

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

GENERATIONS AT ELMWOOD)
PARK, INC., GENERATIONS AT)
APPLEWOOD, LLC, GENERATIONS)
AT LINCOLN, LLC, GENERATIONS)
AT MCKINLEY COURT, LLC,)
GENERATIONS AT MCKINLEY)
PLACE, LLC, GENERATIONS)
AT NEIGHBORS, LLC,)
GENERATIONS AT OAKTON)
PAVILLION, LLC, GENERATIONS)
AT PEORIA, LLC, GENERATIONS)
AT REGENCY, LLC, GENERATIONS)
AT RIVERVIEW, LLC,)
GENERATIONS AT ROCK ISLAND)
LLC,)

Case No. 20-533

PLAINTIFFS,)

v.)

DR. NGOZI EZIKE, in her official)
capacity as the Director of the Illinois)
Department of Public Health,)

and)

SEEMA VERMA, in her official capacity)
as the Administrator of the Centers for)
Medicare and Medicaid Services,)
223 N. Michigan Ave. Suite 60)
Chicago, IL 60601)

DEFENDANTS.)

**COMPLAINT FOR PRELIMINARY AND PERMANANT INJUNCTION AND
DECLARATORY JUDGMENT**

A facility’s Five Star Rating is used not only by consumers to choose which facility to place their loved one, but also by the Center for Medicare & Medicaid Services (“CMS”) to deny a facility inclusion in the “3-Day Rule” Waiver program, by HUD’s Office of Residential Care

Facilities in determining whether a facility qualifies for certain loan programs, by healthcare networks to preclude inclusion of a facility, by lenders to determine interest rates, and by suppliers in setting contract prices. CMS has also begun posting “Stop Sign” style warning markings on its “Nursing Home Compare” web pages in instances where a facility was cited with certain deficiencies related to alleged abuse – regardless of whether or not the facility was granted a CMS hearing and before any allowed hearings have been resolved. Defendants use alleged deficiencies at Plaintiff facilities to enhance penalties in later proceedings, publish alleged deficiencies on the CMS Nursing Home Compare website, and factor those alleged deficiencies into the CMS Five Star Nursing Home Quality Rating System without a fair, impartial hearing in violation of Due Process. Plaintiffs are entitled to a hearing regarding the alleged deficiencies under federal and state law prior to imposition of penalties in all cases. The posting of deficiencies constitutes a penalty which requires a hearing prior to posting and prior to any changes in the calculation of a Star Rating. Defendants have denied Plaintiffs the opportunity to contest citations at a fair and impartial evidentiary hearing.

Plaintiffs seek to require Defendants Dr. Ngozi Ezike, in her official capacity as Director of the Illinois Department of Public Health (“IDPH”), and Seema Verma, in her capacity as Administrator for the Center for Medicare and Medicaid Services, to comply with CMS Medicare and Medicaid regulations, as well as the United States Constitution, to conduct an impartial hearing and forego imposition of penalties unless and until due process is served in compliance with the Federal rules and regulations. The Defendants penalize Plaintiffs for unreviewed allegations of noncompliance and fail to afford Plaintiffs the opportunity to refute findings of noncompliance. This flies in the face of Due Process under the Fourteenth

Amendment. Moreover, penalties are being imposed that are not provided for in the regulations nor approved in the CMS-approved state plan.

I. JURISDICTION AND VENUE

This action arises under the Federal Medicare and Medicaid Act and its implementing regulations. Jurisdiction of this court is invoked to secure protection to redress the deprivation under color of state law, statute, custom and/or usage of a right, privilege and/or immunity guaranteed to Plaintiffs by the United States Constitution and by 42 U.S.C. §1983. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1334(a)(3). Venue lies in this forum pursuant to 28 U.S.C. § 1391(e).

II. PARTIES AND RELEVANT AGENCIES

1. Generations at Elmwood Park, an Illinois corporation, is a skilled nursing facility in Elmwood Park, Illinois.
2. Generations at Applewood, an Illinois limited liability company, is a skilled nursing facility in Matteson, Illinois.
3. Generations at Lincoln, an Illinois limited liability company, is a skilled nursing facility in Lincoln, Illinois.
4. Generations at McKinley Court, an Illinois limited liability company, is a skilled nursing facility in Decatur, Illinois.
5. Generations at McKinley Place, an Illinois limited liability company, is a skilled nursing facility in Decatur, Illinois.
6. Generations at Neighbors, an Illinois limited liability company, is a skilled nursing facility in Byron, Illinois.

7. Generations at Regency, an Illinois limited liability company, is a skilled nursing facility in Niles, Illinois.

8. Generations at Rock Island, an Illinois limited liability company, is a skilled nursing facility in Rock Island, Illinois.

9. Generations at Peoria, an Illinois limited liability company, is a skilled nursing facility in Peoria, Illinois.

10. Generations at Riverview, an Illinois limited liability company, is a skilled nursing facility in East Peoria, Illinois.

11. Generations Oakton Pavillion, an Illinois limited liability company, is a skilled nursing facility in Des Plaines, Illinois.

12. The Illinois Department of Public Health (“IDPH”) is the State of Illinois agency responsible for surveying skilled nursing facilities on behalf of both the State of Illinois and CMS for compliance with Illinois law and the Federal Conditions of Participation for Medicaid.

13. Defendant Dr. Ngozi Ezike is the Director of the Illinois Department of Public Health, and at all times material to this Complaint acted under color of state law in administering the regulations, customs, policies, and practices material herein. Defendant Ezike is sued in her official capacity only.

14. The Center for Medicare and Medicaid Services (“CMS”) is the agency within the Department of Health and Human Services that administers the Medicare and Medicaid programs.

15. Defendant Seema Verma is the Administrator of CMS. Defendant Verma is sued solely in her official capacity.

III. STATEMENT OF FACTS

16. Skilled nursing facilities that participate in the federal Medicare and Medicaid programs must satisfy minimum standards of patient care in order to receive reimbursement for patient services. 42 U.S.C. § 1395i-3(a)-(d); 42 C.F.R. § 483, § 483.25.

17. Each of the Plaintiff facilities is a participating provider.

18. CMS is the federal agency to which the Department of Health and Human Services has delegated the authority to administer the Medicare and Medicaid programs, pursuant to the Social Security Act, 42 U.S.C. §§ 1396a(13)(A)(iv), 13964(a)(1)(B).

The Five-Star Quality Rating System

19. The Five-Star Quality Rating System gives each nursing home a rating of between 1 and 5 stars to help consumers, their families, and their caregivers compare nursing homes and to help identify areas about which a consumer may want to ask questions.

