

provide these individuals with habilitation in and out of the home to assist them to acquire, retain, and improve their self-help, communication, socialization, and adaptive skills needed to reside in the community. Plaintiffs and other OBRA Waiver participants also have received Behavior Therapy through the OBRA Waiver, which helps to alleviate or ameliorate emotional distress disturbances, reverse or change maladaptive patterns of behavioral challenges, and promote positive personality growth and development.

3. Defendants recently amended the OBRA Waiver. These changes, which will take effect January 1, 2012, will result in the termination or substantial reduction of Community Integration services and the loss of Behavior Therapy services for Plaintiffs and other similarly situated individuals. No other services are adequate or available to meet their needs.

4. Without Community Integration services and Behavior Therapy or appropriate and available alternatives that can meet their needs, Plaintiffs and other similarly situated individuals will regress, losing the community living skills that they have worked to attain and some will deteriorate behaviorally. Some may be required to accept services, if available, in more segregated settings than are appropriate to meet their needs. Some may no longer be able to live in their own homes, forcing family members - - many of whom are aging, ill, or have other responsibilities -- to care for them.

5. Defendants' actions and inactions violate Title XIX of the Social Security Act, the Americans with Disabilities Act, and the Rehabilitation Act. Plaintiffs seek appropriate declaratory and injunctive relief.

II. Jurisdiction and Venue

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

7. Plaintiffs' claims are authorized by 42 U.S.C. §§ 1396, 1983, and 12133, 29 U.S.C. § 794, and 28 U.S.C. §§ 2201 and 2202.

8. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) since a substantial part of the events that gave rise to these claims arose in this District.

III. Parties

9. Plaintiff Rebecca Leonard is a 40-year-old resident of Chester County, Pennsylvania. Ms. Leonard, who has autism, is enrolled in the OBRA Waiver. Ms. Leonard brings this lawsuit by and through Joe H. Leonard, Jr. and Virginia G. Leonard, her parents and next friends.

10. Plaintiff Matthew Leonard is a 44-year-old resident of Chester County, Pennsylvania. Mr. Leonard, who has autism, is enrolled in the OBRA Waiver. Mr. Leonard brings this lawsuit by and through Joe H. Leonard, Jr. and Virginia G. Leonard, his parents and next friends.

11. Plaintiff Elisa Anslow is a 24-year-old resident of Montgomery County, Pennsylvania. Ms. Anslow, who has autism and bipolar disorder, is enrolled in the OBRA Waiver. Ms. Anslow brings this lawsuit by and through Trina and Michael Anslow, her parents and guardians.

12. Defendant Department of Public Welfare is the single state agency that has responsibility to implement Pennsylvania's Medical Assistance Program, including home

and community-based waiver services provided to individuals with disabilities. 42 U.S.C. § 1396a(a)(5); 55 Pa. Code § 101.1(e).

13. Defendant Gary Alexander is the Secretary of Public Welfare of the Commonwealth of Pennsylvania. Mr. Alexander is responsible to assure that Pennsylvania's Medical Assistance program is operated in compliance with federal law. Mr. Alexander is sued in his official capacity only for actions and omissions under color of state law.

IV. Class Action Allegations

14. Plaintiffs bring this action on their own behalf and on behalf of a class comprised of all persons enrolled in the OBRA Waiver who received Community Integration services or Behavior Therapy funded through the OBRA Waiver as of October 1, 2011.

15. The action satisfies the prerequisites of Federal Rule of Civil Procedure 23(a):

16. The size of the class is so numerous as to make joinder of all class members impracticable. According to the 2006 OBRA Waiver, DPW anticipated that approximately 665 OBRA Waiver participants would be receiving Community Integration services in the fifth year of the Waiver (July 1, 2009 to June 30, 2010). Factors in addition to class size exacerbate the impracticability of joinder. Class members are dispersed throughout the Commonwealth, have disabilities, and have limited incomes that make it unlikely that they will pursue individual litigation.

17. There are common questions of fact and law, including but not limited to: (1) whether the termination or substantial reduction of Community Integration services and termination of Behavior Therapy with no adequate and available alternatives in place on January 1, 2012 violates 42 U.S.C. § 1983 and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396n(c)(2); (2) whether Residential Habilitation services will be available on January 1, 2012 and, if not, whether the unavailability of such services violates 42 U.S.C. § 1983 and Title XIX of the Social Security Act, 42 U.S.C. §§ 1398a(a)(8) and 1396a(a)(10)(A); (3) whether small intermediate care facilities for persons with other related conditions will be available on January 1, 2012 and, if not, whether the unavailability of such services violates 42 U.S.C. § 1983 and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396a(a)(8), 1396a(a)(10)(A), 1396a(a)(10)(B), and 1396n(c)(2)(C); and (4) whether Defendants violate Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by failing to offer habilitation services in the most integrated setting appropriate to meet their needs and failing to make reasonable modifications to allow them to choose Community Integration services or equivalent habilitation services, rather than services in more segregated settings.

18. Plaintiffs' claims are typical of the claims of class members.

19. Plaintiffs will fairly and adequately protect the interests of class members. Plaintiffs have no interests that are adverse to or in conflict with putative class members. Plaintiffs' counsel has extensive experience in civil rights, disability law, class actions,

and litigation under the Americans with Disabilities Act, Rehabilitation Act, and Title XIX of the Social Security Act.

20. This action can proceed as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2). Defendants have acted or refused to act on grounds generally applicable to all members of the class, making final declaratory and injunctive relief appropriate with respect to the class as a whole.

V. Factual Background

A. Medical Assistance Background

21. Title XIX of the Social Security Act (Title XIX), 42 U.S.C. § 1396 *et seq.*, establishes the federal Medical Assistance program.

22. Medical Assistance is a cost-sharing arrangement under which the federal government reimburses more than 50 percent of the expenditures incurred by states that elect to furnish Medical Assistance to individuals whose income and resources are insufficient to cover the costs of their medical care.

23. The purpose of Medical Assistance is to provide medical services to eligible individuals, including services to help such individuals "attain or retain capability for independence or self-care" 42 U.S.C. § 1396.

24. States are not required to participate in the Medical Assistance program, but, if they choose to do so, they must adopt a "state plan" that delineates the standards for determining eligibility and identifies the extent of Medical Assistance benefits.

25. Pennsylvania has chosen to participate in the Medical Assistance program and has adopted a State Medical Assistance Plan.

