).

Important federal rights are at stake in this litigation. *See, e.g., Temple Univ. v. White*, 941 F.2d 201, 220 n.27 (3d Cir. 1991) ("Public policy under [federal law governing state modification of Medicaid programs] mandates that parties in fact adversely affected by improper administration of programs pursuant thereto be strongly encouraged to correct such errors"). Given the likelihood that Plaintiffs will succeed on the merits, Plaintiffs' status as public assistance recipients, as well as the fact that the injunction seeks merely to require PBH and DHHS to comply with federal law, no bond should issue.

CONCLUSION

Plaintiffs have met their burden of showing (1) a strong likelihood of success on the merits, (2) a substantial likelihood of irreparable harm, (3) that the balance of hardships tips in Plaintiffs favor, and (4) that the public interests demands that the injunction be granted. As such, the Court should grant Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, prohibiting Defendant Coughlin from implementing the reduced reimbursement rates for the Supervised Living Services that Plaintiffs rely upon for their independence.

Dated: February 11, 2010

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