20. CMS created the Five-Star Quality Rating System.

21. The Five-Star Quality Rating is composed of many components, including a star rating for “Health Inspections.”

22. The components are combined to calculate a Facility’s overall Star Rating.

23. CMS uses unreviewed survey deficiencies in the calculation of a facility’s Star Rating.

24. Each alleged deficiency is assigned a numerical value that is directly tied to the scope and severity designation assigned to that tag.

25. These totals are tallied and the ultimate calculation is converted into the Facility’s “Health Inspection” star rating.

26. The Five-Star health inspection rating is based on three cycles of annual survey data and three years of complaint investigations.

27. Each tag numbered deficiency is assigned a value, which is then added and used to determine the Facility's health star rating.

28. The deficiencies are posted on the CMS.gov website www.medicare.gov/nursinghomecompare and negatively impact Plaintiffs' Star Ratings, among other severe penalties.

29. Deficiencies are posted to the CMS Nursing Home Compare website and calculated as part of the Five Star Rating for a period of three years.

30. Each year that passes, the deficiency is credited with less weight, until they "roll off" of the Facility's Star Rating.

31. CMS guidelines specify that the results of a survey should not be uploaded prior to resolution of the informal dispute resolution process.

32. Defendants are uploading survey results prior to completion of the informal dispute resolution.

33. Due Process dictates that the results of a survey should not be uploaded prior to the resolution of a formal hearing process.

34. Defendants are uploading survey results prior to completion of the formal hearing process.

35. The formal hearing process takes significant time to be resolved, with the result that contested deficiencies impact the Plaintiff Facility's quality rating for years, prior to final order.

36. The formal hearing process can take longer than three years, meaning that these deficiencies are posted for the full period they would have counted had a hearing been waived, regardless of the outcome of the hearing.

Surveys and Alleged Deficiencies

37. CMS contracts with state agencies to conduct unannounced compliance surveys of participating skilled nursing facilities. 42 U.S.C. § 1395aa.

38. The standard, annual surveys (“Annual Health Survey”) must be performed at least every fifteen months. 42 U.S.C. § 1395i–3(g)(2)(A)(iii).

39. IDPH conducts Annual Health Surveys in Illinois.

40. There are three annual cycles, each containing an annual survey and the complaint surveys that fall into that year. Each facility has a Health Inspection Rating Cycle 3, Health Inspection Rating Cycle 2, and Health Inspection Rating Cycle 1, representing the three years of data used to calculate the Facility’s health inspection score.

41. Each deficiency written during these three cycles is used to calculate the health inspection score.

42. CMS also contracts with state agencies to conduct unannounced compliance surveys of participating skilled nursing facilities when complaints are lodged against a Facility. (“Complaint Survey”).

43. The complaint surveys occur more frequently in the event of complaints to IDPH or facility self report of certain incidents and accidents.

44. IDPH conducts Complaint Surveys in Illinois.

45. Both Annual Health Surveys and Complaint Surveys involve inspecting the facilities for compliance with the conditions of participation in the Medicare and Medicaid programs.

46. State agency surveyors record alleged violations, known as “deficiencies,” and rate them according to scope and severity. 42 C.F.R. § 488.408.

47. Deficiencies can be issued as the result of both Annual Health Surveys and Complaint Surveys.

48. The state agency assigns an alphabetical scope and severity value, A through L, to the deficiency.

49. “A” is the least serious rating and “L” is the most serious rating.

50. Alleged deficiencies are identified with a “Tag” designation that identifies the regulatory provision allegedly violated.

51. The alleged deficiencies are then referred to CMS for “enforcement actions.”

52. Enforcement actions may include program disqualification, temporary management, denial of reimbursement payments, state monitoring, transfer of residents, closure of the facility, directed plans of correction and training, and/or civil money penalties (“CMP”).

53. All alleged deficiencies are posted on the CMS’ Nursing Home Compare website and are made part of the public record.

54. Alleged deficiencies are made part of the public record shortly after they are written, often being published before a Facility has had an adequate opportunity to contest the allegations.

55. If a provider appeals a deficiency alleged in a survey, the deficiency must either be dismissed or reviewed. *Plott Nursing Home v. Burwell*, 779 F.3d 975 (9th Cir.2015).

56. Unreviewed citations must either be dismissed or reviewed. *Id.*

57. The regulations provide for a hearing where certain penalties, such as civil monetary penalties or termination of a provider agreement, are imposed. 42 U.S.C. § 1395i-3(h)(2)(B)(ii); 42 C.F.R. § 431.153; 42 C.F.R. § 498.5.

58. Additionally, 42 CFR § 488.331 requires that CMS and the State, as appropriate, offer skilled nursing facilities, nursing facilities, and dually participating facilities an informal opportunity to dispute cited deficiencies upon the facility's receipt of the Statement of Deficiencies and Plan of Correction, Form CMS-2567.

59. Appeals procedures must be provided following an adverse action including the "imposition of a civil money penalty or other alternative remedy." 42 C.F.R. § 431.151(a)(1)(ii).

60. CMS and the State are required to comply with mandatory appeals procedures.

61. CMS and the State are required to make an appeal procedure available "to a Nursing Facility (NF) that is dissatisfied with a State's finding of noncompliance that has resulted in one of the following adverse actions: (i) Denial or termination of its provider agreement. (ii) Imposition of a civil money penalty or other alternative remedy." 42 C.F.R. §431.151.

62. CMS or the State must give the facility a full evidentiary hearing for any of the actions specified in § 431.151, with limited exceptions not applicable here. 42 C.F.R. § 431.153.

63. The State Operations Manual sets forth the Informal Dispute Resolution procedure. *See State Operations Manual* 7212, et seq.

64. Initial determinations of noncompliance are subject to appeal. 42 C.F.R. § 498.3(d).

65. Plaintiff Facilities are entitled to administrative review of all alleged deficiencies that CMS cited through the IDPH survey process. *Plot Nursing Home, supra*.

66. The appeal process has taken up to four years for some facilities in Illinois.

67. During the time an appeal process is pending, the alleged deficiencies remain posted to CMS' Nursing Home Compare site.

68. During the time an appeal process is pending, the alleged deficiencies are used to calculate CMS' 5-Star Quality rating for that facility.

69. IDPH conducted inspections at the Plaintiff Facilities and referred alleged deficiencies to CMS.

Generations at Elmwood Park

70. On February 9, 2017, DHS conducted an unannounced Annual Health Survey of Generations at Elmwood Park.

71. The surveyors cited Elmwood Park for five different Tag numbered deficiencies, with the highest being identified at scope/severity "F."