26. Title XIX delineates the types of medical services that can be funded under a state's Medical Assistance plan. *See* 42 U.S.C. § 1396d. Certain types of services are mandatory (*e.g.*, inpatient hospital services, physicians' services, and nursing facilities) and must be included in every state's Medical Assistance plan. Other types of services are optional (*e.g.*, hospice care, dental care, and medications), and each state has discretion to choose whether to cover any particular optional service. Mandatory services and optional services that a state includes in its state plan must be provided to all Medical Assistance recipients who are eligible for and need those services.

27. Many home and community-based services for people with disabilities (such as, habilitation and community integration services) cannot be covered either as mandatory or optional services under Title XIX.

28. Title XIX permits a state to obtain a home and community-based services (HCBS) waiver from the Centers for Medicare and Medicaid Services (CMS). 42 U.S.C. § 1396n(c). HCBS waivers allow states to include in their state plans as "Medical Assistance" home and community-based services for individuals who, without such care, would require institutionalization in intermediate care facilities for persons with mental retardation or other related conditions, nursing facilities, or hospitals.

29. HCBS waivers allow states to waive three Title XIX requirements that apply to mandatory and optional services -- the statewideness requirement (which requires the state to assure the availability of services in all geographic areas); the comparability requirement (which requires the state to assure that all eligible persons

have access to services in the same amount, duration, and scope); and income and resource rules. 42 U.S.C. § 1396n(c)(3).

30. By waiving the comparability requirement, states can limit the number of persons who will be allowed to participate in an HCBS waiver and can establish qualifications for eligibility based on age, disability, or other criteria. Waiver of the comparability requirement also allows states to provide Medical Assistance services to HCBS waiver participants in a different amount, duration, or scope than is available to other Medical Assistance participants.

31. A state can provide services in HCBS waivers that are not identified in Title XIX as approved mandatory or optional services (*e.g.*, habilitation and community integration services). 42 U.S.C. § 1396n(c)(4)(B); 42 C.F.R. § 440.180.

32. The purpose of Title XIX's HCBS waivers is to encourage states to provide services to assist individuals with disabilities to avoid institutionalization. 42 C.F.R. § 441.300. As long as community-based services vis-à-vis institutional services are cost-neutral, *see* 42 U.S.C. § 1396n(c)(2)(D), the preference is to provide services in the community.

B. Pennsylvania's OBRA Waiver

33. Pennsylvania has received authorization from CMS to operate multiple HCBS Waivers, one of which is known as the "OBRA Waiver."

34. To be eligible for the OBRA Waiver, an individual must: (a) be between the ages of 18 and 59, inclusive; (b) have a developmental disability that manifested prior to age 22, is likely to continue indefinitely, and results in substantial functional

limitations in three or more major life activities; and (c) need the level of care provided by an intermediate care facility for persons with other related conditions. A person cannot be eligible for the OBRA Waiver if he or she has a primary diagnosis of an intellectual disability (formerly called mental retardation) or mental illness.

35. Currently, there are approximately 1,600 individuals enrolled in the OBRA Waiver.

36. DPW, the single state agency designated by Pennsylvania to administer its Medical Assistance program, has delegated to its Office of Long Term Living (OLTL) responsibility to administer several of Pennsylvania's HCBS Waivers, including the OBRA Waiver.

37. Each individual in the OBRA Waiver has an Individualized Service Plan (ISP) that delineates the specific services which he or she will receive under that Waiver and the amount of each service and that identifies the provider of each service.

38. Each OBRA Waiver participant has a Supports Coordinator (SC), who is responsible to work with the individual, his or her family, friends, advocates, and providers to develop the individual's ISP.

39. OLTL, however, must approve the ISP and any service changes to the ISP. OLTL cannot authorize services in the ISP that are not permitted by the OBRA Waiver or that exceed the amount, duration, or scope allowed by the OBRA Waiver.

40. Although OLTL is supposed to approve ISPs and changes to ISP services within approximately 10 business days, it frequently takes weeks or even months for the SC to receive authorization from OLTL for the ISP and changes to ISP.

41. Providers will not be reimbursed by DPW for services that are not in an ISP approved by OLTL.

42. In 2006, DPW received approval from CMS to renew its OBRA Waiver for a five-year period (2006 OBRA Waiver).

43. The home and community-based services offered in the 2006 OBRA Waiver included Community Integration services, Personal Assistance services, Adult Day Services, and Behavior Therapy.

44. Community Integration services were defined in the 2006 OBRA Waiver as services that "assist participants in acquiring, retaining, and improving self-help, communication, socialization, and adaptive skills necessary to reside in the community." Community Integration services included "cueing, on-site modeling of behavior, and/or supervision to assist the participant in developing or maintaining maximum independent functioning in community living activities including domestic and leisure activities." This service was to be provided by Community Integration Specialists. There was no limit on the amount or duration of Community Integration services that an OBRA Waiver participant could receive, although the individual's ISP had to delineate specific goals and outcomes to which the Community Integration services were related. DPW estimated that approximately 665 OBRA Waiver participants would receive Community Integration services in the fifth year of the 2006 OBRA Waiver (*i.e.*, FY 2010-2011).

45. Personal Assistance services were defined in the 2006 OBRA Waiver as services to provide assistance with activities of daily living, health maintenance activities,

routine wellness services, meal preparation, and housekeeping essential to the health and welfare of the individuals.

46. Adult Day Services were defined in the 2006 OBRA Waiver as services to assist OBRA participants to acquire, retain, or improve their self-help, socialization, and adaptive skills in a non-residential setting separate from the person's residence. These are essentially segregated, "day care" type services that offer little opportunity for community integration or individualized choice of activities. These services had to be provided in facilities licensed by DPW as Adult Training Facilities or by the Pennsylvania Department of Aging as Older Adult Daily Living Centers.

47. Behavior Therapy offered in the 2006 OBRA Waiver provided therapy to alleviate or ameliorate emotional disturbances, reverse or address maladaptive patterns of behavioral challenges, and promote positive personality growth and development. Behavior Therapy could be provided by a behavior therapist with a bachelor's degree in education, special education, or a related field and experience in working with people with disabilities.

48. The 2006 OBRA Waiver did not fund any form of residential or non-residential habilitation services (other than Adult Day Services in segregated, licensed settings).

49. In or around October 2011, DPW received approval from CMS to renew its OBRA Waiver (2011 OBRA Waiver) with certain changes. These changes will go into effect on January 1, 2012.

50. The 2011 OBRA Waiver imposes amount, duration, and scope limits on Community Integration services that will significantly restrict access to those services. The 2011 OBRA Waiver states that Community Integration services are intended to be a "short-term" service. To be eligible, participants must show that Community Integration services are needed "to assist individuals to achieve maximum function during life-changing events such as a transition from a nursing facility, moving to a new community or from a parent's home, or a change in condition that requires new skill sets." Even those participants who are entitled to Community Integration services because they can demonstrate the requisite "change" will not be authorized to receive more than eight hours per week to work toward a single goal identified in the participant's ISP or 12 hours per week to work toward multiple goals. Community Integration services cannot be authorized for more than 26 weeks for any specific goal.