72. IDPH referred the deficiencies to CMS.

73. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine.

74. CMS did not provide Elmwood Park with a right to a formal ALJ hearing.

75. This annual survey of Elmwood Park is part of what is referred to as the Facility's "Health Inspection Rating Cycle 3."

76. IDPH conducted two complaint surveys of Elmwood Park during Cycle 3 on January 27, 2017 and January 5, 2017 resulting in the imposition of two alleged deficiencies, with the highest being scope/severity level of "E".

77. No formal ALJ hearing right was granted by CMS.

78. On December 8, 2017, IDPH conducted an unannounced Annual Health Survey of Generations at Elmwood Park.

79. The surveyors cited Elmwood Park for one alleged Tag numbered deficiency at the scope/severity level “G”.

80. IDPH referred the deficiency to CMS.

81. Based on the deficiency, CMS imposed a citation, but did not issue a fine and did not provide Elmwood Park with a right to a formal ALJ hearing.

82. This annual inspection falls into Cycle 2.

83. IDPH conducted four complaint surveys of Elmwood Park during Cycle 2 on September 20, 2018, August 15, 2018, May 4, 2018, and March 6, 2018 resulting in the imposition of eleven alleged deficiencies, with the highest being scope/severity level of “E”.

84. No formal ALJ hearing right was granted by CMS.

85. On January 10, 2019, IDPH conducted an unannounced annual health survey of Generations at Elmwood Park.

86. The surveyors cited Elmwood Park for eleven different alleged Tag numbered deficiencies, with the highest being at scope severity level “E”.

87. IDPH referred the alleged deficiencies to CMS.

88. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine and did not provide Elmwood Park a right to a formal ALJ hearing.

89. This annual inspection falls into Cycle 1.

90. IDPH conducted three complaint surveys of Elmwood Park during Cycle 1 on August, 9, 2019, July 16, 2019, and October 23, 2018 resulting in the imposition of seven alleged deficiencies, with the highest being scope/severity level of “D”.

91. No formal ALJ hearing right was granted by CMS.

92. As a result of the inclusion of these unreviewed deficiencies, Elmwood Park’s Health Inspection Star Rating is two out of five stars.

93. As a result of the inclusion of these unreviewed deficiencies, Elmwood Park’s Overall Star Rating is two out of five stars.

Generations at Applewood

94. On May 26, 2017, IDPH conducted an unannounced annual health survey of Generations at Applewood.

95. The surveyors cited Applewood for six different alleged Tag numbered deficiencies, with the highest being scope/severity at a “G”.

96. IDPH referred the alleged deficiencies to CMS.

97. Based on the alleged deficiencies, CMS fined Applewood \$810 per day for 16 days beginning May 24, 2017 through June 8, 2017.

98. Applewood requested an ALJ hearing to dispute the results of the survey on July 31, 2019.

99. This Request for Hearing was granted.

100. Applewood and CMS argued each tag cited.

101. The CMS ALJ ruled in favor of CMS on December 13, 2019.

102. During this time, the contested citations were published on Nursing Home Compare and the contested citations were used to calculate the Facility’s Star Rating.

103. IDPH conducted three complaint surveys of Applewood during Cycle 3 on September 12, 2017, December 23, 2016 and November 2, 2016 resulting in six deficiencies, with the highest being scope/severity level of “D.”

104. No formal ALJ hearing right was granted by CMS.

105. On March 8, 2018, IDPH conducted an unannounced annual health survey of Generations at Applewood.

106. The surveyors cited Applewood for nine different alleged Tag numbered deficiencies, with the highest being at scope/severity level “F.”

107. IDPH referred the alleged deficiencies to CMS.

108. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine and did not provide Applewood a right to a formal ALJ hearing.

109. This annual inspection falls into Cycle 2.

110. IDPH conducted two complaint surveys of Applewood during Cycle 2 on September 5, 2018 and May 23, 2018 resulting in the imposition of four alleged deficiencies, with the highest being scope/severity level of “G”.

111. No formal ALJ hearing right was granted by CMS.

112. On April 4, 2019, IDPH conducted an unannounced annual health survey of Generations at Applewood.

113. The surveyors cited Applewood for nine different alleged Tag numbered deficiencies, with the highest being at scope/severity level “F”.

114. IDPH referred the alleged deficiencies to CMS.

115. Based on the alleged deficiencies CMS imposed citations, but did not issue a fine and did not provide Applewood a right to a formal ALJ hearing.

116. This annual inspection falls into Cycle 1.

117. IDPH conducted two complaint surveys of Applewood during Cycle 1 on August 6, 2019 and July 9, 2019 resulting in the imposition of five alleged deficiencies, with the highest being scope/severity level of “E”.

118. No formal ALJ hearing right was granted by CMS.

119. As a result of the inclusion of these unreviewed deficiencies, Applewood’s Health Inspection Star Rating is two out of five stars.

120. As a result of the inclusion of these unreviewed deficiencies, Applewood’s Overall Star Rating is two out of five stars.

Generations at Lincoln

121. In January 2018, Generations at Lincoln changed ownership.

122. During Health Inspection Rating Cycle 3 of Generations at Lincoln, there were three complaint surveys and one annual health survey that resulted in sixteen alleged deficiencies.

123. Citations were imposed and no hearing right was granted.

124. These deficiencies were used to calculate the current star rating, even with the change in ownership.

125. On January 5, 2018, IDPH conducted an unannounced annual health survey of Generations at Lincoln.

126. The surveyors cited Lincoln for two different alleged Tag numbered deficiencies, with the highest being scope/severity level at “D”.

127. IDPH referred the alleged deficiencies to CMS.

128. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine and did not provide Lincoln a right to a formal ALJ hearing.

129. This annual inspection falls into Cycle 2.

130. IDPH conducted one complaint survey of Lincoln during Cycle 2 on June 21, 2018 resulting in the imposition of two alleged deficiencies, with the highest being scope/severity level of “D”.

131. No formal ALJ hearing right was granted by CMS.

132. On October 29, 2018, DHS conducted an unannounced annual health survey of Generations at Lincoln.

133. The surveyors cited Lincoln for thirty different alleged Tag numbered deficiencies, with the highest being at scope/severity level “G”.

134. IDPH referred the alleged deficiencies to CMS.

135. Based on the alleged deficiencies, CMS fined Lincoln three per instance fines of \$12,500 for multiple deficiencies.

136. Lincoln requested an ALJ hearing to dispute the results of the surveys.

137. This hearing is pending; however the deficiencies are posted and have been used to calculate Lincoln’s Star Rating.

138. This annual inspection falls into Cycle 1.

139. IDPH conducted seven complaint surveys of Lincoln during Cycle 1 on August 6, 2019, June 6, 2019, May 1, 2019, March 7, 2019, February 13, 2019, January 30, 2019, and October 17, 2018 resulting in the imposition of twenty three alleged deficiencies, with the highest being scope/severity level of “G”.

140. The complaint investigations from June 6, 2019 and May 1, 2019 were issued a combined CMS imposition letter, where a fine was issued.

141. Lincoln has requested a formal hearing contesting the fines and the citations.

142. This hearing is still pending however the deficiencies are posted on Nursing Home Compare and used to calculate the Lincoln's Star Inspection Rating.

143. The complaint investigations from February 13, 2019 and January 30, 2019 were issued a combined CMS imposition letter, where a fine was issued.

144. Lincoln has requested a formal hearing contesting the fine and the citations.

145. This hearing is still pending however the deficiencies are posted on Nursing Home Compare and used to calculate Lincoln's Star Inspection Rating.

146. No formal ALJ hearing right was granted by CMS for the remaining citations.

147. As a result of the inclusion of these unreviewed deficiencies, Lincoln's Health Inspection Star Rating is one out of five stars.

148. As a result of the inclusion of these unreviewed deficiencies, Lincoln's Overall Star Rating is one out of five stars.

Generations at McKinley Court

149. In January 2018, Generations at McKinley Court changed ownership.

150. During Health Inspection Rating Cycle 3, there were seven complaint surveys and one annual health survey that resulted in thirty seven alleged deficiencies.

151. Citations were imposed and no hearing right was granted.

152. These alleged deficiencies were used to calculate the current star rating, even with the change in ownership.

153. On December 12, 2017, IDPH conducted an unannounced annual health survey of Generations at McKinley Court.

154. The imposition of the fifteen citations associated with that survey was sent to the prior owners and Generations does not know if the citations were disputed.

155. This annual inspection falls into Cycle 2.

156. IDPH conducted seven complaint surveys of McKinley Court during Cycle 2 on September 10, 2018, August 29, 2018, August 23, 2018, August 15, 2018, July 13, 2018, April 23, 2018, and February 14, 2018 resulting in the imposition of twenty-four alleged deficiencies, with the highest being scope/severity level of "F".

157. CMS did not grant a formal ALJ hearing right.

158. On October 18, 2018, IDPH conducted an unannounced annual health survey of Generations at McKinley Court.

159. The surveyors cited McKinley Court for twenty-nine different alleged Tag numbered deficiencies, with the highest being at scope/severity level "F".

160. IDPH referred the alleged deficiencies to CMS.

161. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine and did not provide McKinley Court a right to a formal ALJ hearing.

162. This annual inspection falls into Cycle 1.

163. IDPH conducted six complaint investigations of McKinley Court during Cycle 1 on June 26, 2019, June 17, 2019, May 21, 2019, May 2, 2019, January 24, 2019, and October 3, 2018 resulting in the imposition of nineteen alleged deficiencies, with the highest being scope/severity level of "F".

164. No formal ALJ hearing right was granted.

165. As a result of the inclusion of these unreviewed deficiencies, McKinley Court's Health Inspection Star Rating is one out of five stars.

166. As a result of the inclusion of these unreviewed deficiencies, McKinley Court's Overall Star Rating is one out of five stars.

Generations at McKinley Place

167. In January 2018, Generations at McKinley Place changed ownership

168. During Health Inspection Rating Cycle 3, there were seven complaint surveys and one annual health survey that resulted in eighteen alleged deficiencies.

169. Citations were imposed and no hearing right was granted.

170. These alleged deficiencies were used to calculate the current star rating, even with the change in ownership.

171. On February 13, 2018, IDPH conducted an unannounced annual health survey of Generations at McKinley Place.

172. The surveyors cited McKinley Place for fourteen different alleged Tag numbered deficiencies, with the highest being scope/severity at "L".

173. IDPH referred the alleged deficiencies to CMS.

174. Based on the alleged deficiencies, CMS fined McKinley Place a per instance fine of \$18,500.

175. McKinley Place requested an ALJ hearing to dispute the results of the surveys and the ALJ ruled against the facility.

176. The matter is still pending appeal.

177. During the pendency of the hearing and the appeal, the deficiencies have been posted to the Nursing Home Compare website and have been used to calculate McKinley's star rating.

178. This annual survey falls into Cycle 2.

179. There were no complaint investigations during Cycle 2.

180. On March 28, 2019, IDPH conducted an unannounced annual health survey of Generations at McKinley Place.

181. The surveyors cited McKinley Place for seventeen different alleged Tag numbered deficiencies, with the highest being at scope/severity level "F".

182. IDPH referred the alleged deficiencies to CMS.

183. Based on the alleged deficiencies, CMS imposed citations but did not issue a fine and did not provide McKinley Place a right to a Formal ALJ hearing.

184. This annual inspection falls into Cycle 1.

185. IDPH conducted ten complaint surveys of McKinley Place during Cycle 1 on June 20, 2019, October 3, 2018, June 13, 2019, April 26, 2019, April 11, 2019, March 14, 2019, January 10, 2019, November 27, 2018, October 25, 2018, and October 11, 2018 resulting in the imposition of twenty-four alleged deficiencies, with the highest being scope/severity level of "F."

186. No formal ALJ hearing right was granted for any of these alleged deficiencies.

187. As a result of the inclusion of these unreviewed deficiencies, McKinley Place's Health Inspection Star Rating is two out of five stars.

188. As a result of the inclusion of these unreviewed deficiencies, McKinley Place's Overall Star Rating is one out of five stars.

Generations at Neighbors

189. On November 18, 2016, IDPH conducted an unannounced annual health survey of Generations at Neighbors.

190. The surveyors cited Neighbors for six different alleged Tag numbered deficiencies, with the highest being at scope/severity level “F”.

191. IDPH referred the alleged deficiencies to CMS.

192. Based on the alleged deficiencies, CMS imposed citations but did not issue a fine and did not provide Neighbors the right to a formal ALJ hearing.

193. This annual inspection falls into Cycle 3.

194. IDPH conducted one complaint survey of Neighbors on May 3, 2017 resulting in the imposition of four alleged deficiencies, with the highest being scope/severity level of “D.”