51. The 2011 OBRA Waiver eliminates Behavior Therapy entirely. A new service, called "Therapeutic and Counseling Services" is included in the 2011 Waiver. Therapeutic and Counseling Services include behavior management. Behavior management includes consultation and ongoing counseling and behavior strategy development and implementation directed by the participant's behavior analyst or neuropsychologist. Behavior management can only be provided by licensed psychiatrists, psychologists, social workers, marriage and family therapists, and professional counselors.

52. The 2011 Waiver continues to allow services, now known as Adult Daily Living (instead of Adult Day), in licensed Adult Training Facilities or Older Adult Daily Living Centers.

53. The 2011 OBRA Waiver continues to allow funding of Personal Assistance services. The slightly revised definition allows a personal assistant to use "cueing to prompt" the participant to perform a task in the home and to "escort participants to community activities or access other services in the community." Personal Assistants, however, may not be reimbursed for their costs (such as costs that might be incurred to accompany a participant to a movie or museum). Personal Assistance services must be provided by a licensed home care agency or individual hired by the OBRA Waiver participant.

54. The 2011 OBRA Waiver adds "Structured Day Habilitation" as a service available to participants. Structured Day Habilitation is a program to provide participants with assistance to acquire, retain, or improve self-help, socialization, and adaptive skills. It provides comprehensive day programming to acquire more independent functioning and improved cognition, communication, and life skills. It includes social skills training and seeks to limit and cap or eliminate maladaptive behaviors. These services can be provided for four to eight hours a day up to seven days a week. The services must take place in small group settings, though OLTL will consider 1:1 or 2:1 enhanced staffing for participants who need that level of support due to their behavioral issues.

55. The 2011 OBRA Waiver adds "Residential Habilitation" as a service that can be funded for participants. Residential Habilitation provides up to 24-hours per day

of habilitation services to assist the individual to acquire the basic skills necessary to maximize their independence in activities of daily living and to fully participate in community life. The services are individually tailored to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice. Residential Habilitation can be provided either in licensed personal care homes with four to eight individuals or in unlicensed settings owned, rented, or operated by a provider that serve one to three individuals. Beginning July 1, 2014, residential habilitation programs must achieve CARF accreditation

56. With the elimination of Community Integration services in the 2011 OBRA Waiver, OBRA Waiver participants have no non-residential habilitation option that enables them to learn skills in flexible, integrated settings.

57. DPW offers "Home and Community Habilitation" services in several of its other HCBS Waivers, which is similar to the Community Integration services available under the 2006 OBRA Waiver. DPW could have, but did not, include Home and Community Habilitation in its 2011 OBRA Waiver.

58. In the section of its application to renew its OBRA Waiver in 2011, OLTL listed a number of "major changes" to the document. The purpose of this section is to highlight for CMS changes that could impact participants. OLTL did not, however, mention any change in the definition of Community Integration services.

59. CMS requires states to submit a "transition plan" if a waiver renewal "would eliminate or limit any of the services that are furnished under the approved waiver" or "affect the amount of services that are furnished to waiver participants under

the approved waiver." Although the 2011 OBRA Waiver renewal limits the amount of Community Integration services furnished under the 2006 Waiver and would affect the amount of services participants received, DPW did not submit a transition plan.

60. In its 2011 renewal application for the OBRA Waiver, OLTL stated that its inclusion of Residential Habilitation and Structured Day Habilitation "have been added to better serve individuals currently residing in Personal Care Homes." On information and belief, few OBRA Waiver participants live in Personal Care Homes. It is, accordingly, unclear whether OLTL considered how those services would be provided to individuals who do not live in Personal Care Homes.

61. On September 29, 2011, OLTL issued a policy Bulletin to Supports Coordinators, providers, and participants in the OBRA Waiver to advise them of the change to the definition of Community Integration services in the 2011 OBRA Waiver.

62. Many current OBRA Waiver participants will not be eligible for any Community Integration services beginning on January 1, 2012 because they have not been subject to a recent life-changing event, a move, or a change in condition that requires a new skill set, and their services will be terminated. Any OBRA Waiver participants who might continue to qualify for Community Integration services after January 1, 2012 will have those services limited and capped at no more than 12 hours per week for a limited duration.

63. OLTL has not issued a policy Bulletin or provided other guidance concerning the other changes in the 2011 OBRA Waiver, including the elimination of Behavior Therapy as a funded service or the addition of Residential and Structured Day

Habilitation. The lack of information has resulted in confusion among Supports Coordinators, providers, and OBRA Waiver participants concerning the availability of those services.

64. Although DPW will terminate or substantially limit and cap Community Integration services for OBRA Waiver participants effective January 1, 2012, there are no appropriate alternatives that will be available to those individuals on that date.

65. Community Integration services have provided essential habilitation to OBRA participants who have autism or brain injury. These services -- provided both in the participants' homes and in various community settings -- allow individuals to acquire, maintain, or improve their self-help, socialization, and adaptive skills. The participants' cognitive, communication, and behavioral deficits are addressed through development of compensatory strategies and the practice of skills. Staff that provide this service offer direction and feedback to the participants based on their unique issues, including impulsivity, judgment, and psychosocial skills. These individualized services help the individuals to participate in their home life and in community life as fully, independently, and successfully as possible.

66. Personal Assistance services are not a substitute for Community Integration services.

(1) Personal Assistance services essentially are caretaking services that assist participants to perform activities of daily living, housekeeping, shopping, and related services that they are unable to do for themselves and that provide

supervision and oversight to individuals who cannot be safely left alone. Personal Assistance services are not habilitative.

(2) Although the definition allows the personal assistants to "cue" individuals to perform some tasks themselves, the context indicates that these tasks are limited to tasks in the home, including activities of daily living and housekeeping. It does not extend to cueing the individual to perform skills in the community. Even if it did, cueing simply alerts the participant to perform a task he already knows how to do. It does not affirmatively teach skills, including community living skills, which they do not already possess or to improve the skills they do possess.

(3) The 2011 OBRA Waiver bars reimbursement of Personal Assistants' costs. This limits the ability of Personal Assistants to teach skills in a variety of settings. For instance, some participants might participate in activities that have entrance fees or related costs, such as going to movies or museums to learn skills. They could not be accompanied by Personal Assistants since entry fees would not be reimbursed.