195. No formal ALJ hearing right was granted.

196. On October 26, 2017, IDPH conducted an unannounced annual health survey of Generations at Neighbors.

197. The surveyors cited Neighbors for four different alleged Tag numbered deficiencies, with the highest being at scope/severity level “F”.

198. IDPH referred the alleged deficiencies to CMS.

199. Based on the alleged deficiencies, CMS imposed citations but did not issue a fine and did not provide Neighbors with a right to a formal ALJ hearing.

200. This annual inspection falls into Cycle 2.

201. IDPH conducted six complaint surveys of Neighbors during Cycle 2 on September 5, 2018, July 24, 2018, June 19, 2018, June 13, 2018, February 8, 2018, and November 11, 2017, with the highest being scope/severity level of “F”.

202. No formal ALJ hearing right was granted.

203. On September 20, 2018, IDPH conducted an unannounced annual health survey of Generations at Neighbors.

204. The surveyors cited Neighbors for seven different alleged Tag numbered deficiencies, with the highest being at scope/severity level "F".

205. IDPH referred the alleged deficiencies to CMS.

206. Based on the alleged deficiencies, CMS imposed citations but did not issue a fine and did not provide Neighbors a right to a formal ALJ hearing.

207. This annual inspection falls into Cycle 1.

208. IDPH conducted one complaint investigation of Neighbor during Cycle 1 on April 30, 2019 resulting in the imposition of four alleged deficiencies, with the highest being scope/severity level of "D."

209. No formal ALJ hearing right was granted.

210. As a result of the inclusion of these unreviewed deficiencies, Neighbors' Health Inspection Star Rating is two out of five stars.

211. As a result of the inclusion of these unreviewed deficiencies, Neighbors' Overall Star Rating is two out of five stars.

Generations at Peoria

212. In November 2018, Generations at Peoria changed ownership.

213. Prior to this change, there were nine inspections that resulted in thirty-six alleged deficiencies.

214. Citations were imposed and no hearing right was granted.

215. These deficiencies were used to calculate the current star rating, even with the change in ownership.

216. IDPH has conducted three complaint surveys at Generations at Peoria during Cycle 1 on May 15, 2019, March 27, 2019 and January 8, 2019 resulting in the imposition of four alleged deficiencies, with the highest being scope/severity level of “E.”

217. No formal ALJ Hearing right was granted.

218. IDPH has also conducted an annual health survey of Generations at Peoria on August 2, 2019.

219. The surveyors cited Peoria for ten different alleged Tag numbered deficiencies.

220. IDPH referred the alleged deficiencies to CMS.

221. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine and did not provide Neighbors the right to a formal ALJ hearing.

222. This annual inspection falls into Cycle 1.

223. IDPH conducted an additional complaint survey at Generations at Peoria on September 13, 2019.

224. This resulted in the imposition of one alleged deficiency for an abuse related tag with the scope/severity level of “J.”

225. A hearing right was granted and a hearing was requested.

226. Although the hearing is still pending, the unreviewed citation is published on the Nursing Home Compare site, it is being used to calculate the Generations at Peoria’s current star rating, and a “stop” warning hand has been added to the Facility’s entry on the site.

227. As a result of the inclusion of unreviewed deficiencies, Peoria’s Health Inspection Star Rating is one out of five stars.

228. As a result of the inclusion of unreviewed deficiencies, Peoria's Overall Star Rating is two out of five stars.

Generations at Regency

229. On March 9, 2017, IDPH conducted an unannounced annual health survey of Generations at Regency.

230. The surveyors cited Regency for fourteen different alleged Tag numbered deficiencies, with the highest being at scope/severity level "E".

231. IDPH referred the alleged deficiencies to CMS.

232. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine and did not provide Regency a right to a formal ALJ hearing.

233. This annual inspection falls into Cycle 3.

234. IDPH conducted one complaint survey of Regency during Cycle 3 on January 12, 2017 resulting in the imposition of one deficiency with the scope/severity level of "D".

235. No formal ALJ hearing right was granted by CMS.

236. On February 28, 2018, DHS conducted an unannounced annual health survey of Generations at Regency.

237. The surveyors cited Regency for ten different alleged Tag numbered deficiencies, with the highest being at scope/severity level "E".

238. IDPH referred the alleged deficiencies to CMS.

239. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine and did not provide Regency a right to a formal ALJ hearing.

240. This annual inspection falls into Cycle 2.

241. IDPH conducted one complaint survey of Regency during Cycle 2 on October 16, 2017 resulting in the imposition of two alleged deficiencies, with the highest being scope/severity level of “D”.

242. No formal ALJ hearing right was granted by CMS.

243. During the October 16, 2017 complaint investigation, IDPH recommended that CMS issue a per instance fine.

244. CMS ultimately did not impose a fine, and the Facility’s hearing request was dismissed for lack of jurisdiction.

245. On January 10, 2019, DHS conducted an unannounced annual health survey of Generations at Regency.

246. The surveyors cited Regency for nine different alleged Tag numbered deficiencies, with the highest being at scope/severity level “E”.

247. IDPH referred the alleged deficiencies to CMS.

248. Based on the alleged deficiencies, CMS imposed these citations, but did not issue a fine and did not provide Regency the right to a formal ALJ hearing.

249. This annual inspection falls into Cycle 1.

250. IDPH conducted two complaint surveys of Regency during Cycle 1 on July 11, 2019 and April 18, 2019 resulting in the imposition of two alleged deficiencies, with the highest being scope/severity level of “G”.

251. No formal ALJ hearing right was granted by CMS related to these surveys.

252. As a result of the inclusion of these unreviewed deficiencies, Regency’s Health Inspection Star Rating is two out of five stars.

253. As a result of the inclusion of unreviewed deficiencies, Regency's Overall Star Rating is two out of five stars.

Generations at Rock Island

254. On August 13, 2017, IDPH conducted an unannounced annual health survey of Generations at Rock Island.

255. The surveyors cited Rock Island for twelve different alleged Tag numbered deficiencies, with the highest being at scope/severity level "E".

256. IDPH referred the alleged deficiencies to CMS.

257. Based on the alleged deficiencies, CMS imposed citations, but did not issue a fine and did not provide Rock Island a right to a formal ALJ hearing.

258. This annual inspection falls into Cycle 3.

259. IDPH conducted six complaint surveys of Rock Island during Cycle 3 on September 13, 2017, August 2, 2017, July 18, 2017, May 10, 2017, April 8, 2017, and December 15, 2016 resulting in the imposition of nine alleged deficiencies, with the highest being scope/severity level of "G".