(4) OLTL pays approximately \$16 to \$20 per hour for Personal Assistance services in contrast to the average rate of \$36 per hour that OLTL pays for Community Integration services. The result of this rate differential is that providers are able to hire more highly qualified staff to work as Community Integration Specialists than Personal Assistants. The higher qualifications are necessary to provide training to people with autism or brain injury who often have very challenging behavioral issues.

Personal Assistants generally would not have the skills or training necessary to provide habilitation to individuals with challenging behavioral needs.

(5) Few home care agencies are willing to provide Personal Assistance services to individuals with autism or other disabilities that result in challenging behavioral issues. Those agencies generally provide those services only to people who have physical disabilities or older individuals. They are reluctant to serve individuals with challenging behaviors. Thus, most OBRA Waiver participants with autism or brain injury receive Personal Assistance services through the same agencies that provide their Community Integration services.

67. Adult Daily Living Services offer habilitation, but only in segregated group settings outside the person's home. This service offers little, if any, opportunity to teach domestic skills in the home or to teach community living skills in various community settings. The service cannot exceed eight hours a day. This service is not appropriate for either individuals with challenging behavioral needs that require more intense staffing or for individuals who have no intellectual, cognitive, or behavioral impairments and need habilitation to learn community living skills (such as financial skills, using public transit, and monitoring medical needs).

68. Structured Day Habilitation is habilitative, but it is not appropriate or adequate for Plaintiffs and putative class members. Structured Day Habilitation must be offered in segregated, group settings. In addition, Structured Day Habilitation, unlike Community Integration services, generally does not allow the teaching of skills in the participants' residences, limiting their capacity to learn domestic skills in their own

homes. OBRA Waiver participants who have used Community Integration services to provide individualized skills training in a variety of settings will not benefit from Structured Day Habilitation. The ability to learn in home and a variety of community settings is essential to enable participants to learn the daily living skills they need. Structured Day Habilitation costs as much -- if not more -- than Community Integration services. Community Integration services cost an average of \$36 per hour under the 2011 OBRA Waiver. Structured Day Habilitation costs approximately \$35 per hour, and the cost increases to \$55 per hour if 1:1 staffing is needed or \$75 per hour if 2:1 staffing is needed. Many individuals with autism or brain injury exhibit challenging behaviors and would need at least 1:1 staffing in a Structured Day Habilitation Program.

69. Residential Habilitation would provide habilitation services, but it is less integrated than necessary for OBRA Waiver participants and, in any event, is unavailable.

(1) Residential Habilitation requires OBRA Waiver participants to receive services in less integrated settings than the homes where they currently live, either independently or with family. Plaintiffs, for instances, live in their own homes that they chose. Their homes are not chosen, paid for, leased by, or operated by the providers who provide them with supports. If they want to move, they can. Residential Habilitation would require them to link their housing to the services they receive. For individuals who are living on their own or with family, they would have to move to less integrated settings to live with other individuals with disabilities.

(2) Those OBRA Waiver participants who might accept residential services will not be able to access that service prior to the termination or reduction of their Community Integration services. There are few providers willing to offer Residential Habilitation services to OBRA Waiver participants. On information and belief, those providers which are willing to do so will not be able to establish residential programs by January 1, 2012.

(3) The rates established by OLTL -- \$264 per day with \$20 or \$40 per hour supplements if 1:1 or 2:1 staffing, respectively, is needed -- are not adequate to pay providers to serve OBRA Waiver participants. In a letter sent to 20 OBRA Waiver participants to whom it provided Community Integration services, Keystone Human Services (Keystone) stated that Residential Habilitation was not an adequate alternative to Community Integration services and that, even if it were, the rate established by OLTL was not adequate to enable Keystone to meet the service needs of its clients.

(4) OLTL has only established a rate for eligible costs, *i.e.*, those costs covered by Medical Assistance (such as staff). OLTL has not established any rates for ineligible costs, *i.e.*, the room and board costs that cannot be paid by Medical Assistance for residential services. On information and belief, OLTL has no funding to pay any ineligible rates, which would require the individual or their family or some other funding source to pay those costs.

70. The 2011 OBRA Waiver's elimination of Behavior Therapy will also have a detrimental impact on Plaintiffs and putative class members. The new "behavior management" service funded as a "Therapeutic and Counseling Service" must be

provided by licensed staff and appears to be more of a supervisory service rather than a one-on-one program to address the challenging behaviors exhibited particularly by OBRA Waiver participants who have cognitive disabilities.

71. Keystone, in its letter terminating services to OBRA Waiver participants, stated that Therapeutic and Counseling Service was not an appropriate substitute for Behavior Therapy for people with autism.

C. ICFs/MR and ICFs/ORC

72. Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR services) are an optional service under Title XIX. 42 U.S.C. § 1396a(a)(10)(A); 1396d(a)(15). Pennsylvania has chosen to provide ICF/MR services in its State Plan. As such, Medical Assistance recipients who are eligible for ICF/MR services have an entitlement to receive those services.

73. Title XIX defines an "ICF/MR" as an institution for persons with mental retardation "or persons with related conditions[.]" 42 U.S.C. § 1396d(d). "Persons with related conditions" are individuals who have a severe, chronic disability that (a) is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disabilities and requires treatment or services similar to those required for such individuals; (b) is manifested before the age of 22; (c) is likely to continue indefinitely; and (d) results in substantial functional limitations in three or more of the

following major life activities: self-care; understanding and use of language; learning; mobility; self-direction; and capacity for independent living. 42 C.F.R. §435.1009.

74. Under Title XIX, "ICF/MR services" therefore include both intermediate care facilities for persons with mental retardation (ICFs/MR) and intermediate care facilities for persons with other related conditions (ICFs/ORC), such as people with autism or brain injury who do not have intellectual disabilities.

75. The key component of ICF/MR services, including ICF/ORC services, is "active treatment." Federal law requires that ICF/MR residents "receive a continuous active treatment program that includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services" 42 C.F.R. § 483.440(a)(1). Active treatment "is directed toward -- (i) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and (ii) the prevention or deceleration of regression or loss of current optimal functional status." *Id.* Active treatment, in essence, is habilitation.

76. Before an individual can be admitted to an ICF/ORC, an evaluation must occur to determine "if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility." 42 C.F.R. § 483.440(b)(3).

77. People with developmental disabilities would need ICF/ORC services in small homes located in integrated neighborhoods.

78. ICFs/MR, including ICFs/ORC, can serve as few as four individuals.

79. Individuals who do not have a diagnosis of an intellectual disability could not be admitted to any ICF/MR in Pennsylvania. *See Mental Retardation Bulletin No. 00-02-13* (Aug. 7, 2002).

80. On information and belief, DPW authorized the development of two ICFs/ORC -- one in Pittsburgh and one in Erie. Each ICF/ORC has the capacity to serve seven individuals and provides 24-hour staffing and active treatment as required by federal law. These ICFs/ORC are designed for and house people with severe physical disabilities that occurred during the developmental period, providing these individuals with intensive skills training to prepare them for more independent living arrangements. The two Pennsylvania ICFs/ORC do not, cannot, and never have served individuals who do not have physical disabilities. Moreover, on information and belief, those two ICFs/ORC have no openings for new residents who have physical disabilities.

81. DPW has significant control over the development of ICF/MR programs, including ICF/ORC services. DPW has not sought the development of ICFs/ORC.

82. On information and belief, providers of services would develop ICFs/ORC for Pennsylvania, but they have not done so because there has been no support from DPW.

D. Plaintiffs' Need for Services

83. Plaintiff Rebecca Leonard is a 40-year-old woman who has a diagnosis of autism.

84. Since April 2001, Ms. Leonard has been enrolled in the OBRA Waiver.

85. For the past ten years, Ms. Leonard has lived in her own residence with a housemate. Their home is owned by a limited liability corporation formed by her and her housemate's families. Ms. Leonard and her housemate receive Section 8 vouchers that are used toward the rent to cover the mortgage.

86. Ms. Leonard was very involved in the selection of her home. She visited various houses for sale in the community before deciding on the current house. She actively was engaged in setting up housekeeping and selecting furniture and other household goods.

87. As of October 1, 2011, the OBRA Waiver provides Ms. Leonard with approximately 106 hours per week of Community Integration services; 28 hours per week of Personal Assistance services (which she shares with her roommate); and 6 hours per week of Behavior Therapy.

88. Ms. Leonard is generally not verbal, though she can speak with difficulty.

89. Ms. Leonard works 16 hours per week at the office of her OBRA Waiver services provider, NHS.

90. Community Integration services assist Ms. Leonard, who can become unfocused and has a low tolerance for interacting with others, with her communication and interpersonal skills. Community Integration services assist Ms. Leonard with her coping skills when she becomes frustrated or agitated. Community Integration services assist Ms. Leonard to participate in community activities, safety awareness, and exercise.

91. Ms. Leonard's Community Integration services allow her to participate in a wide array of community activities, including going to the YMCA, the library, the bank,

shopping, having lunch with her brother, and taking trips. Community Integration services enable her to participate in these activities by assisting her to exhibit socially appropriate behaviors in the community.

92. Community Integration services are also essential to assist Ms. Leonard to solve problems as they arise at her home or in the community.

93. Behavior Therapy has worked to address the difficult behaviors that Ms. Leonard can exhibit when she is frustrated or upset, such as screaming, pacing, and body rocking.

94. Ms. Leonard's staff who provide her Community Integration services and Behavior Therapy understand her communication and how she processes information. Her staff are aware of her non-verbal language and understand what her behaviors mean and how to address escalating negative behaviors.

95. Plaintiff Matthew Leonard is a 44-year-old man who has a diagnosis of autism.

96. Since September 2000, Mr. Leonard has been enrolled in the OBRA Waiver.

97. For nearly eleven years, Mr. Leonard has lived in his own residence with two housemates. The house is owned by a limited liability corporation formed by his and his housemates' families. They receive Section 8 vouchers that are used toward the rent that covers the mortgage.

98. Mr. Leonard was actively involved in the selection of his home and in setting up housekeeping.

99. As of October 1, 2011, the OBRA Waiver provides Mr. Leonard with approximately 106 hours per week of Community Integration services; 23 hours per week of Personal Assistance services (shared with his housemates); and 6 hours per week of Behavior Therapy.

100. Mr. Leonard is non-verbal, but he can communicate using facilitated communication or a "lightwriter."

101. Mr. Leonard works at a part-time job recycling.

102. Community Integration services assist Mr. Leonard with his communication. Community Integration services assist Mr. Leonard to learn computer skills. Community Integration services assist Mr. Leonard with social activities in the community, including going to restaurants, to the park and mall, to the movies, walking around town, and visiting with family and friends. Community Integration services enable Mr. Leonard to improve his social skills by learning appropriate social interactions. Community Integration services assist Mr. Leonard to improve his domestic skills, including laundry and meal preparation.

103. Behavior Therapy has worked to address the difficult behaviors that Mr. Leonard exhibits. He sometimes engages in self-injurious behaviors when he becomes upset or confused.

104. Mr. Leonard's staff who provide his Community Integration services and Behavior Therapy understand how he communicates and his behavioral and social challenges and how to address them.

105. Ms. Leonard and Mr. Leonard maintain close relationships with their parents, Joe H. Leonard, Jr. and Virginia G. Leonard, who visit frequently and monitor their care and services. Joe and Virginia Leonard now are in their 70s. They are unable and unqualified to provide services to their son and daughter if they lose the services they have and adequate alternatives are not available.

106. In or around October 2011, when Joe and Virginia Leonard learned that their son's and daughter's Community Integration services would, at best, each be limited and capped from 106 hours per week to 12 hours per week and that they would lose their Behavior Therapy, they immediately began to seek alternatives to assure that their children were able to stay in their own homes and continue participating in community activities.

107. Joe and Virginia Leonard informed Rebecca and Matthew Leonard's Supports Coordinator that, if adequate alternatives under the OBRA Waiver were not available by January 1, 2012, they would consider moving their children to an ICF/ORC. The Supports Coordinator advised DPW of this request, and asked for guidance and assistance to secure that service if needed. To date, she has received no response.

108. Joe and Virginia Leonard met with their children's provider, NHS, in early November 2011 to discuss these changes and whether their children's services could be reconfigured under the OBRA Waiver to enable them to maintain services similar to those which they currently receive. The Leonards informed NHS that they would be willing to accept Residential Habilitation or ICF/ORC services as an alternative if no other options are available to enable their son and daughter to keep their current supports.

109. NHS investigated the financial feasibility of these options, but to date has not been able to develop alternative services for Rebecca and Matthew Leonard that are financially feasible.

110. Neither Structured Day Habilitation nor Adult Daily Living would provide appropriate day supports for Rebecca and Matthew Leonard. Mr. and Ms. Leonard are able to receive habilitation services that allow them to learn and maximize their skills in the integrated settings in the community. Structured Day Habilitation and Adult Daily Living would require them to receive services in far more segregated settings than where they currently receive those services.

111. If Rebecca and Matthew Leonard cannot receive either adequate alternative services under the OBRA Waiver or an ICF/ORC by January 1, 2012, they will be at risk of significant harm. They cannot stay in their current homes without appropriate services and their parents cannot care for them in the family home due to their challenging behaviors. Even if they were forced to move back to their family home, the loss of Community Integration services and Behavior Therapy will almost certainly result in behavioral regression and the loss of skills that they have worked to acquire as well as preventing them from improving their skills or acquiring new skills. They would also be unable to participate in community life to the same extent as they have been able to do because their parents could not take them into the community, resulting in greater isolation and segregation.

112. Plaintiff Elisa Anslow is a 24-year-old woman who has diagnoses of autism and bipolar disorder.

113. Ms. Anslow has strong skills in many areas. She is able to complete the vast majority of her self-care skills independently, with only occasional verbal prompts. She enjoys cooking and baking and can engage in those activities with some assistance. She also enjoys crafts, music, and simple academics.

114. Due to her disabilities, however, Ms. Anslow exhibits extremely challenging behaviors, including physical and verbal aggression, self-injurious behaviors, and property destruction. These behaviors can vary widely in intensity and amount.

115. Ms. Anslow's father works outside the home full-time during the day and part-time in the evenings. He is unable, unavailable, and unqualified to provide his daughter with habilitation, behavior therapy, care, and oversight she needs. Ms. Anslow's mother has a physical illness. She is unable and unqualified to provide her daughter with the habilitation, behavior therapy, care, and oversight she needs. They are particularly unable to meet the challenges presented by their daughter's disability-related maladaptive behaviors while meeting their own safety needs.

116. Due to their inability to safely provide appropriate services to and care for their daughter safely in their own home, Ms. Anslow's parents sought alternatives that would enable Ms. Anslow to receive services and care outside of the family home.

117. Ms. Anslow was enrolled in the OBRA Waiver in 2007 and began receiving 24-hour daily supports through the OBRA Waiver beginning in November 2008.

118. The OBRA Waiver could not pay for Ms. Anslow to live outside her family home since Medical Assistance does not permit payment for room and board. Ms.

Anslow's parents successfully persuaded the Montgomery County MH/MR Program to use state mental health funds to pay for Ms. Anslow's room and board. With the combination of OBRA services and room and board funding, Ms. Anslow was able to relocate from her parents' home to her own residence where she has been receiving the services and supports she needs.

119. As of October 1, 2011, Ms. Anslow received the following services funded by the OBRA Waiver: 64 hours per week of Community Integration services; 40 hours per week of Behavior Therapy; 8 hours per week of Supported Employment Services; and 56 hours per week of Personal Assistance services.

120. Ms. Anslow's Community Integration staff have been working with her to take on more responsibilities in her home, including laundry and cleaning up after meals.

121. Ms. Anslow's Community Integration staff have been working with her to enable her to improve her money management skills.

122. Ms. Anslow's Community Integration staff and Behavior Therapist have been working with her to improve her interpersonal, social, and communication skills so that she can spend more time with her family, friends, and outside the home and build new relationships. Ms. Anslow, who prior to living on her own had been fairly isolated in her family home, can be polite, but she struggles to control her emotions when interacting with others if she fears that they will reject her. Ms. Anslow's Community Integration staff and Behavior Therapist address her behaviors, and Community Integration staff have strived to take Ms. Anslow into a variety of community settings -- restaurants, malls, church, and an amusement park -- to build her community living skills.

123. Ms. Anslow's Behavior Therapist also has worked to assure that there is predictability, structure, and consistency to her daily activities, which helps to ameliorate her behavioral problems.

124. Ms. Anslow's Community Integration staff additionally have worked to teach her safety skills in the community, including understanding car safety rules.

125. Ms. Anslow is not capable of caring for herself or protecting herself from harm. She needs assistance and training for both domestic and community living skills. She needs oversight, supervision, and protection from harm.

126. Ms. Anslow maintains a close relationship with her parents, who visit her frequently in her home and carefully monitor her care and services. They are unable to care for her at home due to her physically aggressive behaviors.

127. In the two years before she moved out of her parents' home, Ms. Anslow was admitted to psychiatric hospitals eight times. Since she has been living in her own home with supports from the OBRA Waiver, Ms. Anslow has not had any psychiatric hospitalizations.

128. Ms. Anslow's provider, Keystone, informed her parents in writing on October 31, 2011 that effective January 1, 2012 it would no longer provide Ms. Anslow with Community Integration services or Behavior Therapy, effectively terminating her current program since those services provide the bulk of her supports. Without those services, Ms. Anslow cannot continue to live in her own residence.

129. Ms. Anslow's parents asked Keystone to provide Ms. Anslow with Residential Habilitation services funded through the OBRA Waiver. Keystone indicated that it was not financially feasible to do so at the rate paid by DPW.

130. Ms. Anslow's parents contacted Ms. Anslow's Supports Coordinator to ask for alternative services, including Residential Habilitation, and/or other providers so that Ms. Anslow would be able to remain in her current home. Ms. Anslow's Supports Coordinator has been unable to identify any providers who would be willing to provide Ms. Anslow with services under the OBRA Waiver by January 1, 2012 that would enable her to remain in her home.

131. Ms. Anslow's parents also asked whether ICF/ORC services would be available for their daughter in the event that no other services are available on January 1, 2012, but received no further information.

132. If Ms. Anslow loses her current array of OBRA-funded services on January 1, 2012 and there are no other services -- either through OBRA Waiver services or ICF/ORC services -- available to her on that date, she will not be able to continue to live in her own home. It would be traumatizing for both Ms. Anslow and her family if she had to move back to her parents' home. Ms. Anslow was aggressive toward her parents when she lived with them, which caused her psychiatric hospitalizations. These risks are heightened by the fact that Ms. Anslow, due to her autism, does not handle change well and this would be a dramatic change in her life. The loss of Community Integration service and Behavior Therapy also will almost certainly cause Ms. Anslow to regress

behaviorally, to lose the skills she has acquired, and to prevent her from improving her skills or acquiring new skills.

133. Plaintiffs' situations are not unique. OBRA Waiver participants who have been determined to need Community Integration face the loss or substantial reduction of those services, which are the primary source of habilitation, as well as the loss of Behavior Therapy that they need to address and improve their behavioral challenges. There will be no adequate or available alternatives to these individuals prior to the termination of their current services.

E. Irreparable Harm

134. Plaintiffs and putative class members have suffered irreparable harm as a result of Defendants' actions and inactions that give rise to this case.

135. Without the appropriate Community Integration and Behavior Therapy, Plaintiffs and others similarly situated will almost certainly regress and lose the skills they have struggled to attain. Some will lose their ability to live independently in their own homes or be forced to live in more segregated settings.