260. No formal ALJ hearing right was granted by CMS.

261. On July 20, 2018, IDPH conducted an unannounced annual health survey of Generations at Rock Island.

262. The surveyors cited Rock Island for five different alleged Tag numbered deficiencies, with the highest being at scope/severity level "D".

263. IDPH referred the alleged deficiencies to CMS.

264. Based on the alleged deficiencies, CMS imposed these citations, but did not issue a fine and did not provide Rock Island a right to a formal ALJ hearing.

265. This annual inspection falls into Cycle 2.

266. IDPH conducted three complaint surveys of Rock Island during Cycle 2 on August 29, 2018, December 26, 2017, and November 15, 2017 resulting in the imposition of four alleged deficiencies, with the highest being scope/severity level of “D”.

267. No formal ALJ hearing right was granted by CMS.

268. On July 2, 2019, IDPH conducted an unannounced annual health survey of Generations at Rock Island.

269. The surveyors cited Rock Island for twenty six different alleged Tag numbered deficiencies, with the highest being scope/severity level at a “K”.

270. IDPH referred the alleged deficiencies to CMS.

271. Based on the alleged deficiencies, CMS fined Rock Island \$9,345.00 per day for 14 days for a total of \$130,830 then an additional CMP of \$415 per day until compliance was achieved.

272. Rock Island requested an ALJ hearing to dispute the results of the survey.

273. The Request for Hearing is pending; however the results are posted on the Nursing Home Compare website and have been used to calculate the Facility’s current Star Rating.

274. IDPH conducted five complaint investigations of Rock Island during Cycle 1 on August 16, 2019, August 7, 2019, June 14, 2019, March 28, 2019, and March 20, 2019 resulting in the imposition of eight alleged deficiencies, with the highest being scope/severity level of “G”.

275. No formal ALJ hearing right was granted by CMS.

276. As a result of the inclusion of unreviewed deficiencies, Rock Island’s Health Inspection Star Rating is one out of five stars.

277. As a result of the inclusion of unreviewed deficiencies, Rock Island's Overall Star Rating is one out of five stars.

Generations at Riverview

278. Generations at Riverview currently has an Overall Star Rating of four out of five stars and an Overall Health Star Rating of a three out of five stars.

279. Upon information and belief, recent survey activity will impact these ratings and will lower the Facility's score to below three stars. That rating will be based on alleged deficiencies that were not granted formal ALJ hearing rights.

280. Moreover, that rating will be based on deficiencies where a hearing request will be pending.

Generations at Oakton Pavillion

281. Generations at Oakton Pavillion currently has an Overall Star Rating of five out of five stars and an Overall Health Star Rating of a four out of five stars.

282. Upon information and belief, recent survey activity will impact these ratings and will lower the Facility's score to below three stars. That rating will be based on alleged deficiencies that were not granted formal ALJ hearing rights.

283. The allegations above are current through the most recent "Complaint Reporting Period: 10/1/2018-9/30/2019" as posted on Nursing Home Compare, with the exception of Generations at Peoria.

284. The allegations for Generations at Peoria reflect the 11/1/18 through 10/31/19 reporting period and reflect the posting of CMS' Stop Sign designation.

285. Each Plaintiff Facility was provided a Statement of Deficiencies and Plan of Correction Form CMS-2567, citing deficiencies for alleged failures to remain in substantial compliance with the participation requirements in the Medicare and Medicaid programs.

286. In response to the Notice of Deficiencies, each Plaintiff Facility requested a hearing where the right to a hearing was noted.

287. As noted in the above allegations, most of the Notice of Deficiencies at issue failed to notify Plaintiffs of the right to a hearing.

288. CMS holds the position that a facility has no right to a hearing unless one is expressly given in the Notice of Deficiencies and Imposition of Remedies letter sent to a facility.

289. Where CMS recognizes the right to a hearing, CMS still posts deficiencies and deducts points from the Star Rating, even while the hearing process is pending.

- a. On November 25, 2019, Generations at Peoria appealed a CMS imposition of deficiencies and remedies; the appealed deficiencies are posted on Nursing Home Compare and impact the Star Rating. The hearing is still pending.
- b. On June 21, 2019, Generations at Rock Island appealed a CMS ruling finding in favor of the imposition of deficiencies and remedies from a finding issued in 2015. During the pending hearing, the contested deficiencies were posted on Nursing Home Compare and impacted the Star Rating.
- c. On March 19, 2019, Generations at McKinley Place appealed a CMS ruling in favor of the imposition of deficiencies and remedies from a finding issued in 2018. During this pending hearing, the contested deficiencies were posted on Nursing Home Compare and impacted the Star Rating. The deficiencies still appear posted, even though this decision is appealed.

- d. On November 26, 2019, Generations at Rock Island appealed a CMS imposition of deficiencies and remedies related to a September 17, 2019 inspection; the appealed deficiencies are posted on Nursing Home Compare and impact the Star Rating. The hearing is still pending.
- e. On September 16, 2019, Generations at Rock Island appealed a CMS imposition of deficiencies and remedies related to a June 14, 2019 inspection; the appealed deficiencies are posted on Nursing Home Compare and impact the Star Rating. The hearing is still pending.
- f. On July 2, 2019, Generations at Lincoln appealed a CMS imposition of deficiencies and remedies related to a May 1, 2019 inspection; the appealed deficiencies are posted on Nursing Home Compare and impact the Star Rating. The hearing is still pending.
- g. On April 5, 2019, Generations at Lincoln appealed a CMS imposition of deficiencies and remedies related to a January 30, 2019 inspection; the appealed deficiencies are posted on Nursing Home Compare and impact the Star Rating. The hearing is still pending.
- h. On January 28, 2019, Generations at Lincoln appealed a CMS imposition of deficiencies and remedies related to a September 20, 2018 inspection; the appealed deficiencies are posted on Nursing Home Compare and impact the Star Rating.
- i. On July 16, 2018, Generations at Neighbors appealed a CMS imposition of deficiencies and remedies related to an October 26, 2017 inspection; the

appealed deficiencies are posted on Nursing Home Compare and impact the Star Rating.

290. Where CMS does not recognize the right to a hearing, or expressly grant it in notice letters, CMS files motions to dismiss on the basis of jurisdiction, seeking sanctions. Dismissal is routinely entered in these cases.

- a. On October 29, 2018 Generations at Regency appealed a dismissal in an imposition of deficiencies from 2018. CMS responded to the initial request for hearing with an order for dismissal. The appeals board upheld the underlying dismissal.
- b. On September 26, 2018, Generations at Oakton Pavillion requested a hearing related to a July 26, 2018 survey. No CMP was imposed in this case. CMS filed a motion to dismiss and seeking sanctions. An order was entered to dismiss the matter because “no remedies were imposed.”
- c. On September 26, 2018, Generations at Neighbors requested a hearing related to a July 24, 2018 survey. No CMP was imposed in this case. CMS filed a motion to dismiss and seeking sanctions. An order was entered to dismiss the matter because “no remedies were imposed.”
- d. On September 26, 2018, Generations at Rock Island requested a hearing related to a July 20, 2018 survey. No CMP was imposed in this case. CMS filed a motion to dismiss and seeking sanctions. An order was entered to dismiss the matter because “no remedies were imposed.”
- e. In more recent matters, CMS has threatened renewed motions for sanctions based on these three prior rulings.

291. Survey results and deficiency allegations are posted to a public website shortly following the survey and before the review process is completed.

292. Survey results and deficiency allegations are posted to a public website regardless of whether or not the facility was granted a hearing in front of an impartial judge.

293. The posting of deficiencies must be in accordance with statute. 42 U.S.C. § 1395–3(b)(5)(E).

294. The posting of unreviewed deficiencies has a profound and negative impact on the Plaintiff Facilities and other similarly situated Skilled Nursing Homes.

295. Medicare Patients who are residents of one-star or two-star facilities are not allowed to access their benefits on the same level as patients who go to three-star and above facilities.

296. Specifically, the “3-night stay” requirement is waived for participation in certain programs. This limits the choice that patients can make as to where they can go if they are hoping to access Medicare benefits for their first 100 days.

297. The publication of all deficiencies and the use of these deficiencies in calculating the CMS “5-Star Quality Rating System” has significant detrimental effects on Plaintiffs’ businesses.

298. Low Star Ratings limit participation in Federal Programs.

299. Each of the Plaintiff facilities is restricted from participation in certain Federal Programs due to their Low Star Ratings, resulting from unreviewed alleged deficiencies.

300. Low Star Ratings preclude participation in Insurance Service Networks, Accountable Care Organizations, and Preferred Provider Networks.

301. Each of the Plaintiff facilities has been precluded participation in at least one Insurance Service Network, Accountable Care Organization, or Preferred Provider Network due to their Low Star Ratings, resulting from unreviewed alleged deficiencies.

302. Low Star Ratings effect Terms and Conditions provided by lenders, including the U.S. Department of Housing and Urban Development.

303. Each of the Plaintiff facilities has been contacted by a lender regarding their Low Star Rating or is immediate danger of such contact due to their Low Star Ratings, resulting from unreviewed alleged deficiencies.

304. Each of the Plaintiff facilities' eligibility for HUD financing has been negatively affected by their Low Star Ratings, resulting from unreviewed alleged deficiencies.

305. Each facility has been excluded referrals for potential residents eligible for the 3 Day Waiver program due to their Low Star Ratings, resulting from unreviewed alleged deficiencies.

306. Moreover, each deficiency is considered during future surveys and the determination of subsequent remedies, including the imposition of a CMP.

307. CMS is not providing a formal hearing right to disputed deficiencies.

308. Defendants are disclosing survey results in violation of federal and state laws and regulations.

309. Defendants are adjusting the CMS Five Star Rating calculations without first providing an evidentiary hearing, in violation of Constitutional due process, and federal and state laws and regulations.

310. This disclosure has an extreme punitive effect on Plaintiff Facilities in violation of due process rights.

311. Further, the State is implementing remedies in the form of punitive public deficiency postings outside the framework of § 488.406 that are not in the state plan and are not approved by CMS.

312. Where the State elects to pursue its own remedies, state plan amendments requirements are as follows:

(c)*State plan requirement.* If a State wishes to use remedies for noncompliance that are either additional or alternative to those specified in paragraphs (a) or (b) of this section, it must -

(1) Specify those remedies in the State plan; and

(2) Demonstrate to CMS's satisfaction that those remedies are as effective as the remedies listed in paragraph (a) of this section, for deterring noncompliance and correcting deficiencies.

42 C.F.R. § 488.406(c).

313. Available remedies are provided in 42 C.F.R. §488.406 and include “[a]lternative or additional State remedies *approved by CMS*”. 42 C.F.R. §488.406(a)(9) (emphasis added).

314. The remedy of publication of deficiencies before the final outcome of a hearing is not included in the Illinois State Plan.

315. The Administrative Procedure Act (“APA”) § 706(2)(A) requires a reviewing court to “hold unlawful and set aside” agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

316. The APA requires a reviewing court to “hold unlawful and set aside” agency action that is “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

IV. CAUSES OF ACTION

COUNT ONE - VIOLATIONS OF PROCEDURAL DUE

317. Plaintiffs incorporate all paragraphs set out above as if fully set forth herein.

318. Defendants' failure to provide a hearing on Plaintiffs' unreviewed deficiencies will affect the imposition and amount of civil monetary penalties for future deficiencies, affects Plaintiffs' rights to participate in federal programs, and interferes with Plaintiffs' business opportunities.

319. To comply with the Due Process guarantees under the United States Constitution, the Defendants must provide the Plaintiffs with a meaningful notice that apprises them of the opportunity to appeal and the right to a hearing.

320. Moreover, the Defendants must then provide a hearing once requested.

321. Defendants' failure to permit an appeal before a neutral adjudicator and/or a judicial review denies to Plaintiff Facilities sufficient due process to appeal the survey deficiencies assessed by Defendants.

322. Defendants failure to allow for a hearing and appeal before the imposition of civil monetary penalties, participation in government programs, and penalties which affect Plaintiffs' business prospects does not adequately apprise Plaintiffs of the actions against them, or of the reasons for such deprivation.

323. Such actions by Defendants are inconsistent with the Due Process Clause of the United States Constitution, Amendment XIV and the Medicaid Act, Title XIX of the Social Security Act, Title 42 § 1396a, et seq., and its implementing regulations.

324. Defendants actions are not in compliance with law requiring administrative review of disputed deficiencies.

325. Defendants acted willfully, knowingly, and purposefully with the specific intent to deprive Plaintiffs of their rights, privileges, and immunities secured by the Constitution and laws by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and by 42 U.S.C. §1983.

326. The above acts were committed under color of state law by the Defendants. Said acts were committed by the Defendants by and through representatives of the Defendants acting in their official capacities pursuant to the statutes, ordinances, laws and policies of the Defendants.

327. Defendants do not have adequate justification for refusing Plaintiffs a hearing on the alleged deficiencies prior to posting the alleged deficiencies on the Nursing Home Compare website or using the alleged deficiencies to compute the Plaintiffs' Star Ratings.