136. Plaintiffs have no adequate remedy at law.

VI. Claims

A. Count I – Title XIX: Health and Welfare

137. Paragraphs 1 through 136 are incorporated by reference as if fully set forth herein. This Count is brought solely against Defendant Alexander for actions and omissions in his official capacity under color of state law.

138. Title XIX requires that each HCBS Waiver must include "necessary safeguards (including adequate standards for provider participation) ... to protect the health and welfare of individuals provided services under the [W]aiver" 42 U.S.C. § 1396n(c)(2)(A). This requires a state "to provide all people enrolled in the [W]aiver with the opportunity for access to all needed services covered by the [W]aiver and under the Medicaid State plan. ... The opportunity for access pertains to all services available under the [W]aiver that an enrollee is determined to need on the basis of an assessment and a written plan of care/support." CMS, *Olmstead Update No. 4* (Jan. 10, 2001). "Once in the [W]aiver, an enrolled individual enjoys protection against arbitrary or inappropriate restrictions, and the State assumes an obligation to assure the individual's health and welfare." *Id.*

139. Plaintiffs' and putative class members' health and welfare have been jeopardized by Defendant Alexander's implementation of the OBRA Waiver. On January 1, 2012, Plaintiffs' and putative class members' Community Integration services will be terminated or substantially limited and capped and their Behavior Therapy will be terminated. Although the Waiver purports to offer other options to Community Integration services, those options either are inappropriate to meet the needs of Plaintiffs or will be unavailable on January 1, 2012. Similarly, there is no adequate alternative to Behavior Therapy. As a result of their loss of these services without the immediate availability of appropriate alternatives, Plaintiffs and putative class members will regress and lose skills and will be subject to greater segregation and isolation as their opportunities for community interaction with non-disabled people plummet. Some may

even lose their homes, forcing them to live with family members who are unable to provide appropriate care due to advancing age, illness, or other obligations.

140. Defendant Alexander's acts and omissions under color of state law violate 42 U.S.C. §§ 1396n(c)(2)(A) and 1983.

B. Count II -- Title XIX: Access to Residential Habilitation

141. Paragraphs 1 through 140 are incorporated by reference as if fully set forth herein. This Count is brought solely against Defendant Alexander for actions and omissions in his official capacity under color of state law.

142. Under Title XIX, states that participate in the Medical Assistance program must make Medical Assistance benefits available to eligible persons. 42 U.S.C. § 1396a(a)(10)(A).

143. Title XIX provides that HCBS Waiver services approved by CMS constitute "Medical Assistance" under the state plan. 42 U.S.C. § 1396n(c)(1).

144. Since CMS has approved the OBRA Waiver, the services provided under that HCBS Waiver are "Medical Assistance" services that must be made available to eligible individuals.

145. Once in an HCBS Waiver, individuals must be provided with access to all services available under the Waiver that they need. *See Olmstead Update No. 4* (Jan. 10, 2001).

146. Since Residential Habilitation is a service funded by the OBRA Waiver, individuals in that Waiver have an entitlement under Title XIX to receive that service if it is appropriate for them.

147. Although more segregated than their current OBRA Waiver services and supports, Plaintiffs and putative class members may have no choice but to seek Residential Habilitation absent their current supports.

148. Residential Habilitation, however, will not be available to Plaintiffs and putative class members, at least not prior to the termination of their other services on January 1, 2012.

149. Defendant Alexander's actions and omissions under color of state law that have resulted in the failure to assure that those Plaintiffs have access to Residential Habilitation violate 42 U.S.C. § 1983 and 1396a(a)(10)(A).

150. Title XIX further mandates that Medical Assistance shall be furnished with "reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8). Defendant thus must establish reasonable time standards to furnish Medical Assistance, including services under the OBRA Waiver, and must then furnish those services promptly and without any delay caused by the agency's administrative procedures.

151. Defendant has adopted no time standard for the provision of Residential Habilitation and DPW's administrative procedures have resulted in delays. Defendant has failed to assure there was adequate time to recruit Residential Habilitation providers and enable them to develop appropriate supports and services for OBRA Waiver participants who have complex and challenging needs. Defendant has set rates for eligible costs that are inadequate to enable otherwise willing providers to offer Residential Habilitation, and has failed to provide funding options to pay for ineligible expenses that are a prerequisite for Residential Habilitation. As a result, Plaintiffs and

putative class members will not have access to Residential Habilitation prior to the termination of their current services on January 1, 2012.

152. Defendant Alexander's actions and omissions under color of state law that have caused delay in the ability of Plaintiffs and putative class members to timely access Residential Habilitation violates 42 U.S.C. §§ 1983 and 1396a(a)(8).

C. Count III: Title XIX -- Access to ICF/ORC Services

153. Paragraphs 1 through 152 are incorporated by reference as if fully set forth herein. This Count is brought against Defendant Alexander for actions and omissions in his official capacity under color of state law.

154. Under Title XIX, states that participate in the Medical Assistance program must make Medical Assistance benefits available to eligible persons. 42 U.S.C. § 1396a(a)(10)(A).

155. Medical Assistance benefits include, at the option of the state, ICF/MR services. 42 U.S.C. § 1396d(a)(15). ICF/MR services include ICF/ORC services for individuals with autism or brain injury acquired during the developmental period.

156. Pennsylvania has chosen to cover ICF/MR services in its Medical Assistance program, and thus must also cover ICF/ORC services.

157. Plaintiffs and putative class members are eligible for ICF/ORC services and have an entitlement to those services.

158. ICF/MR services are not available in Pennsylvania to persons who do not have an intellectual disability diagnosis. There are few, if any, ICF/MRs that have openings even to serve people with intellectual disabilities.

159. ICF/ORC services are not available in Pennsylvania to provide services to individuals who do not have severe physical disabilities and there apparently are few, if any, openings in ICFs/ORC even for people who do have severe physical disabilities.

160. Defendant Alexander's actions and omissions under color of state law that have failed to assure access to ICF/ORC services violate 42 U.S.C. §§ 1983 and 1396a(a)(10)(A).

161. Title XIX further mandates that Medical Assistance shall be furnished with "reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8). Defendant thus must furnish Medical Assistance, including ICF/ORC services, promptly and without any delay caused by the agency's administrative procedures. 42 C.F.R. § 435.930(a).

162. Appropriate ICF/ORC services will not be available to Plaintiffs and putative class members prior to the termination of their Community Integration services and Behavior Therapy on January 1, 2012.

163. Defendant Alexander's actions and omissions under color of state law that have caused delay in the ability of those Plaintiffs to timely access ICF/ORC and ICF/MR services violates 42 U.S.C. §§ 1983 and 1396a(a)(8).

164. Title XIX also requires DPW to assure that the Medical Assistance benefits available to a "categorically needy" beneficiary are not "less in amount, duration, or scope than the medical assistance made available to any other" categorically needy beneficiary or to a medically needy beneficiary. 42 U.S.C. § 1396a(a)(10)(B).

165. Plaintiffs and putative class members are categorically needy Medical Assistance beneficiaries.

166. Defendant Alexander provides ICF/MR services to several thousand Medical Assistance beneficiaries who have intellectual disabilities and ICF/ORC services to approximately fourteen Medical Assistance beneficiaries who have severe physical developmental disabilities.

167. Plaintiffs and putative class members are eligible for ICF/ORC services under Title XIX, but are unable to access those services.

168. Defendant Alexander's actions and omissions that preclude Plaintiffs and putative class members from accessing appropriate ICF/ORC services violates 42 U.S.C. §§ 1983 and 1396a(a)(10)(B).

169. Title XIX requires that states offer individuals a choice between HCBS Waiver services and institutional services that they would need in lieu of Waiver services. 42 U.S.C. § 1396n(c)(2)(C).

170. Defendant Alexander has not offered OBRA Waiver participants a choice of services in ICFs/ORC, the institutional alternative to the OBRA Waiver, since such services are effectively unavailable.

171. Defendant Alexander's failure to offer Plaintiffs and putative class members the option of ICF/ORC services violates 42 U.S.C. § 1983 and 42 U.S.C. § 1396n(c)(2)(C).

D. Count IV: ADA and RA

172. Paragraphs 1 through 171 are incorporated by reference as if fully set forth herein. The claims under the Americans with Disabilities Act (ADA) are brought solely against Defendant Alexander for actions and omissions in his official capacity under color of state law. The claims under Section 504 of the Rehabilitation Act (RA) are brought solely against Defendant DPW.

173. Plaintiffs and putative class members have developmental disabilities, impairments that substantially limit one or more major life activities, including but not limited to, caring for themselves, learning, concentrating, and thinking. As such, Plaintiffs and putative class members are persons with disabilities protected by the ADA, 42 U.S.C. §§ 12102(1)(A), 12102(2)(A), and the RA, 29 U.S.C. § 705(20)(B).

174. Plaintiffs are eligible for community-based services under the OBRA Waiver, and, as such, are qualified persons with disabilities under the ADA and RA.

175. DPW, operated and administered by Defendant Alexander, is a public entity subject to the requirements of Title II of the ADA. 42 U.S.C. § 12131(1)(B).

176. DPW is a recipient of federal financial assistance and, as such, is subject to the requirements of Section 504 of the RA. 29 U.S.C. § 794(b).

177. Defendants' termination or reduction of the Community Integration services and termination of Behavior Therapy will result in the loss of essential services on which Plaintiffs depend to live independently or with their families and to participate as much as possible in community life.

178. The day habilitation services available under the 2011 OBRA Waiver are provided only in settings that are far more segregated than the settings in which Plaintiffs and putative class members currently receive Community Integration services. The day habilitation options under the 2011 OBRA Waiver will not allow the provision of habilitation in the participants' homes or in a variety of community settings appropriate to learn skills that are specific to meet their needs. Instead, they would be required to receive day services in segregated settings with other people with disabilities.

179. Residential Habilitation or ICF/ORC services, too, would require Plaintiffs and putative class members to receive services in far more segregated settings than those in which they currently live. Plaintiffs and putative class members live in their own homes that they have chosen or with non-disabled family members. Their housing is not linked to their services and they are not required to live in settings selected and paid for by providers.

180. In the absence of Community Integration services or an equivalent habilitation service, Plaintiffs and putative class members are at risk of segregation in these less integrated settings. Indeed, Defendants would require them to switch from the integrated services that Defendants have determined to be appropriate to meet their needs to more segregated settings.

181. The provision of more integrated alternatives will not fundamentally alter Defendants' programs, services or activities. Defendants have been providing integrated habilitation services to Plaintiffs and putative class members.

182. Defendants Alexander and DPW violate, respectively, the integration mandate of Title II of the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(d), and Section 504 of the RA, 29 U.S.C. § 794 and 28 C.F.R. § 41.51(d), by failing to allow Plaintiffs and putative class members access to services in the most integrated setting appropriate to meet their needs.

183. Defendants Alexander and DPW also violate, respectively, Title II of the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(7), and Section 504 of the RA, 29 U.S.C. § 794, by failing to make reasonable modifications to allow Plaintiffs and putative class members to retain their same level of Community Integration services or an equivalent habilitation service, at least to the extent that those services would not cost significantly more than segregated day and residential alternatives.

184. Additionally, Defendants Alexander and DPW violate, respectively, Title II of the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(3), and Section 504 of the RA, 29 U.S.C. § 794 and 28 C.F.R. § 41.51(b)(3), by using methods of administration that subject Plaintiffs and putative class members to discrimination through unnecessary segregation, including, but not limited to: (a) terminating or substantially reducing Community Integration services without regard to potential harm and assuring that alternative, equivalent services would be available to enable Plaintiffs and putative class members to remain in the most integrated settings appropriate to their needs; and (b) allowing no exceptions to enable Plaintiffs and putative class members to seek individualized reasonable modifications to retain their current services or access equivalent services where doing so would not cost significantly more.

VII. Relief Requested

185. Plaintiffs respectfully request that the Court:

- a. retain jurisdiction over this action;
- b. certify this case to proceed as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2);
- c. declare that Defendants' actions and inactions violate 42 U.S.C. § 1983, Title XIX of the Social Security Act, the Americans with Disabilities Act, and the Rehabilitation Act;
- d. issue appropriate injunctive relief to enjoin Defendants from continuing to violate 42 U.S.C. § 1983, Title XIX of the Social Security Act, the Americans with Disabilities Act, and the Rehabilitation Act, and to take appropriate steps to remedy their violations;
- e. issue such other relief as may be just, equitable, and appropriate, including an award of reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. §§ 1988 and 12205 and 29 U.S.C. § 794a(b).

Respectfully submitted,

Dated: December 1, 2011

By: /s/ Kelly Darr
Kelly Darr
PA Bar I.D. 80909
Robin Resnick
PA Bar I.D. 46980
Disability Rights Network of PA
1315 Walnut Street, Suite 500
Philadelphia, PA 19107-4705
(215) 238-8070

and

Shari Mamas
PA Bar I.D.78321
Disability Rights Network of PA
429 Fourth Avenue, Suite 701
Pittsburgh, PA 15219-1505
(412) 391-5225

Counsel for Plaintiffs