COUNT TWO—DECLARATORY JUDGMENT

328. Plaintiffs incorporate all paragraphs set out above as if fully set forth herein.

329. The right to notice and hearing is a fundamental right – the cornerstone of constitutional protections.

330. Plaintiffs are entitled to a declaration pursuant to 42 U.S.C. § 1983, that their civil rights have been violated by IDPH and the Administrator by their refusal to allow a hearing, by violating survey disclosure requirements, and by imposing remedies not part of the state plan.

331. The Defendants' failure to provide notice of a right to a hearing fails to comply with the requirements of due process and violate the civil rights of the Plaintiff Facilities.

332. All citations must be granted the right to a hearing before a neutral fact finder.

333. Where a provider appeals a deficiency claimed in a survey, the deficiency must either be dismissed or reviewed.

334. The Defendants' failure to comply with federal law and regulations regarding Plaintiffs' hearing rights and survey result disclosure requirements, governed by federal law, place Plaintiffs at risk of being deprived of property interests without due process.

335. Publication of all deficiencies after being denied the opportunity to appeal, the use of these deficiencies in calculating the CMS "5-Star Quality Rating System," the effects of the 5-Star on Plaintiffs' business, including but not limited to participation in Federal Programs, Insurance Service Networks, Accountable Care Organizations, Preferred Provider Networks, and Terms and Conditions provided by lenders, including the U.S. Department of Housing and Urban Development, as well as each deficiency's consideration during future surveys and determination of subsequent remedies that require state plan amendments, imposed without CMS approval. 42 C.F.R. § 488.406(c).

336. By failing to comply with the federal rules and regulations regarding approval of state plan amendments and by denying the right to a hearing, Defendants deprived Plaintiff Facilities of the rights, privileges and immunities secured by the Constitution and laws of the United States, in violation of 42 U.S.C. § 1983, and as preempted by the Supremacy Clause of the United States Constitution, Article VI.

337. The burden placed on Defendants, should the Court grant the relief requested in this action, is simply that Defendants will be required to comply with federal Medicare and Medicaid laws, grant hearings after all deficiencies issued, and refrain from posting deficiencies until a final order has been entered. Defendants stand to suffer diminutive, if any, burden by affording Plaintiffs the hearings to which they are entitled pursuant to federal law.

338. Pursuant to 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure, Plaintiffs seek declaratory relief by this Court.

339. It is well settled that the District Court's exercise of discretion in a declaratory judgement action should be informed by a number of prudential facts, including: (1) consideration of practicality and efficient judicial administration; (2) the functions and limitations of the federal judicial power; (3) traditional principles of equity, comity, and federalism; (4) Eleventh Amendment and other constitutional concerns; and (5) the public interest. *Smith & Usaha*, note 2, at 116 citing *Wilton v. Seven Falls Company*, 515 U.S. 288 (1995); *Green v. Mansour*, 474, U.S. 64, 72-74 (1985); *Rickover*, 369 U.S. 111 at 112-113; *Public Service Commission of Utah v. Wycoff Company*, 344 U.S. 237, 243-47 (1952).

340. The most important factors are whether a declaratory judgement will serve a useful purpose and resolve the controversy between the parties. *Smith & Usaha*, *supra* note 2, at 116 (collecting cases; *Wilton*, 515 U.S. at 288; *Green v. Mansour*, 474 U.S. 64, 74 (1985); *Rickover*, 369 U.S. 111 at 112-113; *Wycoff*, 344 U.S. at 244.

341. Plaintiffs seek a Declaratory Judgement from this Court requiring Defendants to afford Plaintiffs sufficient appeal and fair hearing rights prior to imposing penalties and posting deficiencies.

COUNT THREE - 42 U.S.C. §§ 1983 & 1988 – INJUNCTIVE RELIEF

342. Plaintiffs incorporate and reallege the allegations asserted in each of the preceding paragraphs, as if fully set forth herein.

343. Section 1983 of Title 42 of the United States Code provides that any person under color of state law who deprives a citizen of the United States of any federal rights, privilege, or immunity “shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress. . . .” 42 U.S.C. § 1983.

344. Defendants, in their official capacity, are a person under 42 U.S.C. § 1983 for purposes of declaratory and injunctive relief.

345. The actions of IDPH and the Administrator described in this Complaint have been taken under the color of State law and Federal law.

346. Plaintiffs request temporary and permanent injunctive relief requiring that Defendants cease imposing remedies in violation of the CMS State Operations Manual and the state plan until the final outcome of an evidentiary hearing before a fair and impartial arbiter. 42 C.F.R. § 488.406(c); 42 C.F.R. § 431.153(a); 5 U.S.C. § 706(2)(D).

347. Plaintiffs are entitled to a preliminary injunction, pursuant to 42 U.S.C. § 1983, requiring Defendants to afford Plaintiffs an evidentiary hearing on each Notice of Deficiencies issued. 42 C.F.R. § 498 *et seq.*

348. Plaintiffs are entitled to a preliminary injunction, pursuant to 42 U.S.C. § 1983, requiring Defendants to cease imposition of remedies that have not been approved by CMS in state plan amendments. *See* 42 C.F.R. § 430.12(c)(1)(ii); *See also* 42 U.S.C. § 1316(a)(1) and (b).

349. Plaintiffs are entitled to a mandatory injunction, pursuant to 42 U.S.C. § 1983, requiring IDPH and CMS cease disclosure of alleged deficiencies in violation of 42 C.F.R. §488.325.

V. REQUESTS FOR RELIEF

Plaintiffs respectfully request that this Court:

A. Issue a Declaratory Judgment in favor of Plaintiffs, requiring Defendant to adhere to the requirements of the Social Security Act and implementing regulations pursuant to 42 U.S.C. § 1396(c);

- B. Issue Preliminary and Permanent Injunctive relief enjoining the Defendant from subjecting Plaintiffs to practices that violate their rights under the Social Security Act and implementing regulations pursuant to pursuant to 42 U.S.C. § 1396(c);
- C. Issue Preliminary and Permanent Injunctive relief requiring Defendants to adhere to federally mandated right to impartial evidentiary hearing and cease violations of due process.
- D. Issue Preliminary and Permanent Injunctive relief requiring Defendants to cease imposition of remedies imposed in violation of due process and the state plan;
- E. Issue Preliminary and Permanent Injunctive relief requiring Defendants to cease disclosure of survey results in violation of due process and the state plan;
- F. Award such other relief as the Court deems just and appropriate.

Respectfully submitted,